

## **ADDENDUM #1**

Communication Services  
Request for Proposals

This Addendum is hereby included in and made part of the Request for Proposals (RFP) for Communication Services published on November 19, 2024. The RFP is modified as set forth in this Addendum. The original RFP Documents and any previously issued addenda remain in full force and effect, except as modified by this Addendum. Proposers shall take this Addendum into consideration when preparing and submitting their Proposals.

---

The following items are clarifications, corrections, additions, deletions, and/or revisions to and shall take precedence over the original documents.

**A. This Addendum includes the following amended documents:**

1. **Attachment H:** Model Contract

The model contract was amended to include Exhibit C, EPA General Terms and Conditions Effective as of October 1, 2023, and NCIF Terms and Conditions.

## **ATTACHMENT H MODEL CONTRACT**

### Services Agreement under Federal Award

This services agreement (“**Agreement**”), is entered into between CPC Climate Capital LLC a New York not-for-profit corporation with a principal place of business at 220 East 42<sup>nd</sup> Street, 16<sup>th</sup> Floor, New York, NY 10017 (“CPC Climate Capital”) and [COMPANY NAME], a [TYPE OF ORGANIZATION] having its principal place of business at [ADDRESS] (the “Contractor”), for the provision of [SERVICES DESCRIPTION], which Contractor provides within its normal business operations. CPC Climate Capital and Contractor may be referred to individually as a “Party” and collectively as “Parties.” The Agreement is effective as of the date last signed below (the “**Effective Date**”).

In April 2024 the U.S. Environmental Protection Agency (“**Prime Funder**”) selected applicants for National Clean Investment Fund awards under the Inflation Reduction Act’s Green House Gas Reduction Fund (the “**Program**”). The Prime Funder identified Climate United Fund (“Prime Recipient”) as a selectee along with its coalition members, which includes CPC Climate Capital. The terms of the prime award between Prime Funder and Prime Recipient were finalized as of August 13, 2024 (the “**Prime Award**”) and Prime Recipient and CPC Climate Capital are currently finalizing the terms of the subaward between the Prime Recipient and CPC Climate Capital (the “**Subaward**”).

CPC Climate Capital desires to enter into an agreement with Contractor for Contractor to provide CPC Climate Capital with services that are ancillary to the operation of the Project. Contractor wishes to perform, and has represented to CPC Climate Capital that Contractor is capable of performing and is willing to perform, the services described in this Agreement.

In consideration of the promises contained in this Agreement, the Parties now agree as follow:

#### **ARTICLE 1. SCOPE OF SERVICES**

The scope of services is as set forth on Exhibit A hereto (the “**SOW**”). Contractor will provide at its own expense the necessary personnel, services, equipment, and facilities to complete the Services.

#### **ARTICLE 2. COMPENSATION**

[CPC Climate Capital shall pay Contractor a firm, fixed fee of \$[AMOUNT] (the “**Contract Price**”) upon Contractor’s completion of the SOW, based on an invoice submitted to CPC Climate Capital. The invoice must specify work performed [IF APPLICABLE: and an accounting of all expenditures made and be accompanied by receipts for all expenditures (provided that such expenditures must also comply with the provision below)]. Contractor shall submit the invoice to CPC Climate Capital by the 25th day of the month following completion of the SOW.

OR (ONLY IF DAILY/HOURLY PAY ARRANGEMENT NOT PROHIBITED BY EPA REGARDING CONTRACTOR PAY):

CPC Climate Capital shall pay Contractor at the [HOURLY/DAILY] rates stated in Exhibit B, but the total amount paid to Contractor shall not exceed \$250,000.00 (the “**NTE Contract Price**”). CPC Climate Capital will pay Contractor the agreed-upon rates for all labor performed on the Agreement, as required by the SOW. CPC Climate Capital will not pay Contractor for labor performed beyond the work described in the SOW. The agreed-upon rates include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an [HOUR/DAY] shall be paid on a prorated basis. Contractor will be paid based on monthly invoices submitted to CPC Climate Capital. The invoice must indicate the period for which it covers and detail the services provided during the subject period [IF APPLICABLE: and an accounting of all expenditures made and be accompanied by receipts for all expenditures]. Contractor shall submit invoices to CPC Climate Capital by the 25th day of the month for services completed in the prior month. CPC Climate Capital has no obligation to compensate Contractor for any amount that exceeds the NTE Contract Price, and Contractor exceeds the NTE Contract Price at its own risk.]

