## AGREEMENT

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **BEN COLORADO, INC.**, a Colorado nonprofit corporation whose address is 3513 Brighton Blvd Suite 436, Denver, CO 80216 (the "Contractor"), jointly ("the Parties").

The Parties agree as follows:

1. <u>COORDINATION AND LIAISON</u>: The Contractor shall fully coordinate all services under this Agreement with the Executive Director of Denver Economic Development & Opportunity ("Executive Director") or the Executive Director's Designee.

## 2. <u>SERVICES TO BE PERFORMED</u>:

a. As the Executive Director directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on Exhibit A, Scope of Services, Exhibit B Budget, and Exhibit C, entitled "Financial Administration," to the City's satisfaction. The Contractor shall perform the services in a lawful, satisfactory and proper manner, and in accordance with written policies and procedures as may be prescribed by the U.S. Department of Commerce ("DOC") or the City. Exhibits A, B, and C are attached hereto and incorporated herein by this reference as if fully set forth herein.

**b.** The Contractor is ready, willing, and able to provide the services required by this Agreement.

**c.** The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in this Agreement and in accordance with the terms of this Agreement.

3. <u>**TERM**</u>: This Agreement shall commence on April 1, 2025, and will expire at 11:59:59 p.m. on September 30, 2026 (the "Term"), unless such time is extended by written agreement of the parties, executed in the same manner as this Agreement. The Term and the provisions herein shall automatically be extended to cover any additional time period during which the Contractor remains in control of Economic Development Administration ("EDA") Build to Scale (B2S) program funds or other EDA assets.

## 4. <u>COMPENSATION AND PAYMENT</u>:

a. <u>Budget</u>: The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under this Agreement the line item amounts set forth in the budget contained in **Exhibit B**. Amounts billed may not exceed the budget set forth in **Exhibit B**.

b. <u>Reimbursable Expenses</u>: Reimbursable expenses are permitted as described in Exhibit B.

c. <u>Invoicing</u>: The Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., and **Exhibit C** Financial Administration, applies to invoicing and payment under this Agreement.

## d. <u>Maximum Contract Amount</u>:

(1) Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed ONE MILLION ONE HUNDRED NINETEEN THOUSAND FOUR HUNDRED SIXTY-FIVE AND NO/100 DOLLARS (\$1,119,465.00) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in Exhibit A. Any services performed beyond those in Exhibit A are performed at Contractor's risk and without authorization under this Agreement.

(2) The obligation of the City for payments under this Agreement is limited to monies appropriated by the U.S. Congress and paid into the City Treasury as applicable cost under the Build to Scale Agreements referred to below. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. this Agreement does not and is not intended to create a multiplefiscal year direct or indirect debt or financial obligation of the City.

## e. <u>American Rescue Plan Act Provisions</u>:

(1) The Contractor agrees and acknowledges that some or all of the funds encumbered by the City to pay for the services described herein have been provided in accordance with Section 603(b) of the Social Security Act, as added by Section 9901 of the

American Rescue Plan Act, Public Law No. 117-2 (March 11, 2021) and as amended by the Consolidated Appropriations Act 2023, Public Law No. 117-328 (December 29, 2022) (along with all rules and regulations promulgated thereunder, "ARPA"). The Parties acknowledge that all funding from ARPA (collectively, "ARPA Funds") may only be used to cover those eligible costs incurred by the City during the period that begins on March 3, 2021 and ends on December 31, 2024:

(a) To respond to the public health emergency with respect to the Coronavirus Disease 2019 ("COVID-19") or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or to aid impacted industries such as tourism, travel and hospitality;

(b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the City that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

(c) For the provision of government services to the extent of the reduction in revenue of the City due to the COVID-19 public health emergency relative to the revenues collected in the most recent full fiscal year of the City prior to the emergency; or

(d) To make necessary investments in water, sewer, or broadband infrastructure.

The Parties further acknowledge that ARPA Funds may also be used to cover those eligible costs incurred by the City during the period that begins on December 29, 2022, and ends on December 31, 2024:

(e) To provide emergency relief from natural disasters or the negative economic impacts of natural disasters, including temporary emergency housing, food assistance, financial assistance for lost wages, or other immediate needs;

(f) Subject to restriction, to fund certain surface transportation-related projects under limited U.S. Department of Transportation programs; or

(g) Subject to certain restriction, to fund projects eligible under Title I of the Housing and Community Development Act of 1974, which includes any projects that are currently eligible activities, programs, and projects under Community Development Block Grant and Indian Community Development Block Grant authorization.

3

(2) The Contractor shall only utilize ARPA Funds for the purposes described in the Scope of Services attached as **Exhibit A**. The Contractor agrees and acknowledges that, as a condition to receiving the ARPA Funds, it shall strictly follow the Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions attached hereto and incorporated herein as **Exhibit D**. All invoices submitted by the Contractor to the City pursuant to this Agreement shall use "COVID-19" or "Coronavirus" as a descriptor for those costs that are paid by ARPA Funds to facilitate the tracking of Agreement-related spending related to COVID-19. The Contractor shall segregate and specifically identify the time and expenditures billed to the City on each invoice to allow for future review and analysis of COVID-19 related expenses. To avoid an unlawful duplication of federal benefits, the Parties agree and acknowledge that the services and/or goods provided by the Contractor for which ARPA Funds are used shall not, to the extent that ARPA Funds are used, also be paid for or reimbursed by monies provided under any other federal program.

(3) The City agrees and acknowledges that it shall obligate the use of ARPA funds for the services performed and/or good provided by the Contractor under this Agreement no later than December 31, 2024. The Contractor agrees and acknowledges that all services performed and/or goods provided by the Contractor using ARPA Funds must be performed and/or provided, respectively, by the Contractor no later than December 31, 2026. Further, the Contractor agrees and acknowledges that payment for all services performed and/or goods provided by the Contractor using ARPA Funds must be provided by the City to the Contractor no later than December 31, 2026. As such, the Contractor shall invoice the City not later than November 1, 2026 for all work performed pursuant to this Agreement for which ARPA Funds will be used to enable sufficient time for the City to review, process, and pay such invoice no later than the performance deadline prescribed in ARPA (the "Invoice Deadline Date"). Any invoice submitted by the Contractor after the Invoice Deadline Date for services performed and/or goods provided on or prior to December 31, 2026 may not be eligible to be paid by ARPA Funds, and, to the extent that ARPA Funds are not available to pay such invoice, partially or in total, such invoice shall only be paid subject to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement.

(4) To the extent that the Contractor's services hereunder contemplate the spending of ARPA Funds, the Contractor shall provide to the City information responsive to

mandatory performance measures, including programmatic data sufficient to conduct oversight as well as understand aggregate program outcomes. Further, in providing the ARPA-required information to the City, to the extent possible, Contractor shall provide this programmatic data related to such services disaggregated by race, ethnicity, gender, income, and other relevant demographic factors as may be determined by the City. The Contractor shall insert the foregoing requirement into all subcontracts related to this Agreement, thereby obligating all subcontractors to the same reporting requirement as the Contractor.

5. <u>STATUS OF CONTRACTOR</u>: The Contractor is an independent Contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or Directors of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. <u>CONDITIONS</u>: This Agreement is also subject to, and the Contractor shall comply with:

**a.** the Build to Scale Program/Denver – Inclusive Impact Catalyst award entered into by and between the City and DOC, attached hereto as **Exhibit E**;

**b.** the DOC Financial Assistance Standard Terms and Conditions;

c. Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements (79 FR 78390); and

d. Build to Scale EDA Specific Award Conditions.

Additionally, this Agreement is subject to the City's Charter and all applicable City ordinances, as the same may be amended from time to time.

### 7. <u>TERMINATION</u>:

**a.** The City has the right to terminate this Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under this Agreement beyond the time when its services become unsatisfactory to the Executive Director.

**b.** Notwithstanding the preceding paragraph, the City may terminate this Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bidrigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar

nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

**c.** Upon termination of this Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in this Agreement.

**d.** If this Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under this Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

# 8. <u>CERTIFICATION REGARDING DEBARMENT, SUSPENSION,</u> <u>INELIGIBILITY AND VOLUNTARY EXCLUSION</u>:

**a.** The Contractor represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

**b.** The Contractor will not enter into any lower tier transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

**c.** The Contractor shall include the certification contained in subparagraph A of this Section in any and all subcontracts hereunder and shall require any subcontractors or subconsultants to comply with any and all applicable federal laws, rules and regulations, policies and procedures or guidance concerning the federal debarment, suspension, and exclusion program.

**d.** The Contractor will immediately notify DEDO in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this Agreement, or if due to changed circumstances the Contractor or any of its principals have subsequently been excluded by a federal agency.

6

**e.** The representation made in subparagraph A of this Section is a material representation of fact upon which reliance was placed when this transaction was entered into.

9. **EXAMINATION OF RECORDS AND AUDITS:** The Contractor shall maintain records of the documentation supporting the use of ARPA Funds in an auditable format, for the later of five (5) years after final payment on this Agreement or the expiration of the applicable statute of limitations. Any authorized agent of the City, including the City Auditor or his or her representative, and for ARPA Funds any authorized agent of the Federal government, including the Special Inspector General for Pandemic Recovery ("Inspector General") have the right to access, and the right to examine, copy and retain copies, at the official's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's use of ARPA Funds pursuant to this Agreement. The Contractor shall cooperate with Federal and City representatives and such representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of five (5) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of the use of ARPA Funds, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this section shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.

10. <u>AUDIT REQUIREMENTS</u>: Non-profit organizations that expend \$750,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (the "OMB Uniform Guidance") and applicable federal regulations.

11. <u>WHEN RIGHTS AND REMEDIES NOT WAIVED</u>: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Agreement constitutes a waiver of any other breach.

#### 12. INSURANCE:

General Conditions: The Contractor agrees to secure, at or before the time a. of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Contractor shall keep the required insurance coverage in force at all times during the term of this Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. The Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**b.** <u>Proof of Insurance</u>: The Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The Contractor certifies that the certificate of insurance attached as **Exhibit F**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. <u>Additional Insureds</u>: For Commercial General Liability, Business Auto

Liability, and Excess Liability/Umbrella (if required), the Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**d.** <u>Waiver of Subrogation</u>: For all coverages required under this Agreement, with the exception of Professional Liability, Contractor's insurer shall waive subrogation rights against the City.

e. <u>Subcontractors and Subconsultants</u>: The Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

f. <u>Worker's Compensation and Employers Liability Insurance</u>: The Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**g.** <u>Commercial General Liability</u>: The Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

h. <u>Personal Automobile Insurance</u>: The Contractor shall ensure personal automobile insurance is in force with current state minimum limits for all vehicles used in performing services under this Agreement. The Contractor represents, as material representations upon which the City is relying, that the Contractor does not own any fleet vehicles and that in performing Services under this Agreement, the Contractor's owners, officers, directors, and employees use their personal vehicles. The Contractor shall ensure that any person operating a motor vehicle in performing Services under this Agreement shall keep in full force Personal Auto Liability coverage with minimum required limits.

## 13. <u>DEFENSE AND INDEMNIFICATION</u>:

**a.** The Contractor hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against

all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of the Contractor or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

**b.** The Contractor's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. The Contractor's duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

c. The Contractor will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.

**d.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

14. <u>TAXES, CHARGES AND PENALTIES</u>: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

15. <u>ASSIGNMENT; SUBCONTRACTING</u>: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate this Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subconsultant, subcontractor or assign.

16. **<u>INUREMENT</u>**: The rights and obligations of the Parties to this Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of this Agreement.

17. <u>NO THIRD PARTY BENEFICIARY</u>: Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

18. <u>NO AUTHORITY TO BIND CITY TO CONTRACTS</u>: The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

**19. SEVERABILITY:** Except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

## 20. <u>CONFLICT OF INTEREST</u>:

**a.** No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

**b.** The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

21. <u>NOTICES</u>: All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Executive Director of Denver Economic Development & Opportunity or Designee Denver Economic Development Opportunities 101 W. Colfax Ave., Suite 850 Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office 1437 Bannock St., Room 353 Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**22. <u>DISPUTES</u>:** All disputes between the City and Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

23. <u>GOVERNING LAW; VENUE</u>: This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

24. <u>NO DISCRIMINATION IN EMPLOYMENT</u>: In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

25. <u>COMPLIANCE WITH ALL LAWS</u>: Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

26. <u>COMPLIANCE WITH DENVER WAGE LAWS</u>: To the extent applicable to the Contractor's provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

27. <u>LEGAL AUTHORITY</u>: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Contractor or the person signing this Agreement to enter into this Agreement.

28. <u>NO CONSTRUCTION AGAINST DRAFTING PARTY</u>: The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

**29. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of this Agreement and the exhibits, the language of this Agreement controls.

**30. INTELLECTUAL PROPERTY RIGHTS:** The City and the Contractor agree that all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information of the Contractor (collectively "Contractor Materials") made available, directly or indirectly, by the Contractor to City as part of the Scope of Services, are the exclusive property of the Contractor or the third parties from whom the Contractor has secured the rights to use such product. Contractor Materials, processes, methods and services shall at all times remain the property of the Contractor; however, the Contractor hereby grants to the City a nonexclusive, royalty free, perpetual and irrevocable license to use Contractor Materials. The Contractor shall mark or identify all such Contractor Materials to the City.

**31.** <u>SURVIVAL OF CERTAIN PROVISIONS</u>: The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period

equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

32. <u>ADVERTISING AND PUBLIC DISCLOSURE</u>: The Contractor shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Executive Director or the Executive Director's Designee. Any written materials related to services performed under this Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Executive Director or Designee in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

The Contractor shall fully coordinate all logo use under this Agreement with the DEDO Director of Marketing, ("Director") or, if and as directed, with a designated supervisory Manager or Director ("Project Manager"). The Contractor shall submit sponsor proposals to the Project Manager or Director. No sponsorship shall be arranged which would violate other City obligations or any law, rule, or executive order of the City. Except for variances clearly marked, identified and approved by the Director, sponsorship and logo use shall conform precisely to forms which have been pre-approved by the City. Other promotional opportunities or rights must be included as the subject of a regularly executed written agreement to which the City is a party. The Contractor agrees to refrain from doing anything which would tend to discredit, dishonor, reflect adversely upon or in any way injure the good name or business of the City.

## 33. <u>CONFIDENTIAL INFORMATION</u>:

a. <u>City Information</u>: Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential",

or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

**34.** <u>**CITY EXECUTION OF AGREEMENT:**</u> This Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**35.** <u>AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS</u>: This Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.

**36.** <u>USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS</u>: The Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations. The Contractor shall cooperate and comply with the provisions of 2 CFR Part 182 regarding a Drug-Free Workplace.

37. <u>ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS</u>: The Contractor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature under this Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

# [THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

Contract Control Number: Contractor Name: OEDEV-202476469-00 BEN Colorado, Inc

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

## CITY AND COUNTY OF DENVER:

**REGISTERED AND COUNTERSIGNED:** 

ATTEST:

By:

**APPROVED AS TO FORM:** 

Attorney for the City and County of Denver

By:

By:

By:

**Contract Control Number: Contractor Name:** 

OEDEV-202476469-00 BEN Colorado, Inc

	Signed by:	
Bv	Mick Freeman	
Dy	2343824218F84FB	

Name: \_\_\_\_\_\_Mick Freeman

(please print)

Title: CEO & Executive Director (please print)

## ATTEST: [if required]

By: \_\_\_\_\_

Federal Award ID (FAIN) #: Federal Award Date: Federal Awarding Agency:

**Pass-Through Entity:** 

Pass-Through UEI #: Subrecipient UEI #: Assistance Listing: Total Subrecipient Federal Funds: Total Amount of Federal Award: ED23OIE0G0120 November 1, 2023 Department of Commerce Economic Development Administration City and County of Denver Economic Development & Opportunity (DEDO) 101 W Colfax Ave Suite 850, Denver, CO 80202 WP3QXJ87RYH3 S6B5KQHN91G5 11.020 Cluster Grants \$1,119,465 \$1,500,000

#### **1. INTRODUCTION AND OBJECTIVE**

**Period of Performance Start and End Dates: Initial agreement period of** April 1, 2025 – September 30, 2026, with two one-year extensions based on performance.

The purpose of this agreement is to provide a three-year award not to exceed \$1,119,465.00. Funding is based on a federal Build to Scale grant through the Economic Development Administration (EDA) and American Rescue Plan Act (ARPA) received by the city of Denver.

DEDO, through this award, is seeking to address the inequities that historically underutilized and underserved tech founders face when trying to access equity capital. These founders have traditionally had less access to resources, which further weakens their chances of accessing capital. The partner will help these companies become more attractive to investors by accelerating their knowledge and business acumen regarding capital infusions so they can appropriately seek capital when ready and execute effectively with those dollars. The most common gaps in companies' venture-capital-readiness related to lack of strong marketing strategies, poor understanding of financing and accounting requirements, legal contracting, and strategic hiring initiative.

The Partner will prepare businesses owned by these historically underutilized and underserved populations to be capitalized through culturally responsive executive coaching, mentorship, community-based events and educational workshops. This ecosystem will also quickly address companies' readiness for capitalization related to gaps in their finance and accounting systems; business plan development; legal services; marketing; the city's minority, women business enterprises certification (MWBE certification); and human resources needs that support businesses through growth and expansion phases. Funds for this contract will pay for those investment-readiness services. None of the funds will be used as investment capital into business participants receiving services from the Partner.

Through technical assistance provided by The Partner, tech companies will receive help to develop proof-of-concept and assistance with commercialization, further empowering historically underutilized and underserved communities to generate wealth. Finally, every aspect of this partnership is designed to increase access equitably and inclusively to capital for tech-enabled entrepreneurs who have faced systemic, structural and discriminatory challenges to accessing venture capital.

