

APPENDIX I: STATE OF RHODE ISLAND SUBAWARD TERMS & CONDITIONS

PART I: GENERAL TERMS & CONDITIONS

1.1 Definitions.

“2 CFR Part 200” means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published in Title 2, Part 200 of the Code of Federal Regulations.

“Assistance Listing” means the federal program number in the comprehensive list of federal assistance programs, available at SAM.gov. Previously known as “CFDA” or “Catalog of Federal Domestic Assistance” 2 CFR 200.1.

“Authorized Representative” or “Authorized Signatory” means an officer or representative vested with the powers to commit the authorizing subrecipient entity to a binding agreement.

“Closeout” is the process in which the State Agency determines that all applicable administrative actions and all required work with the subaward have been completed by the subrecipient entity and all applicable funds have been paid out in accordance with this agreement.

“Cost based” (reimbursement) without profit - A reimbursement process where the State Agency will reimburse the Subrecipient Entity for each allowable expense contained within an approved budget at the actual amount incurred by the Subrecipient Entity.

“Deliverables based” (reimbursement) without profit - A reimbursement process where the State Agency will reimburse the Subrecipient Entity upon completion of each defined deliverable.

“Federal Award Identification Number” or “FAIN” means the unique identifier issued by the federal agency for each financial assistance award.

“FFATA” or “Federal Funding Accountability and Transparency Act” has the same meaning as in 31 USC 6101; P.L. 110-252.

“Grant Management System” or “GMS” means the eCivis cloud-based, enterprise-wide system for the management of all federal financial assistance coming to the State of Rhode Island.

“Non-Federal Entity” means either the direct recipient of the federal award (State Agency) or the Subrecipient of the federal award (Subrecipient Entity).

“Pass-Through Entity” means a non-federal entity (e.g. State Agency) that provides a subaward to a subrecipient to carry out part of a federal program.

“Performance Period” means the time interval during which all work must be performed and all costs must be incurred, which may include one or more funded portions, or subaward budget periods. Identification of the performance period in the subaward does not commit the awarding State Agency to fund the subaward beyond the currently approved subaward budget period. If

Performance Period dates are listed in *Section II: Subaward Identifying Information* of this Agreement, all work must be performed and all costs must be incurred during the Performance Period, unless pre-award costs are eligible and approved. The maximum allowable Performance Period, including extensions, may not exceed five (5) years, unless a longer performance period is explicitly allowed by the federal government.

“Rhode Island General Laws” or “R.I. Gen. Laws” means the general laws of the State of Rhode Island

“SAM” means the federal System for Award Management (SAM); it is the federal repository into which an entity must provide information required for the conduct of business as a recipient. 2 CFR 25 Appendix A (1)(C)(1).

“Subaward” means an award provided by a State Agency to a Subrecipient Entity for the Subrecipient Entity to carry out part of a federal award received by the State Agency. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program.

“Subaward Budget” means the financial plan for the project or program that the State Agency approves during the subaward process or in subsequent amendments to this Agreement as documented and approved in the GMS. It may include the subaward and cost share or only the subaward share, as determined by the State Agency, and any applicable federal cost share requirements. 2 CFR 200.1

"Subaward dispute" means a circumstance whereby a Subrecipient Entity and a State Agency are unable to arrive at a mutual interpretation of the requirements, limitations, or compensation for the performance of a subaward agreement.

“Subaward Start Date” is the legally binding start date defined in this Agreement between the Parties. Work and costs incurred prior to the Subaward Start Date are only authorized a) as of the Performance Period Start Date, if such pre-dates the Subaward Start Date, and/or b) to the extent Pre-Award Costs are allowable under this Agreement.

“Subrecipient Entity” means a non-federal entity that receives a subaward from a State Agency to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A Subrecipient Entity may also be a recipient of other federal awards directly from a federal awarding agency. 2 CFR 200.1

“Uniform Administrative Requirements, Cost Principles, and Audit Requirements,” or “Uniform Grant Guidance (UGG)” means the requirements which are published in Title 2, Part 200 of the Code of Federal Regulations, incorporated herein by reference, 2 CFR 200 and referred to as the OMB Uniform Guidance.

“Unique Entity Identifier” or “UEI” is a 12-character alphanumeric code assigned to an entity by SAM required for entities receiving federal funds directly from a federal agency or from a pass-

through entity. A UEI is mandatory for all entities receiving a subaward from the State of Rhode Island.

1.2 Governing Law.

The construction and effect of this Agreement shall be governed and construed in accordance with the laws of the State of Rhode Island, without reference to its principles of conflict of laws, except where the federal supremacy clause requires otherwise. Any suit, action or proceeding brought in connection with this Agreement shall be brought solely in the Providence Superior Court, Providence, Rhode Island. The Parties irrevocably submit to the jurisdiction of said court and all courts of appeal from which an appeal may be taken from such court, waive any objection to the venue of said court and any claim that such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained in this section shall be construed to waive any State immunity to suit or liability. In its performance under this Agreement and when utilizing funds received from this Agreement, the Subrecipient Entity shall comply with all applicable federal and state laws, regulations and policies.