[The Contract Price includes compensation for all services, materials, costs, and other fees for performing the SOW. Unless explicitly stated otherwise in this Agreement, CPC Climate Capital shall have no obligation to pay Contractor any additional amount for expenses Contractor incurs in performing the SOW.

OR

CPC Climate Capital will pay Contractor for pre-approved actual, reasonable, and necessary costs that Contractor incurs in performing the SOW, such as economy travel (with automobile mileage at current U.S. Federal rate), materials, supplies, and other out-of-pocket expenses, to the extent reasonably incurred by Contractor in performing the SOW, provided that total reimbursable expenses may not exceed \$[AMOUNT] (the “**Reimbursable Cap**”). CPC Climate Capital has no obligation to compensate Contractor for costs that have not been pre-approved in writing by CPC Climate Capital, or do not comply with the Program, or that exceed the Reimbursable Cap, and Contractor exceeds the Reimbursable Cap at its own risk.]

[IF NEEDED: All payments shall be made on a gross basis without withholding of any kind.]

Contractor shall provide the following signed certification on each invoice submitted to CPC Climate Capital.

By signing this invoice, I certify to the best of my knowledge and belief that the information contained in it 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 Prime Award or 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. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

The certification shall be accompanied by the name and title of the person signing the certification.

### **ARTICLE 3. TERM**

The term for this Agreement commences on the Effective Date, and Contractor shall complete the SOW no later than [DATE]. [OR Contractor shall provide the services in the SOW from [DATE] to [DATE].] [NOTE; TERM SHOULD NOT EXCEED 5 YEARS]

Contractor agrees to perform the SOW in a timely and professional manner in compliance with applicable laws and regulations and without violation of the rights of third parties, of whose rights it has been notified in writing.

### **ARTICLE 4. ACCOUNTING, AUDIT, AND RECORDS REQUIREMENTS**

Contractor shall establish and maintain an adequate system of internal accounting controls as required for prudent business practices and shall maintain accurate fiscal records and supporting documentation for all accounting transactions of the program activities. Records and audits must be consistent with Generally Accepted Accounting Principles (GAAP) and in accordance with Federal cost principles and audit requirements outlined in the Code of Federal Regulations, as applicable to the Contractor.

Contractor shall preserve its fiscal records and supporting documentation, documents, papers, or other records that are pertinent to the Project (“**Records**”) during the term of this Agreement and for a period of three (3) years following final payment under this Agreement or until such later time as may be required by CPC Climate Capital. Contractor shall permit CPC Climate Capital and any of its affiliates or authorized representatives access to the Records during normal business hours or at any reasonable time. The right of access continues as long as the Records are retained and does not expire on the expiration or termination of this Agreement or the expiration of the retention period.

Contractor shall ensure that all Records comply with such internal accounting controls and prudent business practices.

### **ARTICLE 5. TERMINATION**

This Agreement may be terminated:

1. With just cause: CPC Climate Capital may terminate this Agreement, or any severable portion of this Agreement, for cause based upon Contractor’s (i) material breach of a term of this Contract or (ii) failure to comply with any of the terms and conditions of the Prime Award, by giving written notice to the Contractor. The notice will include a statement of the reason for the termination for cause and provide Contractor five (5) days to cure the breach or default under the Contract (“Cure Period”). If Contractor fails to cure the breach or default to the reasonable

satisfaction of CPC Climate Capital within the Cure Period, CPC Climate Capital may terminate this Contract. CPC Climate Capital may obtain, in the manner CPC Climate Capital considers appropriate, any remaining services or items necessary to perform this Agreement, and Contractor shall be liable for and pay to CPC Climate Capital any costs incurred by CPC Climate Capital in the re-procurement process of such services or items, including the cost for additional managerial and administrative services, that are in excess of the [INCLUDE “NTE” before “Contract Price” for time-&-materials contracts] Contract Price. A termination for cause will not impact any other rights or remedies that CPC Climate Capital may have under the terms of this Agreement, law, or equity.

2. Without cause and for convenience: Either Party may terminate this Agreement, or any severable portion of this Agreement, at any time by delivering written notice to the other Party at least thirty (30) days in advance of the proposed date of termination. If the Agreement is terminated by CPC Climate Capital, Contractor may submit a termination claim to CPC Climate Capital, and CPC Climate Capital will consider payment of reasonable and allowable. Contractor shall submit the termination claim within sixty (60) days after the effective date of the termination. Contractor’s termination claim shall include all of Contractor’s costs relating to the actual work performed and costs incurred or obligated up to and including the notice of termination, plus any reasonable costs associated with the termination. In no event, shall CPC Climate Capital be obligated to pay Contractor any amount in excess of the [INCLUDE “NTE” before “Contract Price” for time-&-materials contracts] Contract Price. This Section does not limit or affect CPC Climate Capital’s right to terminate this Agreement for cause.