For purposes of this program, the DEDO program team intends to focus on business participation among historically underutilized and underserved tech founders, including the following populations: Businesses owned by individuals who identify as Black, Indigenous and people of color, women, people with disabilities, veterans, foreign-born, and people who identify as lesbian, gay, bisexual, transgender or queer.

<sup>&</sup>lt;sup>2</sup> For purposes of this program, the tech industry includes research, development and distribution of goods and services related to semiconductors, networking, software, hardware and internet and is focused on innovation, creation, and growth.

#### 2. DESCRIPTION OF ACTIVITY AND TASKS TO PERFORMED:

The purpose of this agreement is to provide a not to exceed award for up to 1,119,465.00 as set forth in Exhibit B – Program and Cost Allocation Plan Summary and Budget Narrative. The Contractor will administer services and programming, serving as the prime contractor, and utilizing suitable and qualified community partners as appropriate to deliver professional services, to qualified businesses participating in services.

The services to be performed by the Contractor include but are not limited to:

2.1. ("Subcontractors") qualified to provide supports including and not limited to:

- Achieving MWBE certifications
- Back Office Supports including and not limited to accounting, marketing, legal, human resources.
- Providing Investment Support Services to prepare business participants to receive capital. Capital readiness is determined by the type of capital needed and the business participants understanding of how to use the capital effectively once received. Each business participant will have different needs based on the type of capital and intended purpose of that capital.
- Mentorship and relationship building
- Technology enablement and literacy

2.2. Develop a pipeline of Business Participants that will be supported with capital readiness resources and investment support services.

2.3. Deliver services in a culturally relevant manner.

2.4. Conduct due diligence on Business Participants to determine capital readiness in a manner to address the systemic inequities faced by firms.

- 2.5. Continuously seek partnership building across the ecosystem.
- 2.6. Business participants under this agreement shall meet the following criteria:
  - a. physically located within the boundaries of the City and County of Denver at the time services are received and for a minimum of three years after.
  - b. be registered with Colorado Secretary of State's Office
  - c. be engaged in activities that are legal under Colorado law
  - d. meets program technical requirements including ability to provide financial records
  - e. be in good standing with local, state, and federal taxing and licensing authorities
- 2.7. Contractor shall prioritize available services to Business Participants in the following categories:
  - a. Are majority owned low-to-moderate income individuals (as defined by U.S. Department of Housing and Urban Development) who desire to own or strengthen existing businesses, develop assets, and empower themselves financially, and/or
  - b. Have strong links to neighborhood placemaking/preservation, and/or
  - c. Support and encourage employee ownership, and/or
  - d. Located in Denver's NEST neighborhoods, Denver's Enterprise Zones, neighborhoods where businesses are displacement vulnerable as determined by DEDO

#### 3.0 USE OF FUNDS

The Contractor will provide services to eligible businesses and compensate Subcontractors that provide investment support services to participating businesses. Investment Support Services provided directly by the Contractor (inhouse) are eligible for funding. Funds also provide management and administration support to the Contractor for the administration of the program.

The program will provide investment support services to qualified businesses under the following categories:

• Investment Support Services that address finance and accounting, business plan development, legal services, marketing, MWBE certification, and Human Resources needs that support businesses through growth and expansion phases.

Funding Types	Services provided Per Company
Funding for Investment Support Services	To Contractor or Subcontractors for support to Business Participants in the following areas: finance and accounting, business plan development, legal services, marketing, MWBE certification, and human resources

#### 4.0 IMPLEMENTATION PLAN AND TIMELINE

The following table outlines the implementation plan and timelines for this agreement.

TASK	DATES
In collaboration with DEDO, finalize program	Contract Execution Date – March 2025
In collaboration with DEDO, define and finalize marketing	Contract Execution Date – March 2024 Ongoing
and outreach plan	
Contractor will finalize Subcontractor agreements for	April 2025 – Ongoing
professional services and technical services	
Contractor will activate Subcontractors to begin developing	Contract Execution Date – May 2025 Ongoing
Business Participant Pipeline	
Contractor start deploying services to Business Participants	Contract Execution Date – May 2025 Ongoing
Monitor performance of business participants' progress	Contract Execution Date – May 2026 Ongoing
toward becoming capital-ready	
Monthly meetings to discuss activities	Contract Execution Date – December 2026
Collect all data required for EDA performance reporting	Contract Execution Date – December 2026
using ED-916 semiannual and ED-917 annual reports	
Submit all required performance and financial reports to	Contract Execution Date – December 2026
EDA	

#### **ROLES & RESPONSIBILITES**

The roles and responsibilities of each party in connection with the Services are reflected below. The subsequent sections of this Exhibit "A" provide greater specifications on service execution with references to associated roles and responsibilities.

#### **5.1 DEDO RESPONSIBILITIES**

- Provide a list and description of the City and County of Denver's priority neighborhoods.
- In collaboration with Contractor, actively promote programming and services.
- Participate in monthly meetings.
- Review all reports in a timely manner.
- Assign a team of 2-3 people who will work closely with Contractor focused on program, data, and finance topics.
- City shall make all attempts to work cooperatively with Contractor in the pursuit of executing a successful programming and services, which includes open communication.
- Serve as a referral source from City sponsored pipeline development activities.
- Advise and approve Contractor's ecosystem partners assisted by this agreement.

#### **5.2 CONTRACTOR RESPONSIBILITIES**

- Contractor will employ a full-time staff member focused on the program.
- Contractor, in collaboration with DEDO, actively promote programming and services.
- Contractor will co-locate staff in DEDO identified space(s) 5 days a week.
- Contractor will identify and screen prospective businesses and entrepreneurs for eligibility and provide in house or through sub-contractor's investment support services as resources allow.
- Contractor will utilize DEDO's licensed software for intake process and tracking mechanism for prospective businesses being considered for funding or services.
- Contractor will collect all necessary documentation to successfully move prospective businesses through the pipeline and connect them to the appropriate resources.
- Contractor will advise DEDO if any subcontractor leaves the ecosystem network.
- Contractor will obtain DEDO approval from the Executive Director or designee of any new ecosystem partner.
- Contractor will notify DEDO of any internal policy changes prior to becoming effective.
- Contractor will convene a monthly meeting with DEDO to review and discuss the program.
- Contractor will provide reporting as requested and outlined in the reporting section to the City on a regular and consistent basis and special requests for information as needed.
- Contractor will make all attempts to work cooperatively with the City in the pursuit of executing a successful program, which includes open communication.

#### 6.0 PERFORMANCE INDICATORS FOR SUCCESS

**Outcome 1)** The Contractor will assess a minimum of 150 BIPOC+-led tech companies for capital-readiness in each year of the grant. The outputs used to measure this outcome include: the number of applications made by tech companies to the contractor for support services; ownership demographics of entrepreneurs; NAICS code of industry the company represents; business stage; and initial investment request.

**Outcome 2)** To generate a pipeline of investment portfolio companies, The Contractor will provide technical expertise to 150 companies in Year 1, 150 companies in Year 2, (300 companies total). Outputs used to measure this outcome include: the number of companies matched with expert professional services; the number of companies that become capital-ready based on those services; and the number of referrals made to other investors or funding partners.

#### 7.0 REPORTING REQUIREMENTS

The Contractor will provide DEDO with annual reports and constant access to Contractor's data system for programming and services and consistently utilize DEDO's software platform as previously described for intake and program and services tracking. DEDO reserves the right to access the data at any time for internal and external reporting needs. The real-time data must be exportable from the contractor's system by minimum of a csv file in an on-demand fashion. The metrics that will be provided are listed below:

#### Support Details (annual report):

The contractor will track important details related to the businesses served through the program. Details will include, but may not be limited to:

- 1. Count of requests for assistance received
- 2. Count of businesses matched with Subcontractors
- 3. Count of businesses served with investment support services
- 4. Count of businesses served with technical assistance
- 5. Count of referrals to Subcontractors broken down by assistance type and specific partner
- 6. Count of businesses graduating from Contractor or Subcontractors programs and services
- 7. Count and dollar value of professional services provided to Business Participants

- 8. Count and dollar amount of any funding achieved by Business Participants as a result of participating in programming and services provided by Contractor or Subcontractors:
  - a. External dollars raised/leveraged
  - b. Business Participants matched with CDFI loan programs
  - c. Repayment progress for businesses funded with debt
  - d. Amount of funds leveraged by type (business funds, other public funds, private investment, etc.)
  - e. Approved/Closed Ratio
- 9. Count of FTE jobs created or retained by Business Participants assisted
- 10. Subsequent rounds of funding closed by Business Participants served and increases in company valuations

#### **Business Participant Information**

- 1. Ownership demographics (match DEDO key categorizations) consistent with applicable law
  - a. Race
  - b. Gender
  - c. Additional key priorities (i.e., veteran, foreign born, LGTBQIA2S+, etc.)

In collecting the foregoing demographic information, the Contractor shall comply with the following requirements:

- (1) the disclosure by an applicant must be voluntary;
- (2) disclosure or nondisclosure cannot affect selection or eligibility;
- (3) withholding disclosure cannot affect selection or eligibility;

(4) applicants must have an option that the applicant "prefers not to state" the information;(5) the purpose of collecting the demographic information needs to be stated (for example, data collected for research and analysis purposes, or to report outcomes); and (6) a statement must be included that the information will not be used for any other purposes without first obtaining the applicant's permission.

- d. Business address
- e. Denver neighborhood
- f. Denver City Council District
- g. DSBO certified firm
- h. Intake assessment (this will need to be part of the pipeline database we will want access to for monitoring)
- i. Plan for preparing for capitalization (with list of needed trainings and business adjustments)
- j. Industry (NAICS Code; 6 digit)
- k. Business stage (pipeline derived)
- 1. Business initial investment request
- m. Subcontractors working with business
- n. Mentor match
- o. Business revenue (pre/post program/investment)
- p. Business employee (pre/post program/investment)
- q. Business earnings before interest, taxes, depreciation, and amortization

On an annual basis, a copy of Contractors Audited Financial Statements shall be provided to City within 150 days of Contractors fiscal year-end

#### End of Scope



#### CITY AND COUNTY OF DENVER DENVER ECONOMIC DEVELOPMENT & OPPORTUNITY Inclusive Impact Catalyst PROGRAM YEARS 4/1/2025-9/30/2026 BUDGET SUMMARY

A. Respondent:	BEN Colorado	D. Contract Number:	<u>OEDEV-202476469-00</u>
B. Project:	Inclusive Impact Catalyst	E. Contract Period:	April 1, 2025 - September 30, 2026
C. Program Year:	FY25-FY26	F. Requested Amount:	<u>\$ 1,119,465</u>

Budget Summary for Inclusive Impact Catalyst										
(1)	(2)		(3)		(4)		(5)		(6)	
Item of Expenditure	Total Project Cost requested from DEDO		Other Federal Funding		Other Non-Federal Funding		Other City and County of Denver Funding		Agency Total (All Funding Sources)	
	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Personnel	\$ 430,520	100.00%	\$-	0.00%		0.00%	\$-	0.00%	\$ 430,520	100.00%
Fringe	\$ 77,311	100.00%	-	0.00%		0.00%	-	0.00%	77,311	100.00%
Office Expenses, Supplies, & Equipment	1,000	100.00%	-	0.00%		0.00%	-	0.00%	1,000	100.00%
Communication	4,000	100.00%	-	0.00%		0.00%	-	0.00%	4,000	100.00%
Insurance	2,333	100.00%	-	0.00%		0.00%	-	0.00%	2,333	100.00%
Subcontractor	125,000	100.00%	-	0.00%		0.00%	-	0.00%	125,000	100.00%
Other Direct Costs	81,000	100.00%	-	0.00%		0.00%	-	0.00%	81,000	100.00%
Indirect Costs	73,300	100.00%	-	0.00%		0.00%	-	0.00%	73,300	100.00%
Direct Costs excluded from MTDC	325,000	100.00%	-	0.00%		0.00%	-	0.00%	325,000	100.00%
TOTAL	\$ 1,119,465	100.00%	\$-	0.00%	\$ -	0.00%	\$-	0.00%	\$ 1,119,465	100.00%

#### I: Respondent Authorization

Signature of Respondent Official Date January 30, 2025 Name (Type or print) Mick Freeman

 Title (Type or print)
 CEO & Executive Director

J: City and County of Denver Authorization

Date

Signature

Gintere

Name (Type or print)

Title (Type or print)

		DENVEI	R ECONOMI Inclusive I YEA		IENT & OPPOH at PROGRAM /30/2026	RTUNITY		
A. Respondent:		BEN Colorado			-	C: Contract Nu	oedDev-202476469-00	_
B. Program: Inclusive Impact Catalyst D: Contract Period: April 1, 2025 - September 30, 2026						-		
(1) Position/Title	(2) Employee(s) Name	(3) No.	(4) Annual	Full-time	Total Program	DEDO Share	(8) Brief Summary of Job Responsibilities	DEDO
Program Director	tbd (target date 4/1/25)	Employee(s)	\$183,333	Equivalent 1.00	Cost (\$) \$183,333	( <del>3)</del> \$183,333	Overall program leadership and management, curriculum design, recruiting, subawardees, outcomes/KPIs, and reporting.	100%
Program Coordinator	tbd (new hire 4/1/25)	1	\$108,333	1.00	\$108,333	\$108,333	Daily management and coordination of the Park Hill Innovation Hub, program support, and entrepreneur support.	100%
CEO & Executive Director	Mick Freeman	1	\$333,333	1.00	\$333,333	\$66,667	As CEO & Executive Director, will be deeply involved in the DEDO IIC initiative, treating it as a core BEN program.	20%
Director, Programs & Impact	Kelly Hughes	1	\$166,667	1.00	\$166,667	\$33,333	Drive program alignment within BEN and across our entrepreneurial ecosystem, will ensure program support and continuity	20%
Marketing & Events Coordinator	Ashley Taylor	1	\$108,333	1.00	\$108,333	\$21,667	will support the program with events support, marketing, PR, and general promotion.	20%
Program Specialist	Will Dehner	1	\$104,167	1.00	\$108,555	\$15,625	Overall program execution and support.	15%
Social Media & PR Manager	Tara Hack	1	\$41,667	0.25	\$10,417	\$1,563	Social media, blog, podcast, and event promotion.	15%
Social Media & FR Manager		1	541,007	0.25		\$1,505		15%
					\$0		(Notes: amounts include projected salary and COLA increases.)	
					\$0	\$0		
					\$0	\$0		
(9) Totals					\$0 \$1.014.583	\$0 \$430,520		
F. Fringe Benefits and Total Perso	onnel Cost				\$1,014,565	\$450,520		4
Type of Fringe Benefits, includes t following, but not limited to:	the				Total Cost (\$)	DEDO Share (\$)	Please Show Calculations Below:	
(10) Social Security & Medicare (FICA)					\$63,411	\$25,364	= 6.25% x Line 9	40%
(11) Federal Unemployment Tax (FUTA) (12) State Unemployment Insurance (SUI)					\$60,875 \$16,233	\$24,350 \$6,493	= 6.00% x Line 9 = 1.60% x Line 9	40%
(12) State Unemployment Insurance (13) Workers Compensation	(301)				\$10,233	\$6,493	= 1.60%  x Line 9 = 0.10% x Line 9	40%
(14) Other (Please List)	FMLA				\$1,015	\$406	= 0.10% x Line 9 = 0.10% x Line 9	40%
(15) Other Please List)	Insurance				\$50,729	\$20,292	= 5.00% x Line 9	40%
(16) Total Fringe Benefits (Add Line	es 10-15)				\$193,278	\$77,311		
(17) Total Personnel Costs (Line 9	plus Line 16)				\$1,207,861	\$507,831		

A. Respondent:	BEN Color	CITY AND DENVER ECONOMIC Inclu PROGRAM NON-PI	ENVER PPORTUNITY COUNTY OF DENVI DEVELOPMENT & C sive Impact Catalyst YEARS 4/1/2025-9/30 CRSONNEL BUDGET C: Contract Number:	DPPORTUNITY 2026	Contract Amount: Indirect Rate:		(6) \$1,119,465 10.005
B. Program:	Inclusive Impact	Catalyst	D: Contract Period:	April 1, 2025 - September 30, 2026			
	(1)	(2)	(3)	(4)	1		
Item of 1	Expenditure	Total Program Cost (\$)	DEDO Share of Cost (\$)	Brief Line Item Description & Justification (Please show justification for Total Cost in the Budget Narrative)	Variable #1	Variable #2	DEDO Shar
OFFICE EXPENSES, S EQUIPMENT TOTAL	SUPPLIES, &	\$1,000		Includes the following, but not limited to:			
Event Nametags, Lanyard	s, Notepads, and Pens	\$1,000	\$1,000		8.00	125.00	100%
		\$0	\$0			125.00	0%
		\$0	\$0				
		\$0	\$0				0%
		\$0	\$0				0%
							0%
COMMUNICATION T	OTAL	\$4,000	\$4,000	Includes the following, but not limited to: 100% cell phone costs for 2 FTE program-focused staff and 20% of cell			
Cell Phone		\$4,000	\$4,000	phone for other BEN support staff	200.00	20.00	100%
WiFi		\$0	\$0	Assumed to be Covered			100%
Office Line		\$0	\$0	Assumed to be Covered			100%
		\$0	\$0				100%
		\$0	\$0				100%
INSURANCE TOTAL		\$11,667	\$2,333	Includes the following, but not limited to:			
General Liability		\$11,667	\$2,333	BEN Colorado annual general liability insurance			
		\$0	\$0		11,667.00	1.00	20%
							0%
		\$0	\$0				0%
		\$0	\$0				0%
		\$0	\$0				0%
SUBCONTRACTOR T	TOTAL	\$125,000	\$125,000	Includes the following, but not limited to:			
Subcontractor A		\$25,000	\$25,000	Vendor supporting tech founder pitch decks	25,000.00	1.00	100%
Subcontractor B		\$25,000	\$25,000	Vendor supporting program curriculum and management training for early stage diverse tech founders	25,000.00	1.00	100%
Subcontractor C		\$25,000	\$25,000	Marketing vendor supporting tech founder marketing/PR/websites	25,000.00	1.00	100%
Subcontractor D		\$25,000	\$25,000	Technology training vendor supporting tech apps for startups	25,000.00	1.00	100%
Subcontractor E		\$25,000	\$25,000	Recruiting vendor to support identifying and recruiting participants	25,000.00	1.00	100%
OTHER DIRECT COS	TS TOTAL	\$81,000	\$81,000	Includes the following, but not limited to:	20,000.00	2.00	10070
Program Certifications		\$25,000	\$25,000	Program certificates of completion for tech founders			
Four Founder Recruiting I	Events	\$16,000	\$16,000	Four pitch, investor networking, advisor networking, and skills	250.00	100.00	100%
Four Participant Networki		\$10,000	\$10,000	development events Four pitch, investor networking, advisor networking, and skills	4,000.00	4.00	100%
Two Program Interns		\$20,000	\$20,000	development events One for Summer 2026, supporting recruiting,	5,000.00	4.00	100%
		\$20,000	\$20,000	curricula, and events	10,000.00	2.00	100%
INDIRECT COSTS TO	TAL	\$73,300	\$73,300	Represents the common costs associated with the efforts of operations and is estimated using the Modified Total Direct Method			
n/a		\$73,300	\$73,300		250.00	Rounding (Up to \$5)	100%
DIRECT COSTS EXCL TOTAL	LUDED FROM MTDC	\$325,000	\$325,000	Includes the following, but not limited to:			
		\$125,000	\$125,000	Vendor supporting tech founder pitch decks	125,000.00	1.00	100%
Subcontractor A			1	Vendor supporting program curriculum and management training for early			100%
Subcontractor A Subcontractor B		\$100,000	\$100,000	stage diverse tech founders	125 000 00		10070
		\$100,000	\$100,000	stage diverse tech founders Marketing vendor supporting tech founder marketing/PR/websites	125,000.00 50,000.00	1.00	100%
Subcontractor B					50,000.00	1.00	100%
Subcontractor B		\$50,000	\$50,000	Marketing vendor supporting tech founder marketing/PR/websites			100% 100% 100%