1.3 Uniform Grant Guidance 2 CFR Part 200.

Subrecipient Entity shall adhere to the applicable Uniform Administrative Requirements, Cost Principles, and Audit Requirements, which are published in Title 2, Part 200 of the Code of Federal Regulations, incorporated herein by reference, 2 CFR 200 and referred to as the OMB Uniform Guidance.

1.4 Flow Down of Federal Terms & Conditions.

The terms and conditions of the federal award flow down and apply to the Subrecipient Entity unless the federal award letter specifically indicates otherwise. 2 CFR 200.101. The Subrecipient Entity is responsible for compliance with all applicable terms and conditions and shall refer to the federal award for details. The terms and conditions of the federal award are available from the State Agency upon request.

1.5 Term and Performance Period of the Agreement.

The Term of the Agreement shall commence on the Subaward Start Date and shall expire on the Subaward End Date. If applicable, the Performance Period of the Agreement shall commence on the Performance Period Start Date and shall expire on the Performance Period End Date. Payment requests/invoices may be submitted through the later of the Performance Period End Date and the Subaward End Date. All obligations relating to confidentiality and record retention shall survive expiration or termination in perpetuity.

1.6 Registration Requirements.

Subrecipient Entity shall: (a) obtain a public Unique Entity Identifier (UEI), available via the federal System for Award Management (SAM) at SAM.gov; (b) maintain a valid registration in

Ocean State Procures (OSP); and (c) maintain an Annual Organization Registration in the Grant Management System referred to hereinafter as GMS. It is the Subrecipient Entity's responsibility to remain current with these registrations and requirements. If Subrecipient Entity's status with regard to any of these requirements change, the Subrecipient Entity must notify the State Agency in writing, in accordance with *1.12 Notice of Change*. Suppressed or private UEI records are not sufficient, unless an exemption has been made in writing by the federal awarding agency in accordance with 2 CFR 25.110. The Subrecipient Entity is only required to register in SAM, if such requirement is included in an Appendix to this Agreement.

1.7 Debarment and Suspension.

The Subrecipient Entity is subject to non-procurement debarment and suspension regulations at 2 CFR 180 and State of Rhode Island vendor discipline regulation 220-RICR-30-00-14. By signing this Agreement, the Authorized Representative of the Subrecipient Entity certifies that neither the Subrecipient Entity nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in state procurements or federal assistance programs and activities including subawards, in accordance with 2 CFR 200.213 and 2 CFR 180. The Subrecipient Entity is required to notify the State Agency of any changes pursuant to this section. The State Agency completes periodic verification of suspension, debarment and exclusion status.

1.8 Financial Management Standards (2 CFR 200.302 (b)).

The Subrecipient Entity's financial management system must provide the following:

A. Identification of Federal Awards. Identification of all federal awards and subawards received and expended. Federal award identification must include, as applicable, the Assistance Listing title and number, Federal Award Identification Number (FAIN) and year, name of the federal agency, and name of the pass-through entity such as a State Agency.

B. Financial Reporting. Accurate, current, and complete financial reporting for each federal award, subaward or program in accordance with 2 CFR 200.327, *Financial reporting*, and 2 CFR 200.328, *Monitoring and reporting program performance*.

C. Source of Funds. Records must identify the source and application of funds for federally funded activities including matching funds and program income. These records must contain information pertaining to federal awards and subaward, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

D. Internal Controls. Subrecipient Entity must ensure effective control over, and accountability for, all funds, property, and other assets. Subrecipient Entity must safeguard these assets and ensure they are used only for authorized purposes. See 2 CFR 200.303

Internal Controls.

E. Expenditures. Comparison of expenditures with budget amounts for each federal award and subaward.

F. Payment Procedures. Written payment procedures. See 2 CFR 200.305

G. Allowability of Costs. Written procedures for determining allowability of costs in accordance with 2 CFR 200 *Subpart E Cost Principles*, and conditions of the federal awards and/or subawards.

1.9 Property Standards.

Subrecipient Entity must comply with the standards set forth in 2 CFR 200.310–200.316 governing the management and disposition of property, including real property and equipment, which was procured for in whole or in part with federal funds. The Subrecipient Entity must submit annually an inventory listing federally-owned property in its custody to the State Agency through the Annual Organization Registration component of the GMS.

1.10 Record Retention and Access.

A. Retention Period. Subrecipient Entity shall maintain and require any third-party recipients to maintain all financial records, supporting documents, statistical records, and other records pertinent to this Agreement for a minimum period of three (3) years from the later of the date of the final expenditure report and from the date when all other pending matters related to the Agreement are closed. A longer record retention period may be required by the State Agency elsewhere in this Agreement.

B. Access. Subrecipient Entity, in compliance with 2 CFR 200.337 shall make books, records, related papers, supporting documentation and personnel relevant to this Agreement available to authorized State Agency representatives, federal authorities, any person identified in 2 CFR 200.337, and any other person as may be authorized by State Agency or by federal statute.