3. In the event that the either the contract for the Prime Award or the contract for the Subaward are terminated by the Primer Funder or Prime Recipient, as applicable, this Agreement shall automatically terminate, and no additional payments shall be submitted or paid thereafter.

CPC Climate Capital’s termination rights are not limited by or otherwise impacted by any sanctions or penalties that a Government entity, including the Prime Funder, may impose on Contractor. For the avoidance of doubt, this means that CPC Climate has the right to terminate this Agreement even if the remedy imposed by the Government entity or Prime Funder are limited to penalties or sanctions.

## **ARTICLE 6. REPRESENTATIONS**

Contractor represents and warrants to CPC Climate Capital that (i) it has the right to enter into this Agreement, to grant the rights granted herein, and to perform fully all of its obligations under this Agreement; (ii) the entering into of this Agreement with CPC Climate Capital does not and will not conflict with or result in any breach or default under any other agreement to which Contractor is subject; and (iii) it has the skill, experience and qualifications to perform the services, and will perform the services in a professional manner in accordance with best industry standards.

Nothing in this Agreement and nothing in Contractor’s statements to CPC Climate Capital will be construed as a promise or guarantee about the outcome of any implementation of Services. Contractor makes no such promises or guarantees. Contractor’s comments about the outcomes are expressions of opinion only.

## **ARTICLE 7. NO ASSIGNMENTS**

This Agreement may not be assigned or transferred by Contractor without the prior written consent of CPC Climate Capital. Any attempt to do so shall be null and void, and any assignees, hypothecates, or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. CPC Climate Capital may assign the Agreement to any of its affiliates without notice to Contractor or Contractor's consent. Contractor will not subcontract any of its obligations hereunder without the prior written consent of CPC Climate Capital.

## **ARTICLE 8. RELATIONSHIP**

Contractor is retained by CPC Climate Capital solely as an independent contractor and Contractor's services shall be rendered as such. No employer/employee, partnership, joint venture, or other relationship between CPC Climate Capital and Contractor in connection with the services to be performed by Contractor under this Agreement is created or shall be created by the services which Contractor renders to CPC Climate Capital.

Contractor understands that as an independent contractor, Contractor and Contractor's employees will not be eligible to participate in any pension, medical, insurance or other benefit plan of CPC Climate Capital, and Contractor shall be responsible for the payment of all income or other taxes of any nature which may be levied by any governmental entity in respect of the compensation Contractor receive under this Agreement, and Contractor agrees to indemnify and hold CPC Climate Capital harmless from any claim by any such entity for any such tax.

This Agreement does not and will not authorize Contractor to enter into any agreement or other arrangement on behalf of CPC Climate Capital or its affiliates, or otherwise to legally or financially bind CPC Climate Capital or its affiliates.

Any persons employed or engaged by Contractor in connection with the performance of the SOW shall be Contractor's employees or contractors, and Contractor shall be fully responsible for them and indemnify CPC Climate Capital against any claims made by or on behalf of any such employee or contractor.

Contractor is a contractor to CPC Climate Capital under the Subaward. Except as otherwise permitted under this Agreement, Contractor shall not initiate contact with the Prime Recipient or Prime Funder without the prior written approval of CPC Climate Capital. Contractor shall ensure that all of Contractor's permitted communications with the Prime Recipient or Prime Funder are coordinated through the CPC Climate Capital program staff.

## **ARTICLE 9. CPC CLIMATE CAPITAL NAME AND LOGO**

The award of this Agreement is not an endorsement of Contractor by CPC Climate Capital. Contractor shall not use CPC Climate Capital's, or any of its affiliates', names or logos in advertising or publications or as an endorsement without the prior written permission of CPC Climate Capital.