## EXHIBIT C FINANCIAL ADMINISTRATION

## 1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the Denver Economic Development Opportunity (DEDO) - Financial Management Unit (FMU) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by DEDO shall be in accordance with established FMU procedures for line-item reimbursements. The Contractor must submit expenses and accruals to DEDO on or before the last day of each month for the previous month's activity. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with DEDO policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense, except for the final voucher for reimbursement.
- 1.1.3 The Contractor shall submit the final voucher for reimbursement no later than forty-five (45) days after the end of the contract period.
- 1.1.4 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget attached to and made a part of this Agreement (Exhibit A).

## **<u>1.2 Vouchering Requirements</u>**

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to DEDO in order to be paid.
  - a. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.
  - b. The second exception will be that costs cannot be reimbursed until they total a minimum of \$35 unless it is a final payment voucher, or the final voucher for the fiscal year (ending December 31).
- 1.2.2 No more than six (6) vouchers may be submitted per contract per month, without prior approval from DEDO.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within forty-five (45) days of the Agreement end date to allow for correct and prompt closeout.
- 1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

- 1.2.5 Only allowable costs determined in accordance with 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (the "OMB Omni Circular") applicable to the organization incurring the cost will be reimbursed.
- 1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:
  - a. Amount of the request in total and by line item;
  - b. Period of services for current reimbursement;
  - c. Budget balance in total and by line item;
  - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
- 1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to DEDO prior to the draw request.
- 1.2.8 The standardized DEDO "Expense Certification Form" should be included with each payment request to provide the summary and authorization required for reimbursement.

### **<u>1.3 Payroll</u>**

- 1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee's name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.

1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

## **<u>1.4 Fringe Benefits</u>**

1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary paid under this contract. Fringe benefits may also include medical plans, retirement plans, worker's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

## **1.5 General Reimbursement Requirements**

- 1.5.1 <u>Invoices</u>: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.
- 1.5.2 <u>Mileage</u>: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.
- 1.5.3 <u>Pager/Cell Phone</u>: Written statement from executive director will be required certifying that cell phone is necessary and reasonable to run the program. And, if the monthly usage charge is exceeded in any month, a detailed phone log will be required for the amount of the overage.
- 1.5.4 <u>Administration and Overhead Cost</u>: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by DEDO.
- 1.5.5 <u>Service Period and Closeout</u>: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received

by DEDO within forty-five (45) days after the end of the service period stated in the contract.

## 2.1 Program Income

- 2.1.1 Program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.
- 2.1.2 Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current reimbursable costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE VOUCHER REQUEST.
- 2.1.3 The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except AS APPROVED IN WRITING BY DEDO, INCLUDING those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs), unless otherwise directed in writing by DEDO.

### 3.1 Financial Management Systems

### The Contractor must maintain financial systems that meet the following standards:

- 3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- 3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- 3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.

- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 Applicable OMB Omni Circular cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- 3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Contractor will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- 3.1.7 The Contractor shall maintain separate accountability for DEDO funds as referenced in the OMB Omni Circular.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- 3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- 3.1.10 The Contractor shall participate, when applicable, in DEDO provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

## 4.1 Audit Requirements

- 4.1.1 If the Contractor expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the OMB Omni Circular.
- 4.1.2 A copy of the final audit report must be submitted to the DEDO Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to DEDO along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to DEDO within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to DEDO

funding, the Contactor shall prepare and submit a Corrective Action Plan to DEDO in accordance with the Single Audit Act Amendments and the OMB Omni Circular, as set forth in 24 C.F.R. Part 45 for each applicable management letter matter.

All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **DEDO Financial Management Unit**; <u>DEDOFMUAcctsPayable@denvergov.org</u>

- 4.1.4 The Contractor will be responsible for all Questioned and Disallowed Costs.
- 4.1.5 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

## 5.1 Budget Modification Requests

- 5.1.1 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to DEDO with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by DEDO. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.
- 5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to DEDO prior to the last Quarter of the Contract Period, unless waived in writing by the DEDO Director.

## 6.1 Procurement

- 6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars (\$5,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

## 7.1 Bonding

7.1.1 DEDO may require adequate fidelity bond coverage, in accordance with , 2 CFR 200.304(b) where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

### 8.1 Records Retention

- 8.1.1 The Contractor must retain for five (5) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.
- 8.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

### 9.1 Contract Close-Out

- 9.1.1 All Contractors are responsible for completing required DEDO contract closeout forms and submitting these forms to their appropriate DEDO Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by DEDO in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by DEDO within thirty (30) days prior to end of contract.
- 9.1.3 DEDO will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. <u>If Contractor fails to perform in accordance with this Agreement</u>, DEDO reserves the right to unilaterally close out a contract, "unilaterally close" means that no additional money may be expended against the contract.

### **<u>10.1 Collection of amounts due</u>**

10.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand, DEDO may; 1) Make an administrative offset against other requests for reimbursements, 2) Withhold advance payments otherwise due to the Contractor or, 3) other action permitted by law.

# Exhibit D

OMB Approved No.:1505-0271 Expiration Date: 11/30/2021

#### U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND

Denver, Colorado 80202
------------------------

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:

Authorized Representative: Title: Date signed:

U.S. Department of the Treasury:

Authorized R	epresentative:
Title:	-
Date signed:	

#### PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

#### U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS

#### 1. Use of Funds.

- a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
- 2. <u>Period of Performance.</u> The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
- 3. <u>Reporting</u>. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
- 4. Maintenance of and Access to Records
  - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
  - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
- 5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
- 6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
- 7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
- <u>Conflicts of Interest.</u> Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.
- 9. Compliance with Applicable Law and Regulations.
  - a. Recipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
  - b. Federal regulations applicable to this award include, without limitation, the following:
    - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
    - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
    - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
    - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

- v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- 10. <u>Remedial Actions.</u> In the event of Recipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
- 11. <u>Hatch Act.</u> Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
- 12. <u>False Statements.</u> Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
- 13. <u>Publications.</u>Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
- 14. Debts Owed the Federal Government.
  - a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
  - b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
- 15. Disclaimer.
- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

#### 16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Treasury employee responsible for contract or grant oversight or management;
  - v. An authorized official of the Department of Justice or other law enforcement agency;
  - vi. A court or grand jury; or
  - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
- 17. <u>Increasing Seat Belt Use in the United States.</u> Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- 18. <u>Reducing Text Messaging While Driving.</u> Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

OMB Approved No. 1505-0271 Expiration Date: November 30, 2021

#### ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the "Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

- 1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
- 2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.
- 3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit http://www.lep.gov.
- 4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
- 5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal

financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.

- 7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
- 8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
- 9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.
- 10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

<u>City and County of Denver</u> Recipient

Date

Signature of Authorized Official

#### PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

#### EXHIBIT E

### **DOC-EDA GRANT:**

Build to Scale Program:

## **Denver – Inclusive Impact**

Catalyst



Department of Commerce

#### **Economic Development Administration**

Notice of Award (NoA) ED230IE0G0120

#### **RECIPIENT INFORMATION**

 Recipient Name(s)
 Denver Office of Economic Development and Opportunity
 101 W. Colfax St. DENVER, CO 80202 US

- 2. Congressional District of Recipient CO-01
- 3. Employer Identification Number (EIN) 846000580
- 4. UEI WP3QXJ87RYH3
- 5. Recipient POC MICHAEL BEVIS michael.bevis@denvergov.org
- 6. Authorized Official Adeeb Khan Adeeb.Khan@denvergov.org

## FEDERAL AGENCY CONTACT INFORMATION

- 7. Grant Specialist Patrick Waggoner pwaggoner@eda.gov
- 8. Program Officer Patrick Waggoner pwaggoner@eda.gov
- 9. Grant Officer Chivas Grannum cgrannum@eda.gov

#### FEDERAL AWARD INFORMATION

10. Award Number / FAIN ED230IE0G0120

**11. Award Type** Grant

- **12. Period of performance Start Date & End Date** 11/01/2023 - 10/31/2026
- **13. Federal Share of Cost** \$ 750000
- **14. Recipient Share of Cost** \$ 750000
- **15. Total Federal and Recipient Cost** \$ 1500000
- **16. Statutory Authority** The statutory authority for the Build to Scale Program is section 27of Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. § 3723).
- **17. NOFO/RFA #** EDA-B2S-2023
- 18. Project Title Denver - Inclusive Impact Catalyst
- **19. Assistance Listing Number and Name** 11.020 Cluster Grants
- 20. Award Action Type New Competing
- 21. Multiyear Award? No
- 22. R&D Award? No
- 23. Construction Award?

No

24. Grants Officer – Signature and Date

- Chivas Grannum Digitally signed by Chivas Grannum Date: 2023.09.25 19:56:54 -04'00'

25. Recipient – Signature and Date Digitally signed by Adeeb

Adeeb Khan Khan Date: 2023.11.30

09:54:12 -07'00'

BY ACCEPTING THIS AWARD, THE RECIPIENT IS AFFIRMING THAT IT WILL COMPLY WITH ALL THE TERMS AND CONDITIONS OF THE AWARD. THE AWARD MUST BE ACCEPTED BY THE APPLICANT'S AUTHORIZED OFFICIAL.

#### RECIPIENT NAME: Denver Office of Economic Development and Opportunity PROJECT TITLE: Denver - Inclusive Impact Catalyst AWARD NUMBER: ED23OIE0G0120

This Notice of Award includes the following sections and incorporates all regulations, documents and authorities referenced therein.

- I. BUDGET INFORMATION
- II. STANDARD TERMS AND CONDITIONS
- III. SPECIFIC AWARD CONDITIONS
- IV. OTHER

Should there be a discrepancy among these documents, the Specific Award Conditions, including any references, shall control.

#### SECTION I – BUDGET INFORMATION

The following is the Authorized Budget for this award. Reference Section III – Specific Award Conditions for conditions related to the Authorized Budget.

#### Authorized Budget

Authorized budget					
Estimated Funding (\$)	Proposed	Approved			
Federal Share (EDA Amount)	\$ 750,000.00	\$ 750,000.00			
Non-Federal Matching Share	\$ 750,000.00	\$ 750,000.00			
Total Project Costs	\$ 1,500,000.00	\$ 1,500,000.00			
Non-Construction					
Cost Classification	Proposed	Approved			
Personnel	\$ 290,485.00	\$ 290,485.00			
Fringe Benefit	\$ 90,050.00	\$ 90,050.00			
Travel	\$ 0.00	\$ 0.00			
Equipment	\$ 0.00	\$ 0.00			
Supplies	\$ 0.00	\$ 0.00			
Contractual	\$ 1,119,465.00	\$ 1,119,465.00			
Construction	\$ 0.00	\$ 0.00			
Other	\$ 0.00	\$ 0.00			
Indirect Charges	\$ 0.00	\$ 0.00			
Total Project Costs	\$ 1,500,000.00	\$ 1,500,000.00			

#### SECTION II - STANDARD TERMS AND CONDITIONS

The following regulations and standard terms and conditions apply to this award:

2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as Adopted Pursuant

to 2 CFR § 1327.101 for Federal Awards

Department of Commerce Financial Assistance Standard Terms and Conditions

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

□ 13 CFR Chapter III Economic Development Administration, Department of Commerce Regulations

□ Other:

SECTION III – SPECIFIC AWARD CONDITIONS See Attachment 3

SECTION IV – OTHER

## DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS



12 November 2020

## DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

## **Table of Contents**

PREFA	ACE	
A. PR	ROGRAMMATIC REQUIREMENTS	6
.01	Reporting Requirements	6
.02	Revisions of Program Plans	
.03	Other Federal Awards with Similar Programmatic Activities	9
.04	Prohibition against Assignment by a Non-Federal Entity	9
.05	Disclaimer Provisions	9
.06	Unsatisfactory Performance or Non-Compliance with Award Provisions	9
B. FI	NANCIAL REQUIREMENTS	
.01	Financial Management	
.02	Award Payments	
.03	Federal and Non-Federal Sharing	
.04	Budget Changes and Transfer of Funds among Categories	
.05	Program Income	
.06	Indirect or Facilities and Administrative Costs	
.07	Incurring Costs or Obligating Federal Funds Before and After the Period of Performance	
.08	Tax Refunds	16
.09	Internal Controls	16
C. PR	ROPERTY STANDARDS	16
.01	Standards	16
.02	Real and Personal Property	16
.03	Intellectual Property Rights	17
D. AU	UDITS	
.01	Organization-Wide, Program-Specific, and Project Audits	
.02	Audit Resolution Process	
E. DE	EBTS	
.01	Payment of Debts Owed to the Federal Government	
.02	Late Payment Charges	
.03	Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan In Guarantees	

.04	Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs	22
PEF	NFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS RTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING BAWARD AND PROCUREMENT ACTIONS	22
.01	Conflict of Interest and Code of Conduct	
.02	Nonprocurement Debarment and Suspension	23
.03	Requirements for Subawards	
.04	Requirements for Procurements	23
.05	Whistleblower Protections	24
.06	Small Businesses, Minority Business Enterprises and Women's Business Enterprises	24
G. NA	TIONAL POLICY REQUIREMENTS	25
.01	United States Laws and Regulations	25
.02	Non-Discrimination Requirements	25
a.	Statutory Provisions	25
b.	Other Provisions	26
с.	Title VII Exemption for Religious Organizations	27
.03	LOBBYING RESTRICTIONS	27
a.	Statutory Provisions	27
b.	Disclosure of Lobbying Activities	
.04	Environmental Requirements	27
a.	The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.)	28
b.	The National Historic Preservation Act (16 U.S.C. §§ 470 et seq.)	28
с.	Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)	29
d.	Clean Air Act (42 U.S.C. §§ 7401 <i>et seq.</i> ), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 <i>et seq.</i> ) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans")	
e.	The Flood Disaster Protection Act (42 U.S.C. §§ 4002 et seq.)	29
f.	The Endangered Species Act (16 U.S.C. §§ 1531 et seq.)	29
g.	The Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.)	29
h.	The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 et seq.)	30
i.	The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 et seq.)	30
j.	The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f et seq.)	30
k.	The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.)	30

1.	The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 <i>et seq.</i> ) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note <i>et seq.</i> )	)30
m.	Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations")	30
n.	The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 180 et seq.)	
0.	Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)	31
p.	Rivers and Harbors Act (33 U.S.C. § 407)	31
q.	The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 <i>et seq.</i> ), and Executive Order 13186 (Responsibilitie of Federal Agencies to Protect Migratory Birds, January 10, 2001)	
r.	Executive Order 13112 (Invasive Species, February 3, 1999)	31
s.	Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.)	31
.05	OTHER NATIONAL POLICY REQUIREMENTS	32
a.	Buy-American Preferences	32
b.	Criminal and Prohibited Activities	32
c.	Drug-Free Workplace	33
d.	Foreign Travel	33
e.	Increasing Seat Belt Use in the United States	34
f.	Federal Employee Expenses and Subawards or Contracts Issued to Federal Employee	
or	Agencies	
g.	Minority Serving Institutions Initiative	
h.	Research Misconduct	
i.	Research Involving Human Subjects	
j.	Care and Use of Live Vertebrate Animals	
k.	Management and Access to Data and Publications	
1.	Homeland Security Presidential Directive	38
m.	Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations	38
n.	The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175	40
0.	The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)	42
p.	Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)	47
q.	Never Contract with the Enemy (2 C.F.R Part 183; 2 C.F.R. § 200.215)	49

r.	Prohibition on certain telecommunications and video surveillance services or	
	equipment (Public Law 115-232, section 889; 2 C.F.R. § 200.216)	50
s.	Federal Financial Assistance Planning During a Funding Hiatus or Government	
	Shutdown	51

## PREFACE

This document sets out the standard terms and conditions (ST&Cs) applicable to this U.S. Department of Commerce (DOC or Commerce) financial assistance award (hereinafter referred to as the DOC ST&Cs or Standard Terms). A non-Federal entity<sup>1</sup> receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB <u>Uniform Administrative</u> <u>Requirements, Cost Principles, and Audit Requirements for Federal Awards</u> (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, and any other terms and conditions incorporated into this DOC financial assistance award. In addition, unless otherwise provided by the terms and conditions of this DOC financial assistance award, Subparts A through E of 2 C.F.R. Part 200 and the Standard Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award.<sup>2</sup>

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: federal laws and regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and specific award conditions. A specific award condition may amend or take precedence over a Standard Term on a case-by-case basis, when indicated by the specific award condition.