C. Right to Access. The federal government representatives and the Office of Internal Audit within the Rhode Island Department of Administration, and/or the State Auditor General shall have the right to access any documents, papers or other records of the Subrecipient Entity and any pertinent third-party recipients which are pertinent to this Agreement in order to make audits, examinations, excerpts and transcripts. The right also includes timely and reasonable access to Subrecipient Entity staff for the purpose of interview and discussion related to such documents.

D. Specific Retention. The following specific retention guidelines apply:

1. *Litigation.* If any litigation, claim or audit is started before the expiration of the retention period, the records must be retained until all litigation, claims or audit exceptions involving the records have been resolved and final action is taken.

2. *Written Notification.* State Agency notifies Subrecipient Entity to Extend Retention Period.

3. *Records for Real Property and Equipment.* Subrecipient Entity is required to retain property and equipment records for three years after final disposition.

4. *Program Income Transactions after Performance Period.* When required, the retention period for the program income records starts at the end of the Subrecipient Entity's fiscal year in which the program income is earned.

5. *Indirect Cost Rate Proposals.* For indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies:

a. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State Agency) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.

b. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State Agency) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Subrecipient Entity's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

1.11 Public Records.

All records possessed by the State Agency in connection with this Agreement are subject to the Rhode Island Access to Public Records Act ("APRA"), R.I. Gen. Laws Ch. 38-2. In no event shall the State Agency be liable to the Subrecipient Entity for releasing to the public any records relating to this Agreement that the State Agency determines should or must be released in accordance with APRA.

1.12 Notice of Change.

All changes to the Subaward Agreement require prior written approval through GMS.

A. Changes to Subrecipient Entity. Subrecipient Entity shall notify the State Agency in writing within thirty (30) days if there is a change in Subrecipient Entity's legal status, federal tax identification number (TIN), unique entity identifier (UEI number), entity name or address. Notification shall be through the GMS amendment process using the narrative field(s). The Subrecipient Entity is responsible for ensuring that Ocean State Procures (OSP) is updated with any of the above changes and that the information is consistent with the data in GMS.

B. Failure to Provide Notification. Subrecipient Entity shall hold harmless State Agency for any acts or omissions of State Agency resulting from Subrecipient Entity's failure to notify the State

Agency of these changes.

C. Subaward Changes. Subrecipient Entity shall follow the amendment process through the GMS to request a subaward Agreement change for one or more of the reasons:

1. Increase or decrease to Subaward amount
2. Budget redirections, any changes to/between budget line items
3. Change to Dates (such as subaward, performance period, and/or subaward budget period start and end dates)
4. Change in Scope of Work or objective (primary place of performance, project locations, goals/metrics, milestones, activities, deliverables)
5. Change to frequency of financial or programmatic reports
6. Addition or removal of Specific Conditions as defined in 2 CFR 200.208.
7. Change in key personnel (Authorized Representative, Primary Program Contact, Primary Business/Finance Representative) 2 CFR 200.201(b)(5) The State Agency may require notification of additional personnel changes, such as staff with professional licenses/registrations, project partners/team members, etc.
8. The State Agency may also initiate amendments via the GMS amendment process.

1.13 Risk Assessments, Subrecipient Entity Monitoring and Remedies.

A. Risk Assessment. Each Subrecipient Entity will be assigned a risk profile based on a fiscal assessment completed annually. Additionally, a programmatic assessment may be completed as part of application review and/or during the subaward issuance process. Based on the risk profile and programmatic assessment, Specific Conditions may be added to the Agreement. 2 CFR 200.208. Such an addition must be incorporated by reference in an Appendix to this Agreement. The risk profile and programmatic assessment will also influence the State Agency's technical assistance, training, and monitoring schedule.

B. Subrecipient Entity Monitoring. State Agency shall monitor the activities of Subrecipient Entity to assure compliance with all requirements and performance expectations of the award. State Agency may make site visits, conduct desk reviews and provide technical assistance/training as warranted by program needs, based on assessed level of risk. Monitoring requirements may be in outlined in an Appendix to this Agreement. 2 CFR 200.328

C. Noncompliance. In the event of noncompliance with any *APPENDICES*, or failure to perform as outlined in this Agreement, the State Agency has the authority to apply remedies, including but not limited to: temporarily withholding payments, cost disallowances, wholly or partly suspend or terminate the subaward, recommend initiation of suspension or debarment proceedings or other remedies that may be legally available in accordance with State or federal law. 2 CFR 200.328 and

200.331.

D. Addition and Removal of Specific Terms and Conditions. Based on the risk profile and/or programmatic assessment, specific terms and conditions may be added in an Appendix to this Agreement. 2 CFR 200.207. The State Agency shall promptly remove any Specific Terms and Conditions once the Subrecipient Entity fully implements agreed upon actions that address the underlying risk. Removal of any Specific Conditions shall follow the process outlined in *1.12 C.(6) Notice of Change*. 2 CFR 200.207(d).