## **ARTICLE 10.           INTELLECTUAL PROPERTY**

CPC Climate Capital shall own all custom-developed work product, and the copyright and other intellectual property rights therein, resulting from the Project and SOW (collectively, “Work Product”). The Work Product shall be considered a “work made for hire” for CPC Climate Capital under the U.S. Copyright Act, 17 U.S.C. § 101 et. seq. To the extent any Work Product does not qualify as a “work made for hire” under the U.S. Copyright Act, Contractor hereby irrevocably assigns to CPC Climate Capital, without additional compensation, all of Contractor’s right, title and interest in perpetuity throughout the world in and to such Work Product. At CPC Climate Capital’s request, Contractor will, and will cause its employees to, at any time, execute and deliver all documents, and perform all acts, necessary or reasonably helpful to evidence, protect or perfect CPC Climate Capital’s rights in Work Product and/or to evidence CPC Climate Capital’s sole ownership of Work Product. Contractor hereby irrevocably designates and appoints CPC Climate Capital and its duly authorized officers and agents as Contractor’s agent and attorney-in-fact to do the above if Contractor fails or is unable to do so. Contractor represents and warrants that all individuals working on the Project or performing Services on behalf of Contractor are Contractor’s employees or otherwise have an affirmative obligation to assign to Contractor all of their right, title and interest in and to any copyright, patent and other intellectual property rights they may have or acquire in any Work Product such that Contractor can fulfill its obligations under this Agreement to assign Work Product to CPC Climate Capital.

To the extent Contractor, now or in the future, owns or has the right to enforce any patent, copyright or other intellectual property that is necessary to use or practice the Work Product, Contractor hereby grants CPC Climate Capital a worldwide, royalty-free, irrevocable, perpetual, non-exclusive license to use and practice such patent, copyright or other intellectual property to the extent necessary to use and practice the Work Product. CPC Climate Capital may sublicense such rights to its users of the Work Product solely to the extent necessary for them to use the Work Product. Contractor also hereby grants to Prime Recipient and Prime Funder a royalty-free license for Federal Government use, and Contractor further grants to Prime Recipient and Prime Funder the right to require the patentee to license others in certain circumstances and require that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.

Contractor represents and warrants the Work Product will not include any software that requires as a condition of its use, modification and/or distribution that it or other software or product combined and/or distributed with it be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, (iii) redistributable and/or licensed at no charge, or (iv) redistributable and/or licensed under terms that would impair CPC Climate Capital’s rights in the Work Product.

CPC Climate Capital and Contractor may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

## **ARTICLE 11. CONFIDENTIALITY**

In performing this Agreement, Contractor may receive or obtain access to information of CPC Climate Capital or develop for CPC Climate Capital information that is confidential or of a proprietary nature. All information that Contractor receives, obtains, and develops, including, technical, marketing and product information and any other proprietary and trade secret information, whether oral, graphic, written, electronic, or in machine readable form (“Confidential Information”) is presumed to be confidential and proprietary. Contractor agrees to maintain the Confidential Information in strictest confidence and use the Confidential Information solely for the purpose of performing the Services hereunder and not use the Confidential Information for Contractor’s own benefit or use or disclose the Confidential Information to or for any third party without CPC Climate Capital’s express prior written approval.

If Contractor is required to disclose any Confidential Information by law or order of a court, administrative agency, or other governmental body, then it shall provide CPC Climate Capital with prompt notice of the order or requirement, so that CPC Climate Capital may seek a protective order or otherwise prevent or restrict such disclosure. Confidential Information shall not be deemed to include (a) information Contractor lawfully had in its possession prior to disclosure by CPC Climate Capital, (b) information Contractor can demonstrate by written records it independently developed, (c) information that is or becomes publicly known other than through a breach of this Agreement by Contractor, (d) information Contractor can demonstrate by written records has been lawfully disclosed to it by a third party not bound to a confidentiality obligation to CPC Climate Capital, and (e) information CPC Climate Capital authorizes in writing to be publicly disclosed.

Contractor’s confidentiality obligations do not prohibit it from lawfully reporting waste, fraud, or abuse related to the performance of a federal award to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (*e.g.*, agency Office of the Inspector General).

## **ARTICLE 12. INDEMNIFICATION**

Contractor shall indemnify and hold CPC Climate Capital and its partners, and their directors, officers, employees and agents, harmless from and against any and all third-party claims arising in connection with this Agreement and the work performed or materials produced hereunder which result in any way from Contractor’s negligent acts or omissions or willful misconduct by Contractor or Contractor’s directors, officers, employees, subcontractors or agents. This Article shall survive termination of this Agreement.