Some of the Standard Terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, SF-424s) or through DOC forms (*e.g.* Form CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

<sup>&</sup>lt;sup>1</sup> Note that the OMB Uniform Guidance uses the term "non-Federal entity" to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms "non-Federal entity," "recipient," and "subrecipient" consistent with their meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance uses the term "pass-through entity" to refer to a non-Federal entity that makes a subaward. As defined at 2 C.F.R. § 200.1:

<sup>&</sup>quot;Non-Federal entity" is "a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient."

<sup>&</sup>quot;Recipient" is "an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award."

<sup>&</sup>quot;Subrecipient" is "an entity, usually but not limited to non-Federal entities, that receives a subaward from a passthrough entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency." "Pass-through entity" is "a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program."

<sup>&</sup>lt;sup>2</sup> See 2 C.F.R. § 200.1 for the definitions of "foreign public entity" and "foreign organization."

DOC commenced implementation of the Research Terms and Conditions (RT&Cs) for Federal awards effective October 1, 2017; the RT&Cs address and implement the Uniform Guidance issued by OMB. For awards designated on the Form CD-450 (Financial Assistance Award) as Research, both the DOC ST&Cs and the RT&Cs as implemented by DOC apply to the award. The RT&Cs as well as the DOC implementation statement, agency specific requirements, prior approval matrix, subaward requirements, and national policy requirements are posted on the National Science Foundation's website – https://www.nsf.gov/awards/managing/rtc.jsp. The DOC ST&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the DOC ST&Cs and the RT&Cs differ in a Research award, the RT&Cs prevail, unless otherwise indicated in a specific award condition.

## A. PROGRAMMATIC REQUIREMENTS

#### .01 Reporting Requirements

a. Recipients must submit all reports as required by DOC, electronically or, if unable to submit electronically, in hard copy, as outlined below and as may be supplemented by the terms and conditions of a specific DOC award.

b. Performance (Technical) Reports. Recipients must submit performance (technical) reports to the Program Officer. Performance (technical) reports should be submitted in the same frequency as the Form SF-425 (Federal Financial Report), unless otherwise directed by the Grants Officer.

1. Performance (technical) reports must contain the information prescribed in 2 C.F.R. § 200.329 (Monitoring and reporting program performance), unless otherwise specified in the award conditions.

2. As appropriate and in accordance with the format provided by the Program Officer (or other OMB-approved information collections, including the Research Program Performance Report [RPPR] as adopted by DOC for use in research awards), recipients are required to relate financial data to the performance accomplishments of this Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance will be measured in a way that will help DOC to improve program outcomes, share lessons learned, and spread the adoption of best or promising practices. As described in 2 C.F.R. § 200.211 (Information contained in a Federal award), DOC will identify the timing and scope of expected performance by the recipient as related to the outcomes intended to be achieved by the Federal program.

3. Recipients (or pass-through entities as applicable) must submit a final performance report within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its final performance report to the pass-through entity within 90 calendar days unless an extension has been granted.

c. Financial Reports. In accordance with 2 C.F.R. § 200.328 (Financial reporting), the recipient must submit a Form SF-425 (Federal Financial Report) or any successor form on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports must be submitted to DOC as directed by the Grants Officer, in accordance with the award conditions and are due no later than 30 calendar days following the end of each reporting period. Recipients (or pass-through entities as applicable) must submit a final Form SF-425 within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its financial report to the pass-through entity within 90 calendar days unless an extension has been granted. A recipient may submit a final financial report in lieu of an interim financial report due at the end of the period of performance (*e.g.*, in lieu of submitting a financial report for the last semi-annual or other reporting under an award, a recipient may submit a final (cumulative) financial report covering the entire award period).

d. Real Property, Tangible Personal Property and Intangible Property Reports and Requests for Dispositions. Unless otherwise required by the terms and conditions of a DOC financial assistance award, where real property, tangible personal property or intangible property is acquired or improved (in the case of real property or tangible personal property), or produced or acquired (in the case of intangible property), pursuant to a DOC award, non-Federal entities are required to submit the following real property, tangible personal property and intangible property reports (as appropriate):

1. Real Property Status Reports and Requests for Dispositions: Non-Federal entities must submit reports using Form SF-429 (Real Property Status Report) or any successor form, including appropriate attachments thereto, at least annually disclosing the status of real property that is Federally-owned property or real property in which the Federal Government retains a Federal Interest, unless the Federal Interest in the real property extends 15 years or longer. In cases where the Federal Interest attached is for a period of 15 years or more, the DOC or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or, the DOC or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). In addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-429, with appropriate attachments, relating to a non-Federal entity's request to acquire, improve or contribute real property under a DOC financial assistance award. Non-Federal entities wishing to dispose of real property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.311(c). See also the real property standards set forth in Section C. of these Standard Terms (Property Standards).

2. Tangible Personal Property Status Reports and Requests for Dispositions: DOC or a pass-through entity may also require a non-Federal entity to submit periodic reports using Form SF-428 (Tangible Personal Property Report) or any successor form, including appropriate attachments thereto, concerning tangible personal property that is Federally-owned or tangible personal property in which the Federal Government retains an interest. In

addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-428 in connection with a non-Federal entity's request to dispose of tangible personal property acquired under a DOC financial assistance award. Non-Federal entities wishing to dispose of tangible personal property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.313(e). *See also* the tangible property standards set forth in Section C. of these Standard Terms (Property Standards).

3. Intangible Property Status Reports and Requests for Dispositions: The specific requirements governing the development, reporting, and disposition of rights to intangible property, including inventions and patents resulting from DOC awards, are set forth in 37 C.F.R. Part 401, which is hereby incorporated by reference into this award. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing to the Grants Officer compelling reasons for allowing the submission of paper reports. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 C.F.R. § 200.313(e). *See also* the intangible property standards set forth in Section C. of these Standard Terms (Property Standards).

e. Subawards and Executive Compensation Reports. For reporting requirements on subawards and Executive Compensation, see paragraph G.05.0 of these Standard Terms (The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)).

f. Recipient Integrity and Performance Matters. For reporting requirements pertaining to integrity and performance matters, see paragraph G.05.p of these Standard Terms (Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)).

g. Research Performance Progress Reports. All research awards shall submit the Research Performance Progress Report (RPPR) in accordance with instructions set forth in the following link: <u>RPPR Instructions.</u>

### .02 Revisions of Program Plans

In accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)), the recipient must obtain prior written approval from the DOC Grants Officer for certain proposed programmatic change requests, unless otherwise provided by the terms and conditions of a DOC award. Requests for prior approval for changes to program plans must be submitted to the Federal Program Officer (or electronically for awards administered through Grants Online). Requests requiring prior DOC approval are not effective unless and until approved in writing by the DOC Grants Officer.

#### .03 Other Federal Awards with Similar Programmatic Activities

The recipient must immediately provide written notification to the DOC Program Officer and the DOC Grants Officer if, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

#### .04 Prohibition against Assignment by a Non-Federal Entity

A non-Federal entity must not transfer, pledge, mortgage, assign, encumber or hypothecate a DOC financial assistance award or subaward, or any rights to, interests therein or claims arising thereunder, to any party or parties, including but not limited to banks, trust companies, other financing or financial institutions, or any other public or private organizations or individuals without the express prior written approval of the DOC Grants Officer or the pass-through entity (which, in turn, may need to obtain prior approval from the DOC Grants Officer).

#### .05 Disclaimer Provisions

a. The United States expressly disclaims all responsibility or liability to the non-Federal entity or third persons (including but not limited to contractors) for the actions of the non-Federal entity or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

b. The acceptance of this award or any subaward by the non-Federal entity does not in any way constitute an agency relationship between the United States and the non-Federal entity or the non-Federal entity's contractors or subcontractors.

#### .06 Unsatisfactory Performance or Non-Compliance with Award Provisions

a. Failure to perform the work in accordance with the terms of the award and maintain satisfactory performance as determined by DOC may result in the imposition of additional award conditions pursuant to 2 C.F.R. § 200.208 (Specific conditions) or other appropriate enforcement action as specified in 2 C.F.R. § 200.339 (Remedies for noncompliance).

b. Failure to comply with the provisions of an award will be considered grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.339 (Remedies for noncompliance), including but not limited to: the imposition of additional award conditions in accordance with 2 C.F.R. § 200.208 (Specific conditions); temporarily withholding award payments pending the correction of the deficiency; changing the payment method to reimbursement only; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 C.F.R. Parts 180 and 1326; and such other remedies as may be legally available.

c. 2 C.F.R. §§ 200.340 (Termination) through 200.343 (Effects of suspension and termination) apply to an award that is terminated prior to the end of the period of performance

due to the non-federal entity's material failure to comply with the award terms and conditions. In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a non-Federal entity's eligibility for future DOC or Federal awards.

## **B. FINANCIAL REQUIREMENTS**

#### .01 Financial Management

a. In accordance with 2 C.F.R. § 200.302(a) (Financial Management), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and any other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See also* 2 C.F.R. § 200.450 (Lobbying) for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.

b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b). *See also* 2 C.F.R. § 200.334 (Retention requirements for records); 200.335 (Requests for transfer of records); 200.336 (Methods for collection, transmission and storage of information); 200.337 (Access to records); and 200.338 (Restrictions on public access to records).

#### .02 Award Payments

a. Consistent with 2 C.F.R. § 200.305(a) (Federal payment), for States, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (Rules and Procedures for Efficient Federal-State Funds Transfers) and Treasury Financial Manual Volume I, 4A-2000 (Overall Disbursing Rules for All Federal Agencies).

b. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

1. The Grants Officer determines the appropriate method of payment and, unless otherwise stated in a specific award condition, the advance method of payment must be authorized. Advances must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. Unless otherwise provided by the terms and conditions of a DOC award, non-Federal entities must time advance payment requests so that Federal funds are on hand for a maximum of 30 calendar days before being disbursed by the

non-Federal entity for allowable award costs.

2. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity or if a non-Federal entity otherwise fails to continue to qualify for the advance method of payment, the Grants Officer or the pass-through entity may change the method of payment to reimbursement only.

c. Unless otherwise provided for in the award terms, payments from DOC to recipients under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the recipient's bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. To receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP:

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;

- 2. Agency Location Code (ALC); and
- 3. Region Code.

d. Recipients enrolled in the ASAP system do not need to submit a Form SF-270 (Request for Advance or Reimbursement) for payments relating to their award. Awards paid under the ASAP system will contain a specific award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

e. When the Form SF-270 or successor form is used to request payment, the recipient must submit the request no more than <u>monthly</u>, and advances must be approved for periods to cover only expenses reasonably anticipated over the next 30 calendar days. Prior to receiving payments via the Form SF-270, the recipient must complete and submit to the Grants Officer the Form SF-3881 (ACH Vendor Miscellaneous Payment Enrollment Form) or successor form along with the initial Form SF-270. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

f. The Federal award identification number must be included on all payment-related correspondence, information, and forms.

g. Non-Federal entities receiving advance award payments must adhere to the depository requirements set forth in 2 C.F.R. §§ 200.305(b)(7) through (b)(11). Interest amounts up to \$500 per non-Federal entity's fiscal year may be retained by the non-Federal entity for administrative expenses.

#### .03 Federal and Non-Federal Sharing

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares must be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total approved budget, the Federal share must not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or third-party in-kind contributions, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or third-party in-kind contributions. In any case, the recipient must meet its cost share commitment as set forth in the terms and conditions of the award; failure to do so may result in the assignment of specific award conditions or other further action as specified in Standard Term A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). The non-Federal entity must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits; see Section D of these Standard Terms (Audits), for audit requirements. *See* 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

#### .04 Budget Changes and Transfer of Funds among Categories

a. Recipients are required to report deviations from the approved award budget and request prior written approval from DOC in accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)). Requests for such budget changes must be submitted to the Grants Officer (or electronically for awards serviced through Grants Online) who will notify the recipient of the final determination in writing. Requests requiring prior DOC approval do not become effective unless and until approved in writing by the DOC Grants Officer.

b. In accordance with 2 C.F.R. § 200.308(f), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is equal to or less than the simplified acquisition threshold. For awards in which the Federal share of the project exceeds the simplified acquisition threshold, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceeds 10 percent of the total budget as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose is not and will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 C.F.R. § 200.308 (Revision

of budget and program plans) (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

#### .05 Program Income

Unless otherwise indicated in the award terms, program income may be used for any required cost sharing or added to the project budget, consistent with 2 C.F.R. § 200.307 (Program income).

#### .06 Indirect or Facilities and Administrative Costs

a. Indirect costs (or facilities and administration costs (F&A)) for major institutions of higher education and major nonprofit organizations can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

b. Unrecovered indirect costs, including unrecovered indirect costs on cost sharing or matching, may be included as part of cost sharing or matching as allowed under 2 C.F.R. § 200.306(c) (Cost sharing or matching) or the terms and conditions of a DOC award.

c. Cognizant Agency for Indirect (F&A) Costs. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. In accordance with Appendices III – VII to 2 C.F.R. Part 200 the cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. With respect to for-profit organizations, the term cognizant Federal agency generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 C.F.R. § 42.003. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for indirect cost negotiations.

1. General Review Procedures Where DOC is the Cognizant Agency.

i. Within 90 calendar days of the award start date, the recipient must submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow DOC to perform the indirect cost rate proposal review. Below are two sources available for guidance on how to put an indirect cost plan together:

- (A) Department of Labor: <u>https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm</u> or
- (B) Department of the Interior: <u>https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/</u>.

ii. The recipient may use the rate proposed in the indirect cost plan as a provisional rate until the DOC provides a response to the submitted plan.

iii. The recipient is required to annually submit indirect cost proposals no later than six months after the recipient's fiscal year end, except as otherwise provided by 2 C.F.R. § 200.414(g).

2. When DOC is not the oversight or cognizant Federal agency, the recipient must provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement within 30 calendar days of receipt of a negotiated rate agreement or submission of a negotiated rate proposal.

3. If the recipient is proposing indirect costs as part of a project budget, but is not required to have a negotiated rate agreement pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b (*i.e.*, a governmental department or agency that receives \$35 million or less in direct Federal funding), the recipient may be required to provide the Grants Officer with a copy of its Certificate of Indirect Costs as referenced in 2 C.F.R. Part 200, Appendix VII, Paragraph D.3. or such other documentation, acceptable in form and substance to the Grants Officer, sufficient to confirm that proposed indirect costs are calculated and supported by documentation in accordance with 2 C.F.R. Part 200, Appendix VII. In cases where the DOC is the recipient's cognizant Federal agency, the DOC reserves the right, pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b, to require the recipient to submit its indirect cost rate proposal for review by DOC.

d. If the recipient fails to submit required documentation to DOC within 90 calendar days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient is the lesser of:

1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or

2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, in accordance with 2 C.F.R 200 Appendix III, C.7, provided that the rate is approved on or before the award end date.

f. In accordance with 2 CFR § 200.414(c)(3), DOC set forth policies, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates. These policies and procedures are applicable to all Federal financial assistance programs awarded and administered by DOC bureaus as Federal awarding agencies and may be found at <a href="http://www.osec.doc.gov/oam/grants\_management/policy/documents/FAM%202015-02.pdf">http://www.osec.doc.gov/oam/grants\_management/policy/documents/FAM%202015-02.pdf</a>.

g. In accordance with 2 CFR § 200.414(g), any non-Federal entity that has a negotiated indirect cost rate may apply to the entity's cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

h. In accordance with 2 CFR § 200.414(f), any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in paragraph D.1.b of Appendix VII to 2 CFR Part 200, may elect to charge a de minimis rate of 10 percent of modified total direct costs. No documentation is required to justify the 10 percent de minimis indirect cost rate.

## .07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance

a. In accordance with 2 C.F.R. § 200.309 (Modifications to Period of Performance) and the terms and conditions of a DOC award, a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance, which is established in the award document. As defined at 2 C.F.R. § 200.1, the "period of performance" means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the Period of Performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period." The period of performance may sometimes be referred to as the project period or award period. This Standard Term is subject to exceptions for allowable costs pertaining to: (i) pre-award costs (*see* 2 C.F.R. § 200.458); (ii) publication and printing costs (*see* 2 C.F.R. § 200.364).

b. Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 120 calendar days following the end of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer. A non-Federal entity may request an extension of the 120-day closeout period, as provided in 2 C.F.R. § 200.344 (Closeout).

c. Unless authorized by a specific award condition, any extension of the period of performance may only be authorized by the Grants Officer in writing. This is not a delegable authority. Verbal or written assurances of funding from anyone other than the Grants Officer does not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.

d. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

#### .08 Tax Refunds

The non-Federal entity shall contact the Grants Officer immediately upon receipt of the refund of any taxes, including but not limited to Federal Insurance Contributions Act (FICA) taxes, Federal Unemployment Tax Act (FUTA) taxes, or Value Added Taxes (VAT) that were allowed as charges to a DOC award, regardless of whether such refunds are received by the non-Federal entity during or after the period of performance. The Grants Officer will provide written disposition instructions to the non-Federal entity, which may include the refunded taxes being credited to the award as either a cost reduction or a cash refund, or may allow the non-Federal entity to use such refunds for approved activities and costs under a DOC award. *See* 2 C.F.R. § 200.470 (Taxes (including Value Added Tax)).