E. Sharing Among State Agencies. Subrecipient Entity acknowledges that the State shares general information, including performance information, about Subrecipient Entity among and between state agencies for the purpose of making determinations of the risk involved with potential, subsequent grant awards and for other purposes. Subrecipient Entity expressly consents and agrees to such uses by the State.

1.14 Procurement.

A. Standards. Subrecipient Entities must comply with the standards set forth in 2 CFR 200.317-200.327 for use in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with subaward funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable federal and State statutes and executive orders.

B. Written Policies. The Subrecipient Entity must have written procurement policies to ensure that such materials and services are obtained in a cost-effective manner and in compliance with the provisions of applicable federal and State statutes, regulations, and executive orders. In addition, the Subrecipient Entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of procurement contracts.

C. ISBE Requirements. The Subrecipient Entity shall comply with all State of Rhode Island Minority, Women, and Disability Business Enterprise (collectively ISBE) requirements within R.I. Gen. Laws § 37-14.1-6 and 220-RICR-80-10-2, unless otherwise preempted by federal law.

D. Prior Approval. Subrecipient Entity must obtain prior written approval from the person expressly authorized and designated by the State Agency in advance of subcontracting any portion of the award funds or delegating any duties covered in this Agreement. The requirement for prior written approval is satisfied if the entity providing the services is named and the description of the services is outlined and approved as part of the Subaward Application or this Agreement.

E. Formal Agreements. The Subrecipient Entity must enter into formal agreements for any portion of the award funds subcontracted under this section. The Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (Appendix II to Part 200) must be included in the formal agreement(s) used by the Subrecipient Entity. 2 CFR 200.327

F. Responsibility. Subrecipient Entity assumes responsibility for all aspects of the work to be performed under this Agreement. Subrecipient Entity is fully responsible for paying subcontractors.

G. Municipalities. Subrecipient Entities that are Rhode Island municipalities shall comply with all parts of R.I. Gen. Laws Ch. 45-55, *Award of Municipal Contracts*, unless otherwise preempted by federal law.

1.15 Subawards.

A. Prior Approval. Subrecipient Entity must obtain prior written approval from the person expressly authorized and designated by the State Agency in advance of sub-awarding any portion of the award funds or delegating any duties covered in this Agreement. The requirement for prior written approval is satisfied if the entity receiving the subaward is named and the description of the services is outlined and approved as part of the Subaward Application or Subaward Agreement.

B. Formal Agreements. The Subrecipient Entity must enter into formal agreements for any portion of the award funds sub-awarded under this section. The terms and conditions of the federal award, contained in this Agreement, must be included in the formal agreement(s) used by the Subrecipient Entity.

1.16 Lobbying.

The Subrecipient Entity shall not use funds received under this Agreement to lobby federal, state or local officials or their staff to receive additional funding or influence legislation. 2 CFR 200.450

1.17 Federal Funding Accountability and Transparency Act of 2006, as amended (FFATA).

Subrecipient Entity agrees to provide the State Agency the information required for FFATA reporting including executive compensation information, where applicable.

1.18 Reporting.

A. Financial Reporting. Subrecipient Entity agrees to submit financial reports in the format and frequency required by the State. The frequency of the financial reporting is determined by the type of reimbursement outlined in the Agreement, program requirements, and the subrecipient risk profile. Failure to submit the required financial reports may cause a delay or suspension of funding. GMS Financial Report functionality enables subrecipients to couple a payment request with each Financial Report.

1. Cost based reimbursement. Subrecipient Entity shall file financial reports not less than quarterly but more frequently if required by the State Agency or requested by the Subrecipient Entity.

2. Deliverable based reimbursement. Subrecipient Entity shall file reports when deliverables are complete and approved by the State Agency in accordance with the defined

deliverables in the Agreement.

3. *Fixed Amount Subaward.* The State Agency will reimburse the Subrecipient Entity using agreed upon milestones, unit cost or full payment upon completion. Subrecipient Entity shall file reports when milestones are met and approved by the State Agency in accordance with the defined milestones in the Agreement. Fixed amount subawards shall comply with all limitations and requirements set forth in 2 CFR 200.201(b) and 2 CFR 200.333.

B. *Activity (Programmatic) Reporting.* Subrecipient Entity is required to submit activity reports via GMS in the format required by the State Agency. Subrecipient Entity shall file reports following a reporting schedule not less than quarterly but more frequently if required by the State Agency.

C. *Close-out Reporting.* See 1.29 *Close-out Requirements.*

1.19 Audits & Financial Statement Review.

A. *Audit Requirements.* The Subrecipient Entity shall be subject to the audit requirements based on the amount of federal funds expended in the Subrecipient Entity fiscal year. Guidance on determining federal funds expended is provided in 2 CFR 200.502. The Subrecipient Entity shall submit Single Audits and Program-Specific Audits to the Federal Audit Clearinghouse, and all other required audit reports to the State Agency either within (i) thirty (30) calendar days after receipt of the auditor's report(s) or (ii) one-hundred and eighty (180) calendar days after the end of the audit period, whichever is earlier.