## **ARTICLE 13. CHANGES**

Changes in the terms and conditions of this Agreement may be made by written agreement of the Parties. In the absence of a mutual agreement to change the Agreement, CPC Climate Capital may by written notice to Contractor, at any time before completion of this Agreement, make changes within the general scope of this Agreement. If any such change causes a material increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this Agreement, Contractor may submit a request for an equitable adjustment to CPC Climate Capital.



This request must include the estimated cost or delivery schedule, and Contractor must submit the request within fourteen (14) days of the date that CPC Climate Capital provides written notice to Contractor; if CPC Climate Capital has not provided written notice to Contractor, the request must be submitted within fourteen (14) days from the date of any act of CPC Climate Capital that Contractor considers a change under this Agreement. Upon receipt of Contractor's request, the Parties shall negotiate the adjustment, which will be finalized in a modification to the Agreement. As part of this negotiation, CPC Climate Capital may require Contractor to provide information sufficient for it to conduct a cost or price analysis. Failure of the Parties to agree to any adjustment shall be a dispute under Article 16, Disputes, but Contractor shall proceed with the work as changed without interruption and without awaiting resolution of any such dispute.

If CPC Climate Capital enters into a contract with any governmental agency in connection with the Program or any terms of the Prime Award or the Subaward are modified, Contractor agrees to enter into an amendment of this Agreement incorporating the relevant provisions of such contract herein.

#### **ARTICLE 14.        DISPUTES**

1.        *Disputes under the Subaward.*

- A. All of the Contractor claims, controversies or disputes concerning matters that pertain to disputes cognizable under the Prime Award or Subaward shall be governed by the provisions of this Section 1, and the Contractor shall provide CPC Climate Capital with a timely and detailed written notice of any such claims or controversies. Any final decision of the Prime Recipient or Prime Funder under the Prime Award or Subaward relating to this Agreement or the Contractor's performance under this Agreement shall be conclusive and binding upon the Contractor unless appealed and reversed as provided below. CPC Climate Capital shall notify the Contractor of any such final decision within ten (10) calendar days of CPC Climate Capital's receipt thereof.
- B. In the event CPC Climate Capital elects to appeal any such final decision, the Contractor shall provide CPC Climate Capital with reasonable assistance in the prosecution of such appeal including, but not limited to, reasonable access to the Contractor's personnel and non-privileged documents. The Contractor further agrees to reimburse CPC Climate Capital for any and all reasonable costs associated with an appeal arising out of or relating to the Agreement, taken on behalf of the Contractor. However, if the Contractor notifies CPC Climate Capital in writing that such an appeal should not be taken on the Contractor's behalf, CPC Climate Capital shall have the right to continue such an appeal on behalf of CPC Climate Capital and the Contractor with the Contractor providing reasonable assistance in the prosecution of such an appeal as described herein.
- C. In the event CPC Climate Capital elects not to appeal any final decision, CPC Climate Capital shall so notify the Contractor in writing within fourteen (14) calendar days of CPC Climate Capital's receipt of the final decision. If within ten (10) calendar days of receipt of CPC Climate Capital's notice of a decision not to appeal any such final decision, the Contractor requests CPC Climate Capital, in writing, to appeal the final decision, CPC Climate Capital shall do so at the sole expense of the Contractor provided such an appeal would not be in

violation of any civil or criminal statute. If CPC Climate Capital appeals any final decision, whether at its election or at the Contractor's request, a final judgment in any such appeal, if binding upon CPC Climate Capital under the Subaward, shall in turn be binding upon the Contractor and CPC Climate Capital under the Agreement. Further, the Contractor shall be solely responsible for providing any and all certifications required and any and all information requested by CPC Climate Capital to support any certifications required for appeals.

- D. As used in this Section, the term "appeal" includes any and all proceedings taken by CPC Climate Capital before the Prime Recipient, Prime Funder, a Board of Contract Appeals, or the U.S. Court of Federal Claims, a U.S. District Court or any other judicial body. The Contractor shall be conclusively bound by any decision of any such dispute resolution forum or tribunal to which such appeal was taken. Pending completion of contract or final disposition of a dispute pursuant to this Subsection that releases Contractor from performance, the Contractor shall, at all times, proceed diligently with the performance of this Agreement.

2. *Disputes under this Agreement.* In the event a question, claim or dispute between the Parties is not cognizable under the Section above, such question, claim, or dispute shall be settled by mutual agreement between the Parties, as further described below.