#### .09 Internal Controls

Each recipient must comply with standards for internal controls described at 2 C.F.R. § 200.303 (Internal controls). The "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States referenced in § 200.303 are available online at <u>http://www.gao.gov/assets/80/76455.pdf</u> and the "Internal Control Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) is available online at <u>Internal Control Guidance</u>.

## C. **PROPERTY STANDARDS**

#### .01 Standards

Each non-Federal entity must comply with the Property Standards set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship).

#### .02 Real and Personal Property

a. In accordance with 2 C.F.R. § 200.316 (Property trust relationship), real property, equipment, and other personal property acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the non-Federal entity must comply with all use and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

b. The Grants Officer may require a non-Federal entity to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition

requirements apply to the property. The statement of interest, financing statement (Form UCC 1), lien, mortgage or other public notice must be acceptable in form and substance to the DOC and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a subrecipient), authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

#### .03 Intellectual Property Rights

a. General. The rights to any work or other intangible property produced or acquired under a Federal award are determined by 2 C.F.R. § 200.315 (Intangible property). The non-Federal entity owns any work produced or purchased under a Federal award subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a non-Federal entity under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq.*, and modified by E.O. 12591 (52 FR 13414), as amended by E.O. 12618 (52 FR 48661). 35 U.S.C. § 201(h) defines "small business firm" as "a small business concern as defined at section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration." Section 1(b)(4) of E.O. 12591 extended the Bayh-Dole Act to non-Federal entities "regardless of size" to the extent permitted by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 C.F.R. Part 401, which implements 35 U.S.C. 202 through 204 and includes standard patent rights clauses in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

The Bayh-Dole regulations set forth in 37 C.F.R. parts 401 and 404 were amended by 83 FR 15954, with an effective date of May 14, 2018 (Amended Bayh-Dole Regulations). The Amended Bayh-Dole Regulations apply to all new financial assistance awards issued on or after May 14, 2018. The Amended Bayh-Dole Regulations do not apply to financial assistance awards issued prior to May 14, 2018, including amendments made to such awards, unless an award amendment includes a specific condition incorporating the Amended Bayh-Dole Regulations into the terms and conditions of the subject award.

1. Ownership. A non-Federal entity may have rights to inventions in accordance with 37 C.F.R. Part 401. These requirements are technical in nature and non-Federal entities are encouraged to consult with their Intellectual Property counsel to ensure the proper interpretation of and adherence to the ownership rules. Unresolved questions pertaining to a non-Federal entities' ownership rights may further be addressed to the Grants Officer.

2. Responsibilities - iEdison. The non-Federal entity must comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401, including the standard patent rights clause in 37 C.F.R. § 401.14. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing the Grants Officer with compelling reasons for allowing the submission of paper reports.

c. Patent Notification Procedures. Pursuant to E.O. 12889 (58 FR 69681), the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or a non-Federal entity, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the non-Federal entity uses or has used patented technology under this award without a license or permission from the owner, the non-Federal entity must notify the Grants Officer.

This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.

d. A non-Federal entity may copyright any work produced under a Federal award, subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and non-Federal entity employees may be copyrighted, but only the part of such works authored by the non-Federal entity is protectable in the United States because, under 17 U.S.C. § 105, copyright protection is not available within the United States for any work of the United States Government. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the non-Federal entity to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.

e. Freedom of Information Act (FOIA). In response to a FOIA request for research data relating to published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the DOC will request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

### D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, must have the right to access any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity's personnel for interview and discussion related to such documents. *See* 2 C.F.R. § 200.337 (Access to records). When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

#### .01 Organization-Wide, Program-Specific, and Project Audits

a. A recipient must, within 90 days of the end of its fiscal year, notify the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, that the recipient expended during its fiscal year.

b. Recipients that are subject to the provisions of Subpart F of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards during their fiscal year must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (https://harvester.census.gov/facides/). In accordance with 2 C.F.R. § 200.425 (Audit services), the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.

c. Unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities, foreign public entities and foreign organizations) and that expend \$750,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 C.F.R. Part 200 and that expend less than \$750,000 in DOC funds in a given fiscal year are

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

e. In accordance with 2 C.F.R. § 200.332(d)(3), pass-through entities are responsible for issuing a management decision for applicable audit findings pertaining only to the Federal award provided by the pass-through entity to a subrecipient.

#### .02 Audit Resolution Process

a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. A recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. The recipient has 30 calendar days from the date of the transmittal of the <u>draft audit</u> report to submit written comments and documentary evidence.

2. The recipient has 30 calendar days from the date of the transmittal of the <u>final audit</u> <u>report</u> to submit written comments and documentary evidence.

3. The DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 calendar days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.

4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of applicable interest, penalties and administrative fees on the debt in accordance with 15 C.F.R. Part 19. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively.

5. The DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

#### E. DEBTS

#### .01 Payment of Debts Owed to the Federal Government

a. The non-Federal entity must promptly pay any debts determined to be owed to the Federal Government. Any funds paid to a non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 C.F.R. § 200.346 (Collection of amounts due), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:

- 1. Making an administrative offset against other requests for reimbursement;
- 2. Withholding advance payments otherwise due to the non-Federal entity; or
- 3. Taking any other action permitted by Federal statute.

The foregoing does not waive any claim on a debt that DOC may have against another entity, and all rights and remedies to pursue other parties are preserved.

b. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 2 C.F.R. § 200.346 (Collection of amounts due) and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government must result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is delinquent for more than 120 calendar days to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as cross-servicing, pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12, and 15 C.F.R. § 19.9. DOC may also take further action as specified in DOC ST&C A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). Funds for payment of a debt must not come from other Federally-sponsored programs, and the DOC may conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt.

#### .02 Late Payment Charges

a. Interest will be assessed on the delinquent debt in accordance with section 11 of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3717(a)). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at <a href="https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr\_home.htm">https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr</a> home.htm and also published by the Department of the Treasury in the *Federal Register* (<a href="http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR">http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR</a>) and in the *Treasury Financial Manual Bulletin*. The assessed rate must remain fixed for the duration of the indebtedness.

b. Penalties will accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, will be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

#### .03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived by DOC, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

# .04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

## F. CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS

#### .01 Conflict of Interest and Code of Conduct

a. DOC Conflict of Interest Policy. In accordance with 2 C.F.R. § 200.112 (Conflict of interest), the non-Federal entity must disclose in writing any potential conflict of interest to the DOC or pass-through entity. In addition, a non-Federal entity will establish and maintain written standards of conduct that include safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of an award. It is the DOC's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with DOC financial assistance awards.

b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render

impartial assistance, services or advice to the recipient, a participant in the project or to the Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the DOC Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a non-Federal entity, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

c. Procurement-related conflict of interest. In accordance with 2 C.F.R. § 200.318 (General procurement standards), non-Federal entities must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. *See* paragraph F.04 of these Standard Terms (Requirements for Procurements).

#### .02 Nonprocurement Debarment and Suspension

Non-Federal entities must comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

#### .03 Requirements for Subawards

a. The recipient or pass-through entity must require all subrecipients, including lower tier subrecipients, to comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions set forth herein. *See* 2 C.F.R. § 200.101(b)(2) (Applicability to different types of Federal awards), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§ 200.331-333 (Subrecipient monitoring and management).

b. The recipient or pass through entity may have more restrictive policies for the RTC *waived* prior approvals (no-cost extensions, re-budgeting, etc.) for their subaward recipients. Such restrictive policies must be addressed in their subaward agreements and in accordance with §200.331.

#### .04 Requirements for Procurements

a. States. Pursuant to 2 C.F.R. § 200.317 (Procurements by states), when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must comply with 2 C.F.R. §§ 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), 200.322 (Domestic preferences for procurements), and

200.323 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.327 (Contract provisions).

b. Other Non-Federal Entities. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in 2 C.F.R. §§ 200.318 (General procurement standards) through 200.327 (Contract provisions) which include the requirement that non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

#### .05 Whistleblower Protections

This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a gross or body information flaw, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward, or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

## .06 Small Businesses, Minority Business Enterprises and Women's Business Enterprises

In accordance with 2 C.F.R. § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), the recipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. DOC encourages non-Federal entities to use small

businesses, minority business enterprises and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency within the DOC will assist non-Federal entities in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA's website at <a href="http://www.mbda.gov">http://www.mbda.gov</a>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce Minority Business Development Agency Herbert C. Hoover Building 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230 (202) 482-0101

#### G. NATIONAL POLICY REQUIREMENTS

#### .01 United States Laws and Regulations

This award is subject to the laws and regulations of the United States. The recipient must comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

#### .02 Non-Discrimination Requirements

No person in the United States may, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

#### a. Statutory Provisions

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the

basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 C.F.R. § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and

6. Any other applicable non-discrimination law(s).

#### **b.** Other Provisions

1. Parts II and III of E.O. 11246 (Equal Employment Opportunity, 30 FR 12319),<sup>3</sup> which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).

2. E.O. 13166 (65 FR 50121, Improving Access to Services for Persons with Limited English Proficiency), requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.

3. In accordance with E.O 13798 and Office of Management and Budget, M-20-09 – Guidance Regarding Federal Grants, states or other public grantees may not condition sub-awards of Federal grant money in a manner that would disadvantage grant applicants based on their religious character.

<sup>&</sup>lt;sup>3</sup> As amended by E.O. 11375(32 FR 14303), E.O. 11478 (34 FR 12985), E.O. 12086 (43 FR 46501), E.O. 12107 (44 FR 1055), E.O. 13279 (F67 FR 77141), E.O. 13665 (79 FR 20749), and E.O. 13672 (79 FR 42971).

#### c. Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion, "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

#### .03 LOBBYING RESTRICTIONS

#### a. Statutory Provisions

Non-Federal entities must comply with 2 C.F.R. § 200.450 (Lobbying), which incorporates the provisions of 31 U.S.C. § 1352; and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with the DOC regulations published at 15 C.F.R. Part 28, which implement the New Restrictions on Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award and require the disclosure of the use of non-Federal funds for lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. *See* 2 C.F.R. § 200.450(b) and (c).

#### b. Disclosure of Lobbying Activities

Any recipient that receives more than \$100,000 in Federal funding and conducts lobbying with non-federal funds relating to a covered Federal action must submit a completed Form SF-LLL (Disclosure of Lobbying Activities). The Form SF-LLL must be submitted within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit any required SF-LLL forms, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

#### .04 Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under

the following statutes and E.O.s and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

#### a. The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any direct, indirect or cumulative impact an award will have on the quality of the human environment and assist the agency in complying with NEPA. Non-Federal entities may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

#### b. The National Historic Preservation Act (16 U.S.C. §§ 470 et seq.)

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation (ACHP) implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally-recognized Indian Tribes. Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Non-Federal entities are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Non-Federal entities may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to

submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, non-Federal entities are required to assist the DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 et seq., formerly 16 U.S.C. § 469a-1 et seq.); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

c. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to decide whether there is an alternative to minimize any potential harm.

d. Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans")

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and E.O. 11738 (38 FR 25161), and must not use a facility on the Excluded Parties List (EPL) (located on the System for Award Management (SAM) website, SAM.gov) in performing any award that is nonexempt under 2 C.F.R. § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPL or knows that the facility has been recommended to be placed on the EPL.

#### e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 et seq.)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 C.F.R. § 200.447(a), the cost of required flood insurance is an allowable expense, if it is reflected in the approved project budget.

#### f. The Endangered Species Act (16 U.S.C. §§ 1531 et seq.)

Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

#### g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.)

Funded projects must be consistent with a coastal State's approved management program for the coastal zone.
#### h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 et seq.)

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

#### i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 et seq.)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

#### j. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f et seq.)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer which threatens public health.

#### k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

# l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note *et seq.*)

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

## m. Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations")

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

## n. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)

Non-Federal entities must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency

procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

#### o. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)

CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

#### p. Rivers and Harbors Act (33 U.S.C. § 407)

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

## q. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

## r. Executive Order 13112 (Invasive Species, February 3, 1999)

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

## s. Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.)

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S.

Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are "proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified" by any agency under a Federal permit or license.

## .05 OTHER NATIONAL POLICY REQUIREMENTS

#### a. Buy-American Preferences

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients of covered programs (as defined in Executive Order 13858, 31 January 2019, and 2 C.F.R. §200.322 (Domestic preferences for procurements)) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under this Award.

## b. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).

2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States must be subject to imprisonment of not more than five years and must be subject to a fine in the amount provided by 18 U.S.C. § 287.

3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.

4. The Copeland Anti-Kickback Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland Anti-Kickback Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and implementing regulations issued at 15 C.F.R. Part 11, which provides for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

6. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.

7. To ensure compliance with Federal law pertaining to financial assistance awards, an authorized representative of a non-Federal entity may be required to periodically provide certain certifications to the DOC regarding Federal felony and Federal criminal tax convictions, unpaid federal tax assessments, delinquent Federal tax returns and such other certifications that may be required by Federal law.

## c. Drug-Free Workplace

The non-Federal entity must comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 2 C.F.R. Part 1329 (Requirements for Drug-Free Workplace (Financial Assistance)), which require that the non-Federal entity take certain actions to provide a drug-free workplace.

## d. Foreign Travel

1. Each non-Federal entity must comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.

2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable or use of U.S. flag air carrier service will not accomplish the agency's mission.

3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website. Information on the Open Skies agreements may be accessed via the Department of State's website.

4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the non-Federal entity must receive prior approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates

of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer must make the final determination and notify the non-Federal entity in writing (which may be done through the recipient in the case of subrecipient travel). Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which any non-Federal entity improperly used a foreign air carrier.

Note: When using code-sharing flights (two or more airlines having flight numbers assigned to the same flight) involving U.S. flag carriers and non-U.S. flag carriers, the airline symbol and flight number of the U.S. flag carrier must be used on the ticket to qualify as a U.S. flag carrier (e.g. "*Delta Airlines Flight XXXX, operated by KLM*"). Conversely, if the ticket shows "[*Foreign Air Carrier*] XXX, operated by Delta," that travel is using a foreign air carrier and is subject to the Fly America Act and must receive prior approval from the Grants Officer as outlined in paragraph G.05.d.4.

#### e. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

## f. Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies

1. Use of award funds (Federal or non-Federal) or the non-Federal entity's provision of inkind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from non-Federal entities regardless of the source. Therefore, before award funds may be used by Federal employees, non-Federal entities must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing (generally through the recipient) of the final determination.

2. A non-Federal entity or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

## g. Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (White House Initiative on Educational Excellence for Hispanics) (75 FR 65417), 13592 (Improving American Indian and Alaska Native

Educational Opportunities and Strengthening Tribal Colleges and Universities) (76 FR 76603), and 13779 (White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities) (82 FR 12499), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC's goals include achieving full participation of MSIs to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and non-Federal entities to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

#### h. Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

## i. Research Involving Human Subjects

1. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27 (Protection of Human Subjects). No research involving human subjects is permitted under this award unless expressly authorized by specific award condition, or otherwise in writing by the Grants Officer.

2. Federal policy defines a human subject as a living individual about whom an investigator (whether professional or student) conducting research (1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

3. DOC regulations at 15 C.F.R. Part 27 require that non-Federal entities maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity (generally through the recipient) must submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. As applicable, this documentation must include:

i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency guidelines (*see also* 15 C.F.R. § 27.103);

ii. Documentation to support an exemption for an activity in the project under 15 C.F.R. § 27.104(d);

iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;

iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and

v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 C.F.R. § 27.118, if research involving human subjects is proposed after an award is made, the non-Federal entity must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

## j. Care and Use of Live Vertebrate Animals

Non-Federal entities must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 C.F.R. Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

## k. Management and Access to Data and Publications

1. In General. The recipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients, may be used by the DOC in conducting reviews and evaluations of its financial assistance programs. For this purpose, recipient information and data may be accessed, reviewed and evaluated by DOC employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of who enter into appropriate or are otherwise subject to confidentiality and nondisclosure agreements covering the use of such information. Recipients are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with DOC and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), recipients are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained relating to a DOC financial assistance award.

2. Scientific Data. Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

3. Publications, Videos, and Acknowledgment of Sponsorship.

i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.*, scientific research). Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

ii. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.

iii. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.

iv. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

## I. Homeland Security Presidential Directive

If the performance of this DOC financial assistance award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term "routine access" is defined as more than 180 calendar days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award must comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors), Federal Information Processing Standard (FIPS) PUB 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient must insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

The subrecipient or contractor must comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

The subrecipient or contractor must account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.

## m. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

1. This clause applies to the extent that this financial assistance award encompasses activities that involve export-controlled items.

2. In performing this financial assistance award, a non-Federal entity may participate in activities involving items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The non-Federal entity must establish and maintain effective export compliance procedures at DOC and non-DOC facilities, including facilities located abroad, throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate restrictions on export-controlled items, to guard against any unauthorized exports, including in the form of releases or transfers to foreign nationals. Such releases or transfers may occur through visual inspection, including technology transmitted electronically, and oral or written communications.

#### 3. Definitions

- i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.
- ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 C.F.R. § 734.13(a)(2) & (b)). A release may take the form of visual inspection or oral or written exchange of information. See 15 C.F.R. § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. See 15 C.F.R. § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. See 15 C.F.R. § 734.15(b).
- 4. The non-Federal entity must secure all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that the export of such items, including in the form of release or transfer to foreign persons, is prevented, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.
- 5. As applicable, non-Federal entity personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items from unauthorized export.

- 6. To the extent the non-Federal entity wishes to release or transfer export-controlled items to foreign persons, the non-Federal entity will be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports. Failure to obtain any export licenses required under the EAR may subject the non-Federal entity to administrative or criminal enforcement. See 15 C.F.R. part 764.
- 7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.
- 8. Compliance with this term will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports and re-exports of defense articles and services subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including the release of defense articles to foreign persons in the United States and abroad.
- 9. The non-Federal entity must include the provisions contained in this term in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve research or other activities that implicate export-controlled items.