1. *Single and Program-Specific Audits.* If Subrecipient Entity expends \$750,000 or more in federal funds combined during its fiscal year, it must have a single audit or program-specific audit conducted for that year. 2 CFR 200.501(a)(b)(c), 2 CFR 200.507.

2. *Financial Statement Audit.* If Subrecipient Entity expends between \$300,000 and \$749,999 in federal funds combined, Subrecipient Entity must have a financial statement audit conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

3. *Financial Statement Review.* If, during its fiscal year, the Subrecipient Entity expends less than \$300,000 in federal funds, the Subrecipient Entity must have a financial statement review completed by a licensed CPA conducted in accordance with standards established by the American Institute of Certified Public Accountants.

4. *For-Profit Entities.* A for-profit entity that expends \$750,000 or more in federal funds during its fiscal year is required to have a program-specific audit conducted in accordance with 2 CFR 200.507 for this program, if program expenditures for the same period were in excess of \$250,000. A for-profit entity with expenditures less than \$750,000 shall follow the applicable standard outlined in 1.19.A.2 or 3.

B. System and Organization Control. If the Subrecipient Entity is a) subject to audit requirements that include System and Organization Control (SOC) 1, 2, or 3 Reporting, and/or b) outsources any business function for which it receives a System and Organization Control Report, the Subrecipient Entity shall submit copies of such reports in accordance with section 1.19.A. SOC reporting is used for two purposes: the integrity of financial reporting (SOC 1) and data security/storage (SOC 2/SOC 3).

C. Performance of Audits. For those organizations required to submit an independent audit report, the audit is to be conducted by a Certified Public Accountant or Certified Public Accounting Firm licensed with the State of Rhode Island. All audits shall be prepared following the Generally Accepted Government Auditing Standards. The Subrecipient Entity shall request and maintain a copy of the auditor's most recent audit opinion or peer review report and acceptance letter. Subrecipient Entity shall follow procedures prescribed by the State Agency for the preparation and submission of audit reports and any related documents.

1.20 Prior Notification/Release of Information.

Subrecipient Entity agrees to notify State Agency ten (10) days prior to issuing public announcements or press releases concerning work performed pursuant to this Agreement or funded in whole or in part by this Agreement, and to cooperate with State Agency in joint or coordinated releases of information.

1.21 Duty to Notify State of Conflict of Interest.

The Subrecipient Entity must maintain written standards of conduct. 2 CFR 200.112 and 2 CFR 200.318. The Subrecipient Entity shall notify the State Agency of any and all real and apparent conflicts of interests between the Subrecipient Entity and a State employee or a State official which Subrecipient Entity is aware of or should be aware of. Refer to R.I. Gen. Laws Ch. 36-14 and 520-RICR-00-00-1 for actions that amount to a conflict of interest under State law.

1.22 Mandatory Disclosures.

A. Disclosures. The Subrecipient Entity must disclose, within three business days, in writing to the State Agency all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the subaward.

B. Disclosures to Federal Government. State Agencies that have received a federal award including the term and condition outlined in 2 CFR 200 Appendix XII *Award Term and Condition for Recipient Integrity and Performance Matters* are required to report certain civil, criminal, or administrative proceedings to SAM. If the subaward contains a requirement for this provision, the Subrecipient Entity is responsible for providing the State Agency the necessary information for compliance. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 *Remedies for noncompliance*, including suspension or debarment. 2 CFR 200.113.

1.23 Circumstances Affecting Performance.

In the event Subrecipient Entity becomes a party to any litigation, investigation or transaction that may reasonably be considered to have a material impact on Subrecipient Entity's ability to perform under this Agreement, Subrecipient Entity shall notify State Agency, in writing, within three (3) business days of determining such litigation or transaction may reasonably be considered to have a material impact on the Subrecipient Entity's ability to perform under this Agreement.

1.24 Subaward Disputes.

A. Disputes potentially involving Federal Terms. In the event of a subaward dispute, the State Agency shall refer the issue to the applicable federal oversight agency(ies) for guidance and resolution, unless the dispute is clearly limited to specific, non-federal terms and conditions solely imposed by the state.

B. Disputes not related to Federal Terms. The Controller is authorized to resolve subaward disputes not related to federal requirements between subrecipients and state agencies upon the submission of a request in writing from either party.