- A. CPC Climate Capital and Contractor agree to negotiate in good faith to attempt to reach a mutually agreeable settlement of any and all claims and disputes that may arise under this Agreement within a reasonable amount of time. In any event and notwithstanding the pendency of any such claims or disputes, Contractor shall proceed diligently with performance of this Agreement pending final resolution of any request for relief, claim, appeal, or action arising under or relating to this Agreement, and Contractor shall comply with any decision of CPC Climate Capital with respect to performance of this Agreement.
- B. If negotiations are unsuccessful, CPC Climate Capital and Contractor agree that any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled in a court of competent jurisdiction as set forth below.
- C. The Parties acknowledge that, in view of the uniqueness of the transactions contemplated by this Agreement, a breach of or failure to comply with the terms and obligations of this Agreement would cause irreparable harm to CPC Climate Capital and that monetary damages will not be an adequate remedy at law to cure the irreparable harm. Therefore, the Parties agree that CPC Climate Capital is entitled to seek specific performance and/or injunctive relief without the posting of bond or other security in addition to any other remedy to which it may be entitled hereunder or at law or in equity, in any court of competent jurisdiction against any such breach or noncompliance. All remedies provided for herein are cumulative, and the exercise of any particular remedy does not limit or preclude the exercise of any other remedy available to the Parties.
- D. UNDER NO CIRCUMSTANCES SHALL CPC CLIMATE CAPITAL OR CONTRACTOR BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES.

**ARTICLE 15. GOVERNING LAW AND JURISDICTION**

IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THE LAW OF THE STATE OF NEW YORK SHALL CONTROL THE INTERPRETATION OF THIS AGREEMENT, SHALL GOVERN AND BE FOLLOWED IN THE CONSTRUCTION OF ITS PROVISIONS AND SHALL FIX THE RIGHTS AND OBLIGATIONS BETWEEN THE PARTIES HERETO. FURTHERMORE, ALL THE RIGHTS AND OBLIGATIONS ARISING OUT OF THIS AGREEMENT SHALL BE SUBJECT EXCLUSIVELY TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK.

**ARTICLE 16. KEY PERSONNEL**

CPC Climate Capital considers [NAMES] (“Key Personnel”) to be essential to the work being performed under this Agreement. Prior to removing any Key Personnel from performing on this Agreement, Contractor shall notify CPC Climate Capital reasonably in advance and shall submit a justification, including proposed substitutions, in sufficient detail to permit CPC Climate Capital to evaluate the impact of the change on the Agreement. Contractor shall not remove any Key Personnel from Agreement performance prior to receiving CPC Climate Capital’s written consent.

If any Key Personnel become unavailable due to no cause of Contractor, Contractor shall immediately notify CPC Climate Capital and provide a proposed substitution. The additional costs that Contractor incurs in substituting any persons for Key Personnel will not be compensable under this Agreement.

Contractor acknowledges that the designation of persons as Key Personnel is a separate inquiry from whether they are considered “principals” under 2 CFR Part 180. Therefore, even if a person is not designated as Key Personnel, Contractor may have other obligations for persons deemed a principal under Part 180.

**ARTICLE 17. INSURANCE**

During the pendency of this Agreement, you shall maintain in full force and effect liability and other insurance in amounts satisfactory to CPC Climate Capital in its reasonable discretion, including, without limitation, general liability insurance in an amount of at least \$1,000,000 per claim.

**ARTICLE 18. FEDERAL ASSURANCES AND CERTIFICATIONS**

Contractor shall comply with all applicable Federal statutes, regulations, and policies, and all applicable state and local laws and ordinances. Additionally, by signing this Agreement:  
[DELETE ALL SECTION NOT APPLICABLE]

1. *Whistleblower Requirements.* Contractor certifies that, if applicable, Contractor is in compliance with Federal whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712 and 10 U.S.C. § 2324, 41 U.S.C. § 4304, and 41 U.S.C. § 4310.

2.

3. *Clean Air Act and Federal Water Pollution Control Act.* Contractor will comply with the Clean Air Act and the Federal Water Pollution Control Act and the related standards, orders, or regulations issued pursuant to the Acts. CPC Climate Capital will report all violations to the Prime Funder and the Regional Office of the U.S. Environmental Protection Agency. [REQUIRED FOR CONTRACTS IN EXCESS OF \$150,000]

4. *Debarment and Suspension.* Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any Federal department or agency or listed on the Government-wide exclusions list.