## n. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if any non-Federal entity engages in certain activities related to trafficking in persons. The DOC hereby incorporates the following award term required by 2 C.F.R. § 175.15(b):

## Trafficking in persons.

## a. **Provisions applicable to a recipient that is a private entity**.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

*i.* Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

*iii.* Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

*i.* Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension).

b. **Provision applicable to a recipient other than a private entity**. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

*ii.* Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326, (Nonprocurement Debarment and Suspension).

c. **Provisions applicable to any recipient**.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

*i.* Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

*ii.* Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

## d. Definitions. For purposes of this award term:

1. "Employee" means either:

*i.* An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

*3. "Private entity":* 

*i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25;* 

*ii.* Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b); and (B) A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

o. The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)

1. <u>**Reporting Subawards and Executive Compensation.**</u> Under FFATA, recipients of financial assistance awards of \$30,000 or more are required to report periodically on executive compensation and subawards, as described in the following term from 2 C.F.R. Part 170, Appendix A, which is incorporated into this award:

## **Reporting Subawards and Executive Compensation**

## a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward

to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

2. Where and when to report.

*i.* You must report each obligating action described in paragraph a.1. of this award term to <u>http://www.fsrs.gov</u>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <u>http://www.fsrs.gov</u> specify.

b. Reporting Total Compensation of Recipient Executives for non-Federal entities.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

*i. the total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 C.F.R § 170.320;* 

ii. in the preceding fiscal year, you received—

- (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards), and
- (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <u>http://www.sec.gov/answers/execomp.htm.</u>)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

*i.* As part of your registration profile found at the System for Award Management (SAM) website located at <u>https://www.sam.gov</u>.

*ii.* By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- *i. in the subrecipient's preceding fiscal year, the subrecipient received*
  - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards) and,
  - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <u>http://www.sec.gov/answers/execomp.htm.</u>).

See also 2 C.F.R. § 200.300(b).

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

*i. To the recipient.* 

*ii.* By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. **Exemptions**. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

2. Non-Federal entity means all of the following, as defined in 2 C.F.R. Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

*ii.* A foreign public entity;

iii. A domestic or foreign nonprofit organization; and,

iv. A domestic or foreign for-profit organization.

3. Executive means officers, managing partners, or any other employees in management positions.

4. Subaward:

*i.* This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

*ii.* The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R § 200.331).

*iii.* A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. Subrecipient means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this award; and

*ii.* Is accountable to you for the use of the Federal funds provided by the subaward.

6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

*i.* Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

*iii.* Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

*iv.* Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

2. <u>System for Award Management (SAM) and Universal Identifier Requirements</u> -- as described in 2 C.F.R. Part 25, Appendix A, which is incorporated into this award:

## System for Award Management (SAM) and Universal Identifier Requirements

a. **Requirement for System for Award Management**. Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

b. **Requirement for Unique Entity Identifier.** If you are authorized to make subawards under this Federal award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph c of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.

2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

c. Definitions for purposes of this term:

1. SAM means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <u>https://www.SAM.gov</u>).

2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

3. Entity includes non-Federal entities as defined at 2 C.F.R. § 200.1 and also includes all of the following, for purposes of this part:

- *i.* A foreign organization;
- *ii.* A foreign public entity;
- iii. A domestic for-profit organization; and
- iv. A Federal agency.
- 4. Subaward has the meaning given in 2 C.F.R § 200.1.
- 5. Subrecipient has the meaning given in 2 C.F.R § 200.1.

See also 2 C.F.R. § 200.300(b).

p. Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)

## **Reporting of Matters Related to Recipient Integrity and Performance**

1. General Reporting Requirement. If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report. Submit the information required about each proceeding that:

i. Is relating to the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

ii. Reached its final disposition during the most recent five-year period; and

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

3. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency. During any period when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions. For purposes of this award term and condition:

i. 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 or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. Conviction, for purposes of this award term and condition, 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.

iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes:

- (A)Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
- (B) The value of all expected funding increments under a Federal award and options, even if not yet exercised.
- q. Never Contract with the Enemy (2 C.F.R Part 183; 2 C.F.R. § 200.215)

Under 2 C.F.R. § 200.215 (Never contract with the enemy) Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 C.F.R. Part 183. These regulations affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

1. <u>Applicability</u>. This term applies only to recipients of covered grants or cooperative agreements, as defined in 2 C.F.R. § 183.35 Definitions.

2. <u>**Requirements.**</u> As applicable, recipients must fulfill the requirements as described in the following terms from 2 C.F.R. Part 183, Appendix A, which is incorporated into this award:

#### a. Term 1. Prohibition on Providing Funds to the Enemy.

- 1. The recipient must—
- *i.* Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR Part 180.300 prior to issuing a subaward or contract and;
- *ii.* Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

2. The recipient may include the substance of this clause, including this paragraph (1), in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

3. The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (1) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities

## b. Term 2. Additional Access to Recipient Records.

1. In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations

2. The substance of this clause, including this paragraph (2), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

## r. Prohibition on certain telecommunications and video surveillance services or equipment (Public Law 115-232, section 889; 2 C.F.R. § 200.216)

(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.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (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.

- (c) See Public Law 115-232, section 889 for additional information.
- (d) See also §200.471.

## s. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for specific grant or cooperative agreement obligations, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in grant or cooperative agreement administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

3. The ASAP system should remain operational during a government shutdown. Non-Federal entities that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown (see section B.02.b.1 of these terms). GPO

Washington, DC 20250–9410; Fax, (202) 690–7442; Email, *program.intake@usda.gov.* 

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC on: December 23, 2014.

#### Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2014–30478 Filed 12–29–14; 8:45 am] BILLING CODE 3410–DM–P

#### DEPARTMENT OF AGRICULTURE

#### Food Safety and Inspection Service

[Docket No. FSIS-2014-0029]

#### National Advisory Committee on Microbiological Criteria for Foods; Renewal

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of renewal of committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice is announcing the renewal of the charter of the National Advisorv Committee on Microbiological Criteria for Foods (NACMCF). The Committee is being renewed in cooperation with the Department of Health and Human Services (DHHS). The establishment of the Committee was recommended by a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, "An Evaluation of the Role of Microbiological Criteria for Foods." The current charter for the NACMCF is available for viewing on the NACMCF homepage at http://www.fsis.usda.gov/ wps/portal/searchhelp/sitemap/!ut/p/ a1/r2LLbsIwEEW hUWWlsfNg2RJI5 FC1UQU2pJskPEjNUqckFhV1a-vU4G6 ohQp3oxHvj66M7q4wFtcaPqhSmp Uo2k19EWwgxUEJIphmUVkDov0dZU9 xjEkT3dWkA-CC2cG1 6 4QIXTJv WvONc9qpHrNFGaOOAsrXTwt5qqr QDpmkV6x3g1FCrqirBBpeIao460T adsY-asprJcx3gLS0FF70q9U\_HFMd5IL lwCeeIuq5AXhgJtOcBRb4MPElCT 7pwsvaH-9A7Cy5Pn9v1TH8Jy TMQWMzXG5L492RmCesb TV0BBmMD bGB05GB2e07XP4j1Opw PBYzG80hjZ8Gb8fPZlu\_1OFBtg9f G1nXuzRÉdB-C61flZPIN bauiQ!!/ ?1dmy&current=true&urile=wcm%3 apath%3a%2Ffsis-content%2Finternet %2Fmain%2Ftopics%2Fdatacollection-and-reports%2Fnacmcf% 2Fcommittee-charter%2Fcharter.

**FOR FURTHER INFORMATION CONTACT:** Karen Thomas, Advisory Committee Specialist, U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), Room 9–214D Patriots Plaza III, 1400 Independence Avenue SW., Washington, DC 20250– 3700. Telephone number: (202) 690– 6620.

#### SUPPLEMENTARY INFORMATION:

#### Background

USDA is charged with the administration and the enforcement of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). The Secretary of DHHS is charged with the administration and enforcement of the Federal Food, Drug, and Cosmetic Act (FFDCA). These Acts help protect consumers by ensuring that food products are wholesome, not adulterated, and properly marked, labeled, and packaged.

In order to assist the Secretaries in carrying out their responsibilities under the FMIA, PPIA, EPIA, and FFDCA, the NACMCF is being renewed. The Committee will continue to be charged with providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been adequately and appropriately processed.

Renewal of this Committee and its charter is necessary and in the public interest because of the need for external expert advice on the range of scientific and technical issues that must be addressed by the FSIS and DHHS in meeting their statutory responsibilities. To address the complexity of the issues, the Committee is expected to meet one or more times annually.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of the DHHS. Because of the complexity of matters addressed by this Committee, the Secretary may consult with other Federal Agencies, such as the Department of Commerce's National Marine Fisheries Service, the Department of Defense's Veterinary Service Activity, and the DHHS' Centers for Disease Control and Prevention, for advice on membership appointments. Background materials are available on the Internet at the address noted above or by contacting the person listed above.

#### Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located athttp://www.fsis.usda.gov/regulations\_ &\_policies/Federal\_Register\_Notices/ index.asp.

FSIS also will make copies of this Federal Register publication available through the FSIS Constituent Update (Update), which is used to provide information regarding FSIS policies, procedures, regulations, Federal **Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update also is available on the FSIS Web site. In addition, FSIS offers an electronic mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/News & Events/Email Subscription/.

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

#### USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status.

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC on: December 23, 2014.

#### Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2014–30483 Filed 12–29–14; 8:45 am] BILLING CODE P

#### DEPARTMENT OF COMMERCE

#### Office of the Secretary

[Docket No. 141217999-4999-01]

RIN 0690-XC003

#### Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

**AGENCY:** Department of Commerce (DOC).

ACTION: Notice.

**SUMMARY:** This notice replaces the U.S. Department of Commerce (DOC) Pre-Award Notification Requirements for Grants and Cooperative Agreements most recently published in the **Federal Register** on December 17, 2012 (77 FR 74634). This announcement constitutes notice of a recompilation of the Department of Commerce pre-award requirements for grants and cooperative agreements, including all amendments and revisions to date.

**DATES:** This notice is effective on December 26, 2014.

**FOR FURTHER INFORMATION CONTACT:** John Geisen, Department of Commerce Office of Acquisition Management, Telephone Number: (202) 482–0602.

SUPPLEMENTARY INFORMATION: The DOC is authorized to award grants and cooperative agreements under a wide range of programs that support economic development, international trade, minority businesses, standards and technology, oceanic/atmospheric services, and telecommunications and information. It is the policy of the DOC to seek full and open competition for awards of discretionary financial assistance funds whenever possible. Moreover, in general DOC financial assistance must be awarded through a merit-based review and selection process. Notices announcing the availability of Federal funds for new awards for each DOC competitive financial assistance program will be posted on www.grants.gov by the sponsoring operating unit in the uniform format for an announcement of Notice of Funding Opportunity (NOFA) published by the Office of Management

and Budget (OMB). Note that the DOC may use the term "Federal Funding Opportunity (FFO)" interchangeably with NOFA. In limited circumstances (*e.g.*, when required by statute), the DOC will also publish notices in the **Federal Register** announcing the availability of Federal funds for new awards.

In accordance with the Federal Register notice published on December 19, 2014 (79 FR 75871) and the regulation at 2 CFR 1327.101, the DOC adopted the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 (OMB Uniform Guidance) for DOC Federal financial assistance awards (*i.e.*, grants and cooperative agreements). The DOC is updating its policies and administrative requirements applicable to its assistance programs to reflect the requirements of the OMB Uniform Guidance.

This announcement provides notice to applicants and other interested parties that various laws, regulations, administrative requirements, and Federal and DOC policies procedures apply to all DOC-sponsored assistance programs. A compilation of these requirements may be found on the DOC Web site at http://www.osec.doc.gov/ oam/grants management/policy/ default.htm. Please note that as these requirements change, the DOC Web site will be updated, but there may be a time lag between when a requirement is effective and when it is posted at the previously referenced Web site. All requirements applicable to Federal awards will be clearly identified in the

terms and conditions of the Federal award.

Dated: December 22, 2014.

#### John Geisen,

Grants Management Division, Office of Acquisition Management, Department of Commerce. [FR Doc. 2014–30297 Filed 12–29–14; 8:45 am] BILLING CODE 3510-17-P

#### **DEPARTMENT OF COMMERCE**

#### **Economic Development Administration**

#### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/19/2014 through 12/22/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
Sunheat International	3724 Arch Avenue, Grand Is- land, NE 68803.	12/22/2014	The firm manufactures electrical heating devices including portable heaters, fireplaces, saunas, and patio heaters.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: December 22, 2014.

Michael S. DeVillo,

*Eligibility Examiner.* [FR Doc. 2014–30496 Filed 12–29–14; 8:45 am] **BILLING CODE 3510–WH–P** 

#### DEPARTMENT OF COMMERCE

#### **Bureau of Industry and Security**

#### **Order Denying Export Privileges**

In the Matter of:

Maria Luisa Sanchez-Lopez, Inmate Number: 51777–379, FCI Aliceville, Federal Correctional Institution, P.O. Box 4000, Aliceville, AL 35442

On February 13, 2014, in the U.S. District Court for the Southern District of Texas, Maria Luisa Sanchez-Lopez ("Sanchez-Lopez") was convicted of

#### SPECIFIC AWARD CONDITIONS U.S. DEPARTMENT OF COMMERCE (DOC) ECONOMIC DEVELOPMENT ADMINSTRATION (EDA)

**Build to Scale (B2S)** awards are made under Section 27 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. § 3722).

#### Award: ED23OIE0G0120

Recipient: City and County of Denver: Denver Office of Economic Development and Opportunity

Project: Denver – Inclusive Impact Catalyst

Competition: 2023 Capital Challenge

.....

	Term	Term Description
1	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards	Along with other controlling law, this Award is governed by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) as set forth in 2 C.F.R. part 200.
2	Project Contact Information	Recipient agrees to notify EDA promptly of any changes to Recipient's contact information as specified in the Notice of Award.
3	Matching Share	The Recipient agrees to provide the Recipient's Non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal Share requested for such project expenses. The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, as stated on the Notice of Award, whichever is less. By accepting the Award, the Recipient also certifies that the Matching Share of the project costs is committed to the project, is not encumbered in any way that would prevent its use for the project and will be available as needed for the project.
4	Federal Share	The EDA participation in total eligible project costs will be limited to the lesser of the EDA grant amount or the EDA share of total allowable project costs (as stated on the Notice of Award or the most recent Amendment).

Interest, or Unused Funds Following two methods: i. The first is the pay.gov website, which allows the Recipient to pay EDA online. The Recipient will have the option to make a one-time payment or to set up an account to make regular payments. ii. The second is paper check conversion. All checks must be made payable to 'Department of Commerce, Economic Development Administration' and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be		
West Highway, SSMC3 Silver Spring, MD 20910 When funds are remitted t	5	one-time payment or to set up an account to make regular payments. ii. The second is paper check conversion. All checks must be made payable to 'Department of Commerce, Economic Development Administration' and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address: NOAA OCFO Attn: Finance Office, Travel Dept. 1315 East West Highway, SSMC3 Silver Spring, MD 20910 When funds are remitted to EDA by check, the check will be converted into an electronic funds transfer (EFT) by using the account information on the check to debit the payor's account electronically. The debit from the payor's account will usually occur within 24 hours. If the EFT cannot be completed because of insufficient funds, EDA will charge a one-time fee of \$25.00, which will be

6	Waste, Fraud, and Abuse	Consistent with 2 C.F.R. part 200, at EDA's direction, at any time(s) during the estimated useful life of the Project, Recipient's key personnel will take a training on preventing waste, fraud and abuse as provided by the Government. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors, or sub-grantees (for financial matters and/or general oversight related to this Project). EDA will provide instructions on when and how to take the training. Within 60 days of the date of Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all recipients whether or not designated in this Award as the Lead Recipient. Further, Recipient will monitor award activities for common fraud schemes (hereinafter 'Fraud Schemes'), such as but not limited to: false claims for materials and labor, bribes related to the acquisition of materials and labor, product substitution, mismarking or mislabeling on products and materials, and ' time and materials overcharging. Should Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx,
7	Additional Included Documents (Non- construction)	as soon as possible. In addition to the regulations, documents, or authorities incorporated by reference on the Notice of Award, the following additional documents are incorporated by reference into this Award: i. The Recipient's application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation ii. Authorized Scope of Work (Attachment 1) iii. Authorized Staffing Plan (Attachment 2) Should there be a discrepancy among these documents, the Specific Award Conditions shall control.

9 Conf Inter	flicts of rest	The Recipient must maintain a written and enforced conflict of interest policy. The policy should at a minimum address actual or potential personal (e.g., employees, agents, members of their immediate family) or organizational conflicts of interest in the performance or administration of the Award. Conflicts of interest may include, but are not limited to, any past, present or planned contractual, financial, or other relationships, obligations, commitments or responsibilities, which may bias the Recipient or affect the Recipient's ability to perform or administer the Award in an impartial and objective manner. The policy must include standards of conduct covering conflicts of interest and governing actions of Recipient employees engaged in the selection, award, or administration of contracts in accordance with 2 C.F.R. § 200.318(c). The Recipient shall ensure that all subrecipients and contractors under the Award: (1) have their own conflict of interest policy in place that meets the requirements of this Specific Award Condition; or (2) adopt the Recipient's conflict of interest policy. The Recipient's policy should provide procedures to disclose, mitigate, and resolve any such conflicts of interest. In accordance with 2 C.F.R. § 200.112, the Recipient must disclose in writing any potential or actual conflict of interest to EDA in a timely manner. EDA will evaluate the disclosure and inform the Recipient of any required remedial action beyond what the Recipient may have already implemented. Failure to comply with this condition, or the Recipient's own conflict of interest policy, may result in appropriate enforcement action pursuant to 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, which are incorporated under the Award.