1. Such request shall provide:
 - a. a copy of the subaward agreement in question, as amended;
 - b. a description of the problem, including all appropriate citations and references from the subaward agreement in question;
 - c. evidence, including copies of citations and communications, that the problem is related to specific terms and conditions solely imposed by the state, above and beyond federal requirements;
 - d. a clear statement by the party requesting the decision of their interpretation of the subaward agreement; and
 - e. a proposed course of action to resolve the dispute.
2. The other subaward party shall respond with five business days.
3. Within fourteen (14) calendar days after receipt of a subaward dispute the Controller shall determine in writing whether:
 - a. the interpretation provided is appropriate;
 - b. additional consultation with federal oversight agencies is appropriate;
 - c. the proposed solution is feasible, or
 - d. another solution may be negotiable.
4. The Controller may invoke recapture (clawback) of funds pursuant to Section 4.3 below,

deobligation of funds pursuant to Section 4.3 below, suspension and/or termination clauses pursuant to Sections 1.25 and 1.26 below, in the subaward agreement against subrecipients determined to be non-performing or otherwise in default of their contractual obligations. The Controller may also require specific conditions to be imposed on the subrecipient. Compliance with such invocation and/or specific conditions shall be a condition precedent for any subsequent change or new subaward. Failure by the subrecipient to comply shall constitute just cause for suspension or debarment.

1.25 Suspension.

State Agency may suspend this Agreement, in whole or in part, if the Subrecipient Entity fails to comply with terms and conditions of this subaward Agreement. If suspension is due to Subrecipient Entity's failure to comply, State Agency may withhold further payment and prohibit Subrecipient Entity from incurring additional obligations pending corrective action by Subrecipient Entity or a decision to terminate this Agreement by State Agency. State Agency may determine to allow necessary and proper costs that Subrecipient Entity could not reasonably avoid during the period of suspension.

1.26 Termination (2 CFR 200.339).

A. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice. The State Agency may terminate this agreement for convenience, for cause, or for any breaches of the terms or conditions of this Agreement. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements outlined in this Agreement for services rendered prior to date of termination.

B. Agreement Contingent on Availability of Funds. This Agreement is contingent upon and subject to the availability of federal or State funds. State Agency may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if funds for this Agreement have not been appropriated or otherwise made available to the State Agency by the General Assembly or the federal funding source. State Agency shall provide notice, in writing, to Subrecipient Entity of any such funding failure and its election to terminate or suspend this Agreement as soon as practicable. Any termination pursuant to this Section will be effective upon the date of the written notice unless otherwise indicated.

1.27 Insurance and Workers' Compensation.

A. Insurance Requirements for Subawards above Threshold. Subrecipient Entities receiving a subaward of thirty thousand dollars (\$30,000) or more must comply with the minimum insurance requirements set forth in the "General Conditions - Addendum A, General Insurance Requirements" (attached), unless otherwise excepted by the Controller and documented in an Appendix to this Agreement. For purposes of General Insurance Requirements, Subaward Entity is a "Contract Party".

B. Insurance Requirements for Subawards below Threshold. Subrecipient Entities receiving a subaward less than thirty thousand dollars (\$30,000) must comply with the following:

1. Workers' Compensation. The Subrecipient Entity certifies that it is in compliance with the State of Rhode Island laws relating to workers' compensation and insurance coverage. The Subrecipient Entity's employees and agents shall not be considered employees of the State of Rhode Island. Any claims that may arise on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State of Rhode Island's obligation or responsibility.

2. Minimum Insurance Requirements. Subrecipient Entity shall comply with the minimum Insurance Requirements imposed by the State. If different or additional insurance requirements are set forth in the solicitation and/or this Agreement, then Subrecipient Entity shall comply with the insurance requirements specified in the solicitation and/or Agreement.

3. Real Property and Equipment Coverage. Subrecipient Entity shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Agreement funds as provided to property owned by the Subrecipient Entity.
2 CFR 200.310

1.28 Whistleblower Protection.

An employee of a Subrecipient Entity, contractor, subcontractor, or personal services contractor 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 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. 41 U.S.C. 4712.

1.29 Close-out Requirements.

Subrecipient Entity shall complete all applicable administrative actions and all required work of the subaward, as defined below, by the Subaward End Date specified in this Agreement.

A. Final Reports. Submission of certified final financial, activity and other reports as required by the terms and conditions of this Agreement.

B. Liquidation of outstanding obligations. Liquidate all outstanding obligations. No new obligations are to be made after the end of the performance period.

C. Refund cash advance balance. Refund any balances of cash advances paid by the State Agency.

D. Real and personal property. Account for real and personal property

E. Post close-out adjustments. If an audit or review of Subrecipient Entity occurs and results in adjustments after Subrecipient Entity completes the award close out, the Subrecipient Entity will revise the final financial report based on audit adjustments, and immediately submit a refund to the State Agency, if applicable.

F. Early termination of Agreement. In the event that this Agreement is terminated prior to the end of the term, the Subrecipient Entity must complete all close-out activities within 45 calendar days of such termination.

G. Close-out checklist. Subrecipient Entity shall complete a close-out checklist to the State Agency certifying the items contained in this section have been addressed.