5. *Restrictions on Lobbying.* Contractor certifies that it has not used and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Contractor has disclosed any lobbying with non-Federal funds that took place in connection with the Federal award. Contractor further certifies that it has obtained certifications and disclosures from its currently engaged lower-tier contractors and that it will obtain certifications and disclosures from future lower-tier contractors. [REQUIRED FOR CONTRACTS IN EXCESS OF \$100,000]

6. *Prohibited Telecommunications and Video Surveillance Services or Equipment.* Contractor shall not use or provide to CPC Climate Capital “Covered Telecommunications Equipment or Services” in the performance of this Agreement. As described in Public Law 115-232, Section 889, “Covered Telecommunications Equipment or Services” is: (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) 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); (3) Telecommunications or video surveillance services provided by such entities or using such equipment; and (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of 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. If Contractor later learns that prohibited telecommunications services, equipment or systems have been supplied, installed, or utilized under this Agreement, Contractor shall immediately inform CPC Climate Capital in writing. CPC Climate Capital may treat such occurrence as an event of default under this Agreement, and CPC Climate Capital may require the Contractor to promptly

replace such prohibited service, equipment and systems at the Contractor's sole cost or take such other actions.

7. *Domestic Preference.* The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. As appropriate and to the extent consistent with law, to the greatest extent practicable under this Agreement, Contractor shall purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

## **ARTICLE 19. PRIME FUNDER TERMS**

As a [selectee] for a subaward funded by the Prime Funder, CPC Climate Capital must comply with Prime Funder regulations and terms and conditions. As required by those regulations or terms and conditions or to ensure its compliance with them, CPC Climate Capital must require its contractors to comply with the same. Thus, Contractor agrees that it will comply with all relevant Prime Funder regulations and terms and conditions that it is aware of or should be aware of, which includes, but is not limited to, 2 CFR Part 200, 2 CFR Part 1500, 40 CFR Part 33, the EPA Terms and Conditions attached hereto in Exhibit C, and the NCIF Terms and Conditions attached hereto in Exhibit C, regardless of whether those obligations are further described in this Article.

1. *Limitation on Individual Consultant Rates.* Contractor agrees that if it retains individual consultants, it will comply with 2 CFR 1500. Contractor further agrees that any rates included on Exhibit B (i) are not for individual consultants covered by the 2 CFR 1500 prohibitions; or (ii) are for individual consultants covered by the 2 CFR 1500 but are not more than the maximum daily rate for level 4 of the Executive Schedule.

2. *DBE Requirements.*

- A. Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by Contractor to carry out these requirements is a material breach of this contract which may result in the termination of this Agreement or other legally available remedies.
- B. Contractor shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, state, and local law.
- C. Contractor shall cooperate fully and promptly with CPC Climate Capital, Prime Funder, its Private Certifiers, Prime Recipient, and its representatives in reviews, investigations, and other requests for information.
- D. Contractor shall not intimidate, threaten, coerce, or discriminate against any individual or firm for purposes of interfering with any right or privilege secured by 40 CFR Part 33.

- E. In the event that Contractor is permitted to award subcontracts, Contractor shall make the good-faith efforts outlined in 40 CFR 33.301.
- F. Contractor shall pay its subcontractors, if any, for satisfactory performance no more than 30 days from receipt of payment from CPC Climate Capital.
- G. Contractor will notify CPC Climate Capital in writing prior to terminating a DBE subcontractor for convenience.
- H. If a DBE subcontractor fails to complete subcontract work for any reasons, Contractor shall employ the good-faith efforts in 40 CFR 33.301 if soliciting a replacement subcontractor.
- I. Contractor shall provide EPA Form 6100-2-DBE (Program Subcontractor Participation Form) to all of its DBE subcontractors.
- J. Contractor agrees to provide its DBE subcontractors with EPA Form 6100-3-DBE (Program Subcontractor Performance Form) and to submit them and EPA Form 6100-4-DBE (Program Subcontractor Utilization Form) to CPC Climate Capital.
- K. Contractor shall maintain all records documenting its compliance with 40 CFR Part 33, including its good-faith efforts and shall make such records available to any of the following who may request the records: CPC Climate Capital, Prime Recipient, Prime Funder, and their representatives.
- L. Contractor shall provide information on MBE and WBE annually or semi-annually, as may be requested by CPC Climate Capital.

3. *Prime Funder-Specific Lobbying Certification.*

- A. The Contractor certifies that to the best of its knowledge and belief, that:
  - i. Federal appropriated funds have not been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- iii. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
  - iv. Contractor acknowledges that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- B. Contractor's CEO has responsibility to ensure that Contractor complies with the above-referenced lobbying certification.