10 Financial Disbursement EDA will make Award payments using the Department of the Treasury's Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation as required by ASAP including but not limited to Recipient and Requestor Identification Numbers. Complete information concerning the ASAP system may be obtained by visiting www.fms.treas.gov/asap. In order to receive payments, the Recipient must submit Form SF-270 (Request for Advance or Reimbursement) for the applicable period electronically. The Project Officer will review and process the request. Prior to the initial disbursement, the Recipient must complete Form SF-3881 (ACH Vendor/Miscellaneous Payment Enrollment Form). The form must be completed by the respective parties (EDA, Recipient's Bank, and Recipient) at the start of the Award. EDA will provide instructions for submitting the form during the project kick-off meeting.

11	Final Financial Report	A final Form SF-425 must be submitted no more than 120 calendar days after the Authorized Award End Date specified on the Notice of Award (or any subsequently executed Amendment to the Notice of Award), unless an extension is granted in writing by EDA pursuant to 2 CFR § 200.344. Final Financial Reports should follow the instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. Determination of the final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.

12	Performance	The Recipient agrees to provide EDA with: (1) Form ED-916 (Outputs
	Measures	Questionnaire) on a semiannual basis, and (2) Form ED-917 (Outcomes
	medodreo	Questionnaire) on an annual basis. All Outputs Questionnaires and
		Outcomes Questionnaires should be submitted via a web-based
		information collection system to be provided by EDA. Outputs
		Questionnaires (Form ED-916) must be submitted to EDA on a semi-annual
		basis during the period of performance or as otherwise directed by EDA.
		The first Outputs Questionnaire must be submitted to EDA six months after
		the date the period of performance starts, as set forth in the Notice of
		Award or as later memorialized through an Amendment. The Outputs
		Questionnaire must be submitted to EDA every six months thereafter
		through the end of the Period Performance, or any portion thereof if
		applicable, or as otherwise directed by EDA. Outcomes Questionnaires
		(Form ED-917) must be submitted to EDA on an annual basis for a total of
		five years after the date the period of performance starts, including after
		Award closeout. The first Outcomes Questionnaire must be submitted to
		EDA one year after the date the period of performance starts, as set forth
		in the Notice of Award or as later memorialized through an Amendment.
		The Outcomes Questionnaire must be submitted to EDA at the end of every
		year thereafter for a total of five years, or as otherwise directed by EDA.
		Note that EDA may revise or replace the Outputs Questionnaire and/or the
		Outcomes Questionnaire at any time during or following the period of
		performance. The Recipient agrees to report on program performance
		measures and program outcomes in such form and at such intervals as may
		be prescribed by EDA in compliance with the Government Performance and
		Results Act (GPRA) of 1993 and the Government Performance and Results
		Modernization Act of 2010 (collectively, GPRA Reports). Recipient must
		collect sufficient data and retain sufficient documentation to enable
		Recipient to submit these required GPRA Reports. Failure to submit the
		required GPRA Reports can adversely impact the ability of the Recipient to
		secure future funding from EDA. Recipient must retain sufficient data and
		records to comply with the above reporting requirements at least through
		the end of the fifth year after the date the period of performance starts, or
		longer if necessary to comply with the above reporting requirements.
L	I	

13	Financial Reports	Financial Status Reports (SF-425) must be submitted to EDA on a semi- annual basis via EDA's Grants Management Portal for the reporting periods ending March 31 and September 30, or any portion thereof if applicable, for the period of performance set forth in the Notice of Award or as later memorialized through a mutually agreed-upon Amendment to the Award. Form SF-425 (and instructions for completing this form) is available at: https://www.grants.gov/forms/post-award-reporting-forms.html. Reports are due no later than 30 calendar days following the end of the reporting period.

14	Project and Program Evaluation	As part of the process of validating and monitoring the Award and the performance information provided by the Recipient, and as a general method of evaluating the Award and the Program, EDA reserves the right to conduct project and program evaluations through site visits and/or survey(s) during or after the period of performance. Such evaluations may be conducted by outside parties associated with EDA or by EDA staff. Recipient agrees to participate in the evaluation by answering the evaluator's questions and furnishing information as requested. Evaluators will maintain the confidentiality of business information as required and appropriate. Recipient agrees to provide data and client management system information to facilitate evaluations. If EDA chooses to conduct a survey, EDA may require that Recipient provide client email addresses in
		order to allow such a survey to identify Program impact across the Project's clients, defined as those receiving services from the Recipient. For site visits, EDA will provide the Recipient at least two weeks of notice prior to a visit, unless exigent circumstances warrant otherwise. The site visit may include interviews with Recipient's staff or visits with Project clients.
16	Freedom of Information Act (FOIA)	EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application information publicly available. Accordingly, the Recipient should notify EDA if it believes any Application information to be confidential.

17	Intellectual Property Rights	The Recipient (including any subrecipients and contractors) is subject to the intellectual property requirements of all applicable federal statutes and regulations (e.g., Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 et seq.; 37 C.F.R. part 401; 2 C.F.R. § 200.315). The rights of the Federal Government in any inventions, data and other intellectual property created, developed, first reduced to practice or purchased under this Award (e.g., a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world), are defined by applicable federal law. The standard patent rights clause in 37 C.F.R. § 401.14 is hereby incorporated by reference into this Award.				
18	Non-relocation	In signing this Award, Recipient(s) attests that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation of existing jobs within the U.S. that are located outside of its jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for those purposes, EDA retains the right to pursue appropriate enforcement action in accord with 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, including suspension of disbursements and termination of the Award, which may include the establishment of a debt requiring the Recipient to				
		reimburse EDA.				
19	Project Development	The Recipient agrees to the following Project development time schedule:				
----	------------------------	---	--	--	--	--
	Time Schedule	Action Items	Due			
		Return of executed Form CD-450 (Financial Assistance Award) or Form CD-451 (Amendment)	No later than (NLT) 30 calendar days after receipt of Notice of Award/Amendment			
		Scheduling of Kick-Off Meeting	NLT 30 calendar days after receipt of Notice of Award/Amendment			
		Finalization of Work Schedule	NLT the date of the Kick-Off Meeting			
		Submission of Final Project Progress Report	NLT 120 calendar days from the Award End Date, i.e., the latest date set forth in the "Period of Performance" field on the Notice of Award or as later memorialized through an Amendment			
		Submission of Final Financial Documents (Form SF- 425)	NLT 120 calendar days from the Award End Date			
		of the Project upon receipt of the A this time schedule. Moreover, the R writing of any event that could subs milestones or deadlines for the Proj further acknowledges that failure to may result in EDA imposing remedie termination of the Award, in accord C.F.R. §§ 200.339 through 200.343 a	ject as set forth above. The Recipient o meet the development time schedule es for noncompliance, including lance with the regulations set forth at 2			

20	Project Progress Reports	The Recipient agrees to provide the Project Officer with project progress reports, communicating the important activities and accomplishments of the project, on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, for the entire project period. Reports are due no later than one month following the end of the semi- annual period. Progress Reports must be submitted to EDA via EDA's Grants Management Portal in a concise, clear format that outlines the following information in three to six pages: a. a clear, concise overview of the activities undertaken during the reporting period; b. descriptions of accomplishments, benefits, and impacts of the Project and activities, including specific outcomes of Project activities such as job creation/retention, private investment, increased regional collaboration, engagement with historically excluded groups or regions, enhanced regional capacity, and other positive economic benefits; c. upcoming or potential press events or opportunities for collaborative press events to highlight Project activities and henefits; d. a comparison of Project progress with the Project timeline and explanations of any departures from the targeted schedule, descriptions of how these departures will be remedied, and projections of the course of work for the next period; e. an outline of challenges that currently impact or could impact progress on the Project over the next reporting period and means of mitigating this risk; and f. an outline of any areas where EDA assistance (e.g., connections to subject matter experts or other resources, amplifications of activities or impacts) is needed to support the Project; and g. any other key information that would be helpful to your EDA Project Officer.

	1	
21	Final Project Progress Report	The final Progress Report must be submitted to EDA no more than 120 calendar days after the Award End Date and these reports or any part of the information contained therein may be posted on EDA's website, used for promotional materials or policy reviews, or may be otherwise shared. Recipient must clearly identify any information that may constitute a trade secret or may be commercial or financial information that is confidential or privileged in these reports. There is no minimum or maximum page requirement for the final Progress Report; however, the final Progress Report should concisely yet completely communicate key Project information as follows: a. the specific regional need that the Project was designed to address and progress made during the period of performance and beyond that has mitigated or will mitigate that need and advance economic development; b. a high-level overview of the activities undertaken; c. details of lessons learned during the period of performance that may be of assistance to EDA or other communities undertaking similar efforts; d. the expected and actual economic benefits of the Project at the time that the Report is written; e. any other key information from the period of performance.

22	Use of EDA Logo	Recipient may use the EDA logo pursuant to the below terms and
	(Non-	conditions for the following limited purposes: Press releases, social media
	Construction)	posts, and websites that build awareness of this Award (note that some
		advertising and marketing activities are not allowable costs under federal
		awards as provided at 2 CFR 200.421); and Work products and deliverables
		developed under this Award (e.g. tools, publications, resource guides,
		brochures, PowerPoint presentations, technical assistance materials).
		Recipient may not use the EDA logo for other purposes, including lobbying
		or issue advocacy, endorsing a product or organization, or communications
		to elected officials or federal agencies. Recipient may not use the EDA logo
		in a negative or defamatory manner. Recipient must request and obtain
		EDA permission prior to certain uses of the EDA logo (see section B, below).
		A. Grant of License: EDA hereby grants to Recipient a non-exclusive,
		royalty-free right to use the EDA logo for the limited purposes described above (the 'License').
		Recipient agrees that: (1) the EDA logo will not be used in a way that would
		suggest that it is the property of Recipient or any other third party, and (2)
		Recipient will include the following notice in conjunction with its use of the
		EDA logo, as appropriate:
		<ul> <li>The EDA logo is a trademark of the Economic Development</li> </ul>
		Administration, used with permission.
		- This License does not grant Recipient the right to use any seal,
		emblem, logo, or other symbol of the U.S. Department of
		Commerce or EDA that is not the EDA logo.
		B. Required Approvals for Certain Uses of the EDA Logo: Before
		Recipient uses the EDA logo for press releases and related materials,
		Recipient shall send a sample of each print, product, design, or other
		work to show the proposed use to the EDA Regional Office Public
		Affairs Specialist (whose contact information may be obtained from the
		Project Officer for this Award). Recipient shall not use the EDA logo for
		the above uses until receiving written approval (including via email)
		from EDA of the proposed use.
		C. Quality Control: EDA shall have the right, at all reasonable times, to
		inspect Recipient's goods, services, and promotional activities
		employing the EDA logo to ensure that such use is of proper quality and otherwise consistent with this License.
		D. Duration and Termination: The License shall terminate on the Award
		End Date. Recipient may request a renewal of the License for an additional term subject to the express written consent of EDA. Such
		consent shall be in the form of a properly executed agreement signed
		by authorized signatories of EDA and Recipient. Upon termination of
		the License, all rights of Recipient to use the EDA logo shall
		immediately terminate. EDA may terminate the License unilaterally and
		without cause at any time, including if EDA determines that Recipient's
		use of the EDA logo is inconsistent with the License.
	I	

E. Validity and Ownership of EDA Logo: Recipient acknowledges and
agrees that EDA is the owner of all right, title, and interest in the EDA
logo, and all such right, title, interest, and ownership shall remain with
EDA. Recipient further acknowledges that Recipient shall not acquire
any right, title, interest, or ownership in the EDA logo by virtue of the
License or use other than the license granted hereunder and disclaims
any such right, title, interest, or ownership. Recipient is prohibited from
interfering with EDA's rights in the EDA logo, including challenging
EDA's use, registration of, or application to register the EDA logo alone
or in combination with other words or designs, as a U.S. or foreign
trademark anywhere in the world. Recipient is further prohibited from
attempting to register the EDA logo, any derivatives thereof, or any
confusingly similar mark, whether or not registered by EDA, alone or in
combination with other words or designs, as a U.S. or foreign
trademark or as a part of a domain name.
F. Assignments and Sub-Licenses: The License is not assignable, and any
attempt by Recipient to assign any portion of the License shall be
deemed a breach of the License and will result in immediate
termination of the License. Recipient may subcontract, thereby
engaging in a limited sublicensing arrangement as applicable, for
manufacturing and distribution activities under the License; Recipient
shall provide notice to EDA and must receive prior approval from EDA
of any such subcontract prior to manufacturing and distribution
activities.
G. Governing Law: The License shall be interpreted and implemented in
accordance with the Federal common law as interpreted by the U.S.
District Court for the District of Columbia, without giving effect to any
conflict of law principle that would result in the application of the
substantive law of another jurisdiction.
H. Indemnification: Recipient agrees to indemnify and hold EDA
harmless from any and all claims, damages, and attorneys' fees arising
from the use of the EDA logo by the Recipient and its operations,
except to the extent that any such claims, damages, or attorneys' fees
arose in connection with any act or failure to act by the U.S.
Department of Commerce or any agency, department, or subdivision
thereof.
I. Obtaining the EDA Logo: For an electronic version of the EDA logo,
Recipient should contact the EDA Regional Office Public Affairs
Specialist (whose contact information may be obtained from the
Project Officer for this Award).

23	Reaffirmation of	Recipient acknowledges that Recipient's Application for this Award may
23	Reaffirmation of Application	Recipient acknowledges that Recipient's Application for this Award may have been submitted to EDA and signed by Recipient, or by an authorized representative of Recipient, electronically without providing an original 'wet' signature. In addition, the Recipient or an authorized representative of Recipient may have accepted the Award electronically, which includes drawing down any funds under this Award. Regardless of who submitted the Application to EDA or the means by which Recipient submitted the Application or accepted the Award, Recipient hereby reaffirms and states that: i. All data in the applicable Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award; ii. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and ii. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the Application and through the System for Award Management (SAM.gov). The Recipient agrees to immediately notify the EDA of any material changes to the Application within 30 calendar days of the date the Recipient becomes of aware of such changes. For purposes of this provision, the term 'Application' includes all documentation and any information provided to EDA as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by EDA after submission of the initial Application.
24	Technical Assistance to Businesses	Any technical assistance offered to businesses under the Award shall be widely advertised and accessible to all potentially benefitting businesses, as is reasonably permitted by the EDA project Scope of Work and Authorized Budget. Recipient shall maintain adequate documentation of any technical assistance offered to benefitting businesses under the Award.
26	Staffing Changes	The Authorized Staffing Plan sets forth Recipient staff primarily responsible for administering this Award. In the event of a change in the professional staff positions primarily funded with the EDA grant, Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of their resume within 30 business days of the selection.

27	Use of Information	EDA reserves the right to use information contained in the Recipient's Application as well as all Reports and performance data submitted by the Recipient to undertake an evaluation of the Program. The Recipient agrees to cooperate with such evaluations, including by sharing performance information that they have collected or will collect as part of their grant activities, including performance information for Project clients.
28	Scope of Work	This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the Authorized Scope of Work (Attachment 1). All work on this project must be consistent with the Authorized Scope of Work, unless the Grants Officer has authorized a modification of the scope of work memorialized in writing through execution of an amendment to the Notice of Award.

29	Report Schedule	The Recipient agrees to report to impacts as summarized in the foll this subsection:	•	-			
		Phase		Obligations			
		i. During the Period of Performance	Progress Report Financial Status Report	Semiannually, for the periods ending March 31 and September 30			
			Outputs Questionnaire	Semiannually, six months after the date the Period of Performance begins and every six months thereafter, or as otherwise directed by EDA			
			Outcomes Questionnaire	Annually, one year after the date the Period of Performance begins and every one year thereafter for a total of five years, or as otherwise directed by EDA			
		ii. At the Expiration of the Period of Performance but Before Award	Progress Report Financial Status Report	One time, within 120 calendar days after the Award End Date			
		Closeout		N/a			
			Outcomes Questionnaire				
		···· 4/(	Progress Report Financial Status Report	N/a			
		iii. After Award Closeout	Outputs Questionnaire				
			Outcomes Questionnaire	Annually, until the end of the fifth year after the date the Period of Performance begins, or as otherwise directed by EDA			
30	Procurement	The Recipient agrees that all procurement transactions will be in accordance with the Uniform Administrative Requirements, Cost Principle and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317 - 200.327.					
31	Failure to Submit Required Reports	Timely submission of all above-described reports is a condition of this award. Under 2 C.F.R. § 200.344, the Recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. If the Recipient fails to submit all required					

		reports to EDA within one year of the period of performance end date, per 2 C.F.R. § 200.344 EDA will report the failure to comply with the terms and conditions of the award with the OMB-designated integrity
32	Food and Conference Costs	Timely submission of all above-described reports is a condition of this award. Under 2 C.F.R. § 200.344, the Recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. If the Recipient fails to submit all required reports to EDA within one year of the period of performance end date, per 2 C.F.R. § 200.344 EDA will report the failure to comply with the terms and conditions of the award with the OMB-designated integrity
33	Travel Costs	Travel costs are not allowable costs under this award and may not be charged to the project, unless they are the expenses for transportation, lodging, subsistence, and related items incurred by employees or officers of the Recipient, and Recipient employees or officers are in travel status on official business of the Recipient within the scope of this Award. Travel costs must meet cost principles per 2 CFR 200.475, <i>Travel costs</i> .
34	Equity Investments and Loans	Recipient understands and agrees that the use of funds to make equity investments or issue debt is not an allowable cost. Neither federal nor matching share funds may be invested in startups or other companies, whether through equity, debt, hybrid, or another mechanism.
35	Subsidies to Participant Firms	Recipient understands and agrees that award funds may not be passed or transferred to companies (i.e., startups and individuals) being served by the applicant organization, nor may they be used to subsidize such companies' expenses that are unrelated to program activities, including general operating expenses. As such, award funds may not be used to pay contractors to undertake companies' business functions. Neither federal nor matching share funds may be used for such costs.
36	Competitive Procurement Verification	The Budget includes expected contractual costs. Recipient must compete all contracts in accordance with the procurement standards of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) as set out at 2 C.F.R. 200.317-327. If a Recipient that is not a State entity wishes to sole source any contract, the Recipient must provide the Project Officer adequate documentation that sole source justifications can be made in accordance with the Uniform Guidance (see 2 C.F.R § 200.320(c)) within 30 days of the Award. This condition applies to all contracts, including those with any providers named in the Applicant's application materials.