1.30 Confidentiality.

In the event that the services provided under this Agreement involve Personal Health Information (PHI) and/or Health Insurance Portability and Accountability Act (HIPAA) is otherwise applicable, the Subrecipient Entity shall execute a Business Associate Agreement with State Agency and be bound to the provisions stated therein. The Subrecipient Entity shall take reasonable measures to safeguard protected personally identifiable information (PII) and other information the State Agency designates as sensitive or considers sensitive consistent with applicable federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

1.31 Indemnification.

The Subrecipient Entity shall defend, indemnify, release and hold harmless the State of Rhode Island and its agencies, branches, departments, divisions, together with their respective officers, agents and employees, from and against any and all third-party claims, demands, liabilities, causes of action, losses, damages, judgments and other costs and expenses (including attorneys' fees) arising out of, or related to, directly or indirectly, in whole or in part, Subrecipient Entity and/or the Subrecipient Entity's agents or employees breach of the Agreement act(s), error(s) or omission(s) of the Subrecipient Entity or its employees, agents, subcontractors or volunteers at any tier.

1.32 Severability.

If any section, term, or provision of this regulation should be adjudged invalid for any reason, that judgment should not affect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

1.33 Precedence.

The following order of precedence shall apply (with A being the highest level of precedence):

A. Federal laws and/or regulations;

B. Rhode Island General Laws;

C. State Grants Management Regulations;

D. Amendments and/or modifications approved through GMS;

E. The Agreement;

F. The application/proposal submitted by the Subrecipient Entity and to the extent accepted; and

G. Solicitation documents.

PART II: SCOPE OF WORK

2.1 Scope of Work.

A. Subrecipient Entity will conduct the activities or provide the services as described in the Agreement and any APPENDICES incorporated herein, and in accordance with all terms and conditions set forth herein and all applicable administrative rules. All State Agency and subaward specific provisions including programmatic reporting required under this Agreement are described in the incorporated APPENDICES.

B. Changes. The Subrecipient is required to report deviations from project scope, goals, objectives, and metrics, and request prior approvals from the State Agency for scope of work revisions, in accordance with section *1.12 Notice of Change*.

PART III: SUBAWARD BUDGET

3.1 Subaward Budget.

The budget submitted by the Subrecipient Entity at application and/or negotiated between the State Agency and the Subrecipient Entity is final and may be incorporated herein as an APPENDIX. The Subrecipient is required to report deviations from budget or project scope or objective, and request prior approvals from the State Agency for budget and program plan revisions, in accordance with section *1.12 Notice of Change*.

3.2 Match.

When the subaward budget includes matching funds, matching expenditures must be necessary, reasonable and allowable in accordance with provisions outlined in 2 CFR 200.306 (b) and any applicable program rules. Federal funds under a different award may not be used to meet the match requirement, except where permitted under federal statute.

Cash match to the Program from third parties must be accounted for in the general ledger with other subaward funds. Third party in-kind (non-cash) match is not required to be recorded in the general ledger, but must be under accounting control, possibly through the use of a memorandum ledger.

3.3 Leverage.

Leverage refers to the financial commitment of non-match cash or non-match in-kind funds toward the costs of the project from a source outside of the awarding State Agency.

If the Subrecipient Entity application included leveraged funds commitments, these funds are a legal obligation that the Subrecipient Entity must commit to the program. Leveraged funds must be identified, tracked and verifiable in the Subrecipient Entity accounting systems. In meeting the leverage commitment, the Subrecipient must follow applicable federal statute and program regulations with regarding allowability under 2 CFR 200 *Subpart E Cost Principles*.

3.4 Profits.

The Subrecipient Entity may not earn or keep any profit resulting from federal financial assistance unless explicitly authorized by the terms and conditions of the Subaward Agreement.

3.5 Indirect Costs.

Where permitted under the federal award, the Subrecipient Entity may only claim indirect costs if the Subrecipient Entity a) has a federally approved indirect cost rate; b) has a rate negotiated between the State Agency and the Subrecipient Entity in compliance with 2 CFR 200.332 (a)(4); or c) elects to accept the 10% de minimis indirect cost rate, as defined in 2 CFR 200.414(f). Only Subrecipient Entities that do not have a current negotiated (including provisional) indirect cost rate may elect to charge a de minimis indirect cost rate of 10% of modified total direct costs (MTDC).

3.6 Program Income.

Subrecipient Entity is encouraged to earn income to defray program costs where appropriate and allowable under federal statute and program regulations. Subrecipient Entity must follow federal regulations regarding terms of use. 2 CFR 200.307. If Program Income is classified as “additive,” (see *Section II: Subaward Identifying Information*), program income shall be expended by the Subrecipient Entity prior to invoicing/expending federal funds.

3.7 Personnel Costs.

If the budget includes personnel costs, time and effort documentation shall be maintained by the Subrecipient Entity in accordance with 2 CFR 200.430-431. Charges for salaries and wages must be based on records that accurately reflect the work performed. Such records must: be part of the Subrecipient’s official record; be supported by internal controls; reasonably reflect the total activity for which the employee is compensated by the Subrecipient; and support the distribution of each employee's salary or wages among specific activities or cost objectives. Budget estimates (i.e., estimates determined before the services are performed) do **not** qualify as support for charges to federal awards.