37	Non-Federal Share	The Recipient has informed EDA that it intends to fund all or part of the					
	<ul> <li>State and Local</li> </ul>	required non-federal share of project costs using funds provided through					
	Fiscal Recovery	the Department of the Treasury's State and Local Fiscal Recovery (SLFR)					
	Funds	Funds program. By accepting this Award, the Recipient reaffirms that the					
		SLFR Funds applied to the non-federal share will be taken only from the					
		amount of SLFR Funds available under the revenue loss eligible use					
		category, and that the use of SLFR Funds for the non-federal share is					
		consistent with Treasury's regulations governing the SLFR Funds program					
		and the terms and conditions of the SLFR Funds award. The Recipient					
		further agrees that it will obligate all SLFR Funds designated for the non-					
		federal share of this Award promptly after accepting the Award (and no					
		later than December 31, 2024) and that it will expend all SLFR Funds					
		designated for the non-federal share no later than December 31, 2026. In					
		the event that the Department of the Treasury determines for any reason					
		that SLFR Funds may not be used for the non-federal share of this Award or					
		the SLFR Funds otherwise become unavailable, the Recipient agrees to fund					
		the non-federal share from other allowable sources. The Recipient further					
		agrees to inform EDA promptly if SLFR Funds become unavailable to fund					
		the non-federal share.					
38	Non-Duplication of	The Scope of Work shall not duplicate activities funded under any other					
	Past and Current	federal programs, including but not limited to any current EDA Award.					
	Federally Funded	Recipient shall not use EDA or required local match for this Award for the					
	Activities	completion of any activity required under any other federally funded					
		project, and shall not claim the costs of any activity funded under any other					
		federally funded project as part of this EDA Award.					

# Attachment 1 - Scope of Work

Activities		Timeline	Responsible	
	Year 1	Year 2	Year 3	Party
Launch marketing and community outreach campaign	Qtr. 1	Qtr. 1	Qtr. 1	DEDO
Host a kick-off conference for the catalyst ecosystem	Qtr. 1			DEDO
Monitor the website as companies apply for support/investment through the Herman Malone Fund	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	DEDO
Conduct due diligence on companies that apply and business navigation services to onboard businesses	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	DEDO and Herman Malone Fund
Assign entrepreneurs to appropriate partners within the catalyst ecosystem	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	DEDO
Assigned training provider provides entrepreneur with needed technical assistance to become capital-ready	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	ICC ecosystem partner
Maintain communication with the catalyst ecosystem partners and monitor their performance with participating entrepreneurs' progress toward becoming capital-ready	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	DEDO
Meet with potential investors who would consider making an investment in the Herman Malone Fund	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	DEDO and ICC partners
Monthly meetings to review and discuss the Herman Malone Fund's activities	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	DEDO and ICC partners
Collect all data required for EDA performance reporting using ED-916 (semi- annual report) and ED-917 (annual report)	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	DEDO
Submit all required performance and financial reports to EDA	Qtrs. 3, 4	Qtrs. 1, 2, 3, 4	Qtrs. 1, 2, 3, 4	DEDO

# Attachment 2 – Staffing Plan

L							
Staffing Plan - Budget							
		<u>% of Annual</u>					
		Hours for	Annual \$ from	Number of	Total Cost by		
Name	<u>Annual Salary/Rate</u>	<u>project</u>	<u>Award</u>	<u>Years</u>	<u>Employee</u>		
Director	\$124,000	10%	\$12,400	3.00	\$37,200		
Project Manager	\$80,000	50%	\$40,000	3.00	\$120,000		
Data Analytics Manager	\$100,000	10%	\$10,000	3.00	\$30,000		
Financial Manager	\$107,000	10%	\$10,700	3.00	\$32,100		
Contracts Manager	\$131,928	10%	\$13,193	3.00	\$39,578		
Internal Monitor	\$105,355	10%	\$10,536	3.00	\$31,607		
Total Personnel Costs							
Total Fringe Costs (Please Provide the Basis for Fringe Calculations)31.00%							

AUTHORIZED	<b>STAFFING</b>	PLAN
	01/11110	

Staffing Plan - Narrative						
Name	<u>Title</u>	Project Responsibilities				
Michael Bevis	Director	Direct supervision and support of the project manager and overall project. Supports all aspects of the project as needed.				
		Oversee all aspects of the project and will manage the contracted service providers; supervise and manager the project team; develop and manage project plans to achieve deliverables for program activities; identifying project barriers/constraints/risks and providing recommendations to mitigate; operating project communication plan; facilitating improvement efforts; and managing key work plan and outcomes, including quarterly				
TBD	Project Manager	reporting				
Jonathan Steiner	Data Analytics Manager	Ensure the timely and accurate fiscal reporting and procurement management of the TEC-P 2.0 project. They will provide fiscal oversight and reporting, including management of procurement processes in alignment with the city, state and federal required procurement procedures for DOL-funded grants.				
Fanta Harkiso	Financial Manager	Direct supervision and support of financial administrator. Ensure that all financial requirements are met in accordance with grant and local policy.				
Lisa Valdez	Contracts Manager	Ensure that signed contracts are in place and updated throughout the grant period of performance. This includes the development and negotiations for all related contracts as well as modifications and amendments throughout				
		Act as the monitor for all grant activities. Will also lead any and all required federal audits. Will provide continual feedback to Project Manager and Project Administrator to address issues discovered				
Dan Fector	Internal Monitor	during regular monitoring cycles.				

The Executive Director (the "Executive Director") of the City and County of Denver's Economic Development and Opportunity ("DEDO"), or permitted designee, is authorized to execute documents necessary to receive grant funds from the U.S. Department of Commerce ('DOC"), including a funding approval/agreement, for Build to Scale grant, Federal Award ID Number ED23OIE0G0120, so long as the documents requiring the Executive Director's signature are executed or requested by DOC.

**Contract Control Number: Contractor Name:** 

#### OEDEV-202371615-00 US DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT ADMINISTRATION

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:  $6/28/2024 \mid 12:40 \text{ PM MDT}$ 



CITY AND COUNTY OF DENVER:

ATTEST:

DocuSianed by

Clerk and Recorder/Public Trustee The Honorable Paul D. Lopez

#### **APPROVED AS TO FORM:**

Attorney for the City and County of Denver

DocuSigned by: By: Brian L. Martin 30F45B0411A343C

Assistant City Attorney Brian L. Martin By: Michael Johnston

Mayor Michael Johnston

### **REGISTERED AND COUNTERSIGNED:**

By: DocuSigned by: Mill Dolumy

> Chief Financial Officer Nicole Doheny

DocuSigned by: By:

Auditor Timothy O'Brien

## **Contract Control Number: Contractor Name:**

#### OEDEV-202371615-00 US DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT ADMINISTRATION

## By: FEDERAL REVENUE GRANT EXECUTED UPON RECEIPT

Name: CHIVAS GRANNUM (please print)

Title: GRANTS OFFICER (please print)

## ATTEST: [if required]

By: \_\_\_\_\_

#### **BLACKENT6 ACORD**<sub>TM</sub> **CERTIFICATE OF LIABILITY INSURANCE**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY A CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EX BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the po If SUBROGATION IS WAIVED, subject to the terms and conditions of the	TEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED Nicy(ies) must have ADDITIONAL INSURED provisions or be endorsed. policy, certain policies may require an endorsement. A statement on							
this certificate does not confer any rights to the certificate holder in lieu								
PRODUCER	CONTACT Nicole Miller							
USI Insurance Services, LLC	PHONE (A/C, No, Ext): 952-395-1546 FAX (A/C, No): 952-945-9477							
8000 Norman Center Drive, Suite 400	E-MAIL ADDRESS: nicole.miller@usi.com							
Bloomington, MN 55437	INSURER(S) AFFORDING COVERAGE NAIC #							
	INSURER A : Citizens Insurance Company of America 31534							
INSURED								
Ben Colorado, INC	INSURER B :							
3513 Brighton Blvd., Suite #471	INSURER C :							
Denver, CO 80216	INSURER D :							
	INSURER E :							
	INSURER F :							
COVERAGES CERTIFICATE NUMBER:	REVISION NUMBER:							
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAY INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION C CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDE EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAY INSER WYD         INSR       TYPE OF INSURANCE       ADDL SUBR WYD       POLICY NUMBER         A       X       COMMERCIAL GENERAL LIABILITY       X       OHXH18641205	DF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS D BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, VE BEEN REDUCED BY PAID CLAIMS. POLICY EFF POLICY EXP (MM/DD/YYYY) LIMITS 02/01/2025 02/01/2026 EACH OCCURRENCE \$1,000,000							
CLAIMS-MADE X OCCUR	DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000							
	MED EXP (Any one person) \$5,000							
	PERSONAL & ADV INJURY \$1,000,000							
GEN'L AGGREGATE LIMIT APPLIES PER:								
	PRODUCTS - COMP/OP AGG \$2,000,000							
OTHER:	\$							
AUTOMOBILE LIABILITY	COMBINED SINGLE LIMIT (Ea accident) \$							
ANY AUTO	BODILY INJURY (Per person) \$							
OWNED SCHEDULED	BODILY INJURY (Per accident) \$							
HIRED NON-OWNED	PROPERTY DAMAGE							
AUTOS ONLY AUTOS ONLY	(Per accident)							
	\$							
UMBRELLA LIAB OCCUR	EACH OCCURRENCE \$							
EXCESS LIAB CLAIMS-MADE	AGGREGATE \$							
DED RETENTION \$	\$							
WORKERS COMPENSATION	PER OTH-							
	E.L. EACH ACCIDENT \$							
ANY PROPRIETOR/PARTNER/EXECUTIVE								
(Mandatory in NH)	E.L. DISEASE - EA EMPLOYEE \$							
DÉSCRIPTION OF OPERATIONS below	E.L. DISEASE - POLICY LIMIT \$							
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured on General Liability policy.								
L CERTIFICATE HOLDER	CANCELLATION							
The City and County of Denver DEDO 201 W Colfax Avenue 6th Floor	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.							
Denver, CO 80202								
	Jaco Contraction of the second s							

© 1988-2015 ACORD CORPORATION. All rights reserved. ACORD 25 (2016/03) 1 of 1 #S48107124/M48107087 The ACORD name and logo are registered marks of ACORD

DATE (MM/DD/YYYY)

2/12/2025

Client ID: 3404

鼷

## Workers Compensation and Employers Liability Insurance Policy

NCO	CI Co Number: <b>22381</b>	INFORMAT	ION PAGE	Pol	icy Number:	4024899	
1.	INSURED/MAILING ADDRE Blackstone Enterepreneur 17220 Katy Fwy Ste 350 Houston, TX 77094-1485		IC.	Entity Type: <b>Co <u>Renewal of Pol</u> F.E.I.N. NCCI Risk Id</b>	-	<b>24899</b> 844159830	
	Other workplaces not shown abc Other named insured (if applicab		200 A				
2.	POLICY PERIOD: From 01/01/2	2025 to 01/01/2026 at	12:01am at tl	ne Insured's r	nailing add	ress	
3.	<ul> <li>COVERAGE:</li> <li>A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the state listed here:</li> <li>CO</li> <li>B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:</li> <li>Bodily Injury by Accident \$1,000,000 Each Accident Bodily Injury by Disease \$1,000,000 Policy Limit Bodily Injury by Disease \$1,000,000 Each Employee</li> <li>C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:</li> <li>None</li> <li>D. This policy includes these endorsements and schedules: See Schedule WC 200 C</li> </ul>						
4. r	PREMIUM: The premium for this policy will be Plans. All information required be	low is subject to verificat	ion and chang	e by audit.			
	Classifications Code No		n Basis Total al Remuneratio		Per \$100 nuneration	Estimated Annual Premium	
		See Schedule WC 200 D				#200.00	
			Total	Expense C Estimated Annu	onstant al Cost:	\$200.00 \$714.00	
	Minimum Premium: <b>\$223.00</b> Deposit Premium:	Colorado	If indicated below, interim adjustments of premium shall be made: Semi-annually;Quarterly;Monthly				
	DUCER: Lockton Companies LLC (Mountai 2750 E Cottonwood Pkwy Ste 600 Salt Lake City, UT 84121-7285 (816) 960-9000	,	Counte	rsigned By 12/17/2024	Issuing Of	ffice: Sandy, Utah	
				12, 11, 202 <sup>-</sup> T			



Workers Compensation and Employers Liability Insurance Policy

## EXTENSION OF INFORMATION PAGE ITEM #1 SCHEDULE OF OTHER WORKPLACES

Name of	Blackstone Enterepreneurs		
Insured:	Network Colorado, Inc.		
Name of	WCF National Insurance		
Insurer:	Company		
Policy Number:	4024899		
Policy Period:	01/01/2025 at 12:01am	То	01/01/2026 at 12:01am

Name/Address	Fein	<u>#Employees</u>
Blackstone Enterepreneurs Network		
Colorado, Inc.	844159830	5
3513 Brighton Blvd Ste 436	044139030	5
Denver, CO 80216-3807		

Docusign Envelope ID: 20089D3D-6CEB-4E4D-A9B4-27BCBC7C44C7 VEHICLE OR EQUIPIVIENI CERTIFICATE OF INSURANCE									DATE(MM/DD/YYYY) 02/11/2025				
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.													
This form is used to report coverages provided to a single specific vehicle or equipment. Do not use this form to report liability coverage provided to multiple vehicles under a single policy. Use ACORD 25 for that purpose.													
PRODUCER     CONTACT NAME:       COLORADO INSURANCE     PHONE (A/C, No, Ext): 720-283-1722       7901 SOUTHPARK PLZ STE 110     FAX (A/C, No): 720-283-1726													
LITTLETON, CO 80120  E-MAIL ADDRESS: PRODUCER CUSTOMER ID #:													
										ORDING COVERAGE			
GEC		E FREEMA	AN				INSURER A		STANDARD FIRE IN	SURANCE COMPANY		19070	
-	-	ROGERS	WAY 0401-6518				INSURER C						
	ים	,	9401 0910				INSURER D						
DES	CRIF	TION OF	VEHICLE OR E				INSURER E	:					
YE	AR )15	1	/ MANUFACTURER		MODEL CHER	PU	BODY TYPE		1 C 4	VEHICLE IDENTIFICATION N RJFAG3FC660141	IUMBER		
	RIPTI			Glumb			e / Equipment V	ALUE		SERIAL NUMBER			
		GES		CEDTIEICAT	E NUMBER:								
			IFY THAT THE P			ED BELO	W HAS/HAVE	BEEN	I ISSUED TO THE	<b>REVISION NUMBER:</b> E INSURED NAMED ABON		HE POLICY	
	VHIC	H THIS CER	TIFICATE MAY E	E ISSUED OR I		IE INSUI Y(IES).	RANCE AFFOR	DED	BY THE POLICY(I	OR OTHER DOCUMENT ES) DESCRIBED HEREIN I			
	ADD'L NSRD	TYPE O	F INSURANCE	Р	OLICY NUMBER				OLICY EXPIRATION ATE (MM/DD/YYYY)	LIM	ITS		
		X VEHICLE	LIABILITY							COMBINED SINGLE LIMIT	\$		
				6161	289452031		07/26/20	24 0	07/26/2025	BODILY INJURY (Per person) BODILY INJURY (Per accident			
										PROPERTY DAMAGE	\$ 250,		
		GENERAL LI	ABILITY							EACH OCCURRENCE	\$		
		OCCURR								GENERAL AGGREGATE	\$ \$		
INSR		CLAIMS						CTIVE POLICY EXPIRATION					
LTR	PAYEE		LLISION LOSS				-	-		LIMITS / D		LIMIT	
				6161	289452031		07/26/20	24 (	07/26/2025	STATED AMT	\$1,0	) () () <b>DED</b>	
		X VEH COMP VEH OTC 6161289452031 0		07/26/20	24 0	07/26/2025	ACV AGREED AMT		LIMIT				
		PROPERTY								ACV AGREED AMT		LIMIT	
		BASIC SPECIAL	BROAD							RC STATEDAMT	\$	DED	
			<u> </u>					T					
KEMA	KKS (	INCLUDING SP	YECIAL CONDITIONS	/ UTHER COVERA	AGES) (Attach ACORI	טר ט1, Ad	aitional Remarks §	schedu	ie, it more space is re	equired)			
ADD	ΙΤΙΟ	NAL INTE	REST					CAN	ICELLATION				
Select one of the following:       SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED         The additional interest described below has been added to the policy(ies) listed herein by policy number(s).       SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED         A request has been submitted to add the additional interest described below to the policy(ies)       BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE													
	listed herein by policy number(s). VEHICLE / EQUIPMENT INTEREST: LEASED FINANCED							DESCRIPTION OF THE ADDITIONAL INTEREST					
NAME AND ADDRESS OF ADDITIONAL INTEREST					ļ	ADDITIONAL INSURED LOSS PAYEE							
						-		ENDER'S LOSS PAY	YEE				
						F							
		I						AUTH	ORIZED REPRESENT	TATIVE			
ACC	© 1997-2015 ACORD CORPORATION. All rights reserved. ACORD 23 (2016/03) The ACORD name and logo are registered marks of ACORD												