PART IV: PAYMENT

4.1 Subaward Payments.

The State Agency will make payments in accordance with the Reimbursement Type selected in *Section II: Subaward Identifying Information* of this Agreement. The only costs that will be reimbursed or paid are those that are:

- a) Within the scope of the approved project,
- b) Consistent with the approved budget, as amended,
- c) Consistent with the federal cost principles, and
- d) Consistent with limitations applicable to the prime award.

A. Cost-based reimbursement without profit. The State Agency will reimburse the Subrecipient Entity for each allowable expense contained within an approved budget at the actual amount incurred by the Subrecipient Entity. Subrecipient Entity will submit reimbursement requests for allowable expenses, in accordance with the payment schedule contained in this Agreement.

B. Deliverables-based reimbursement without profit. The State Agency will reimburse the Subrecipient Entity for allowable expenses upon completion of each defined deliverable as defined in this Agreement.

C. Fixed Amount Subaward without profit. The State Agency will reimburse the Subrecipient Entity using agreed upon milestones, unit cost or full payment upon completion.

4.2 Consideration and Payment.

In consideration of the satisfactory performance of the Agreement, the State Agency will pay Subrecipient Entity in accordance with all applicable terms and conditions of this Agreement provided that the total amount paid by the State Agency to Subrecipient Entity under this Agreement shall not exceed the Subaward Agreement budget.

Subrecipient Entity will have the sole responsibility for the accuracy and timely submission of proper invoices. At a minimum, Subrecipient Entity's invoices shall identify the time period and breakdown of expenses, deliverables or milestones. Invoices must include Subrecipient Entity's federal taxpayer identification number and reference this Agreement.

In accordance with R.I. Gen. Laws Ch. 42-11.1, unless otherwise provided, payments pursuant to this Agreement will be made within thirty (30) days after receipt of acceptable invoice(s) with appropriate documentation which itemizes costs and expenses in detail consistent with the terms and conditions of the federal award.

4.3 Questioned Costs and Disallowance Right.

The State Agency has the authority to question costs and withhold payment of such questioned

costs until reasonable questions are resolved.

All payments made pursuant to this Agreement: (i) are “provisional,” (ii) may be questioned for up to three years after the closeout of the subaward, and (iii) subject to repayment by the Subrecipient if found at some later date to have been unallowable.

The State Agency may deobligate funds, withhold funds (or recapture/clawback funds if already paid) and/or nullify the whole or part of any invoice in the event of: (i) defective services or other breach under this Agreement; (ii) third party claims filed or reasonable evidence indicating probable filing of such claims; (iii) failure to make payments due to subcontractors or employees; (iv) reasonable indication that the services will not be completed within the time frames specified in this Agreement; (v) invoicing which is incorrect; (vi) overcharges in violation of the terms and conditions of this Agreement; (vii) any unpaid and delinquent taxes or other debt owed to the State Agency by Subrecipient Entity; or, (viii) any claim against Subrecipient Entity by the State Agency arising out of this Agreement or any other agreement between Subrecipient Entity and the State Agency.

4.4 Financial Reconciliation.

The State Agency may require the Subrecipient Entity to complete annual financial reconciliations. More frequent reconciliations may be required at the sole discretion of the State Agency, especially if needed to fully account for program income and/or matching funds; and/or to account for grant funds on grants with multiple budget periods. More frequent reconciliations may also be required if the Subrecipient Entity is using a provisional indirect cost rate.

4.5 Advance Payment (2 CFR 200.305).

Advance payments when authorized by the State Agency Chief Financial Officer (CFO) to a Subrecipient Entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Subrecipient Entity in carrying out the purpose of the approved program or project in this Agreement. The Subrecipient Entity shall submit an itemized invoice detailing any estimated allowable expenses for which the advance payment will be used. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the Subrecipient Entity for direct program or project costs and the proportionate share of any allowable indirect costs. The Subrecipient Entity must make timely payment to contractors in accordance with the contract provisions. The State Agency and the Subrecipient Entity are required to have written policies and procedures for advance payments, which shall include reconciliation procedures. The Subrecipient Entity must have a financial management system that meets the standards outlined in *1.8 Financial Management Standards*. Advance payments may be used with any reimbursement type in *4.1 Subaward Payments*.

The State Agency (pass-through entity) may provide cash on a working capital advance basis. Under this procedure, the State Agency must advance cash payments to the Subrecipient Entity to

cover its estimated disbursement needs for an initial period generally geared to the Subrecipient Entity's disbursing cycle. Thereafter, the State Agency must reimburse the Subrecipient Entity for its actual cash disbursements.

4.6 Required Certifications.

Pursuant to 2 CFR 200.415, each invoice and financial report submitted by Subrecipient Entity must contain the following certification by an official authorized to legally bind the Subrecipient Entity:

By submitting this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the subaward. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. 2 CFR 200.415a (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

If applicable, I further certify that the personnel expense amounts set forth above for payment with grant funds are supported by auditable documentation meeting the standards of 2 CFR 200.430.