4. *Limitations on Reimbursements.* Contractor agrees that it will not request as reimbursement under this Agreement fees for (or otherwise use fees from this Agreement to pay for):

- A. Travel of Federal employees or other costs associated with Federal participation in the Project.
- B. Contractor foreign travel unless approved in advance and unless it complies with the Fly America Act.
- C. Light refreshments or meals served at meetings, conferences, training workshops, and outreach activities, unless approved in advance.
- D. Light refreshments, meals, or space rental if alcohol is served, purchased, or otherwise available as part of the event or meeting, even if Agreement funds are not used to purchase the alcohol or if the costs have been approved in advance.
- E. Supporting or opposing union organizing.

5. *Suspension and Debarment in Lower-Tier Transactions.* Contractor agrees to comply with 2 CFR Part 180 and agrees to assess whether it may enter into any lower-tier transactions in accordance with that Part and, in accordance with 2 CFR 1532.220, to include a clause in its lower-tier transactions that obligate its subcontractors to comply with 2 CFR Part 180, including flowing down the obligation in its lower-tier transactions.

6. *Organizational Conflicts of Interest.* By signing this Agreement, Contractor certifies that:

- A. It has informed CPC Climate Capital of any real or apparent organizational conflict of interest ("OCI"). Such OCI exists when (1) the Contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to CPC Climate Capital due to other activities, relationships, contracts, or circumstances; (2) the Contractor has an unfair competitive advantage through receipt of or obtaining access to nonpublic information; or (3) during the performance of an earlier contract or the conduct of a procurement, the Contractor has established the ground rules for the solicitation or selection of the services

or goods acquired under this Agreement by developing specifications, evaluation factors, or similar documents[IF CONTRACTOR WILL ASSIST CPC CLIMATE CAPITAL IN AN AUDIT CAPACITY: (4) the Contractor prepared an indirect cost proposal or cost allocation plan for CPC Climate Capital for any year covered by this RFP].

- B. If at any time the Contractor discovers an OCI, the Contractor shall make an immediate and full disclosure to CPC Climate Capital in writing. The disclosure shall include a full description of the OCI and a description of the action(s) the Contractor has taken, or proposes to take, to avoid or mitigate the OCI. CPC Climate Capital may, in its sole judgment, terminate the Agreement for cause if CPC Climate Capital determines that the OCI has not been adequately avoided or mitigated or if it is otherwise in CPC Climate Capital's best interest to terminate.
- C. If a nondisclosure or misrepresentation of or concerning an OCI is discovered after award of this Agreement, CPC Climate Capital may terminate this Agreement for cause.

7. *OCIs Regarding Future Contracts.*

- A. This Agreement may require Contractor to draft, prepare, or otherwise assist in preparing documents that CPC Climate Capital will use in the procurement of services, goods, and intangible property. The Parties recognize that by the Contractor providing this support, a potential OCI arises.
- B. For the term of this Agreement or the term of CPC Climate Capital's Subaward, whichever expires or is terminated later, Contractor agrees that it will not seek to provide such future services, goods, or intangible property to CPC Climate Capital. Contractor further agrees that for the same term, it will not provide services to an entity seeking or receiving Project funds (under any type of contractual or assistance arrangement) from CPC Climate Capital.
- C. Any subcontractor or agent that performs work for Contractor under this Agreement shall be subject to this section. Contractor shall, within 15 calendar days after the effective date of this Agreement, provide, in writing to CPC Climate Capital, a representation that all employees, agents, and subcontractors involved in the performance of the Agreement have been informed of the provisions of this Section. Contractor agrees to place in each subcontract affected by this section the necessary language contained in it.
- D. Contractor acknowledges that for purposes of this Section, "Contractor" includes its subsidiaries and affiliates, joint ventures involving the Contractor, any entity with which the Contractor may hereafter merge or affiliate and any other successor or assignee of the Contractor.
- E. The Contractor acknowledges the full force and effect of this Section and agrees to be bound by its terms and conditions and understands that violation of this Section may, in the judgment of CPC Climate Capital, be cause for Termination for Cause.

8. *Additional Intellectual Property Rights.* To the extent not already granted under Article 10 above, Contractor hereby grants to CPC Climate Capital, Prime Recipient, and Prime Funder the right to reproduce, publish, use, and authorize others to do the same, copyrighted works or other data developed under this Agreement.



9. *Inventions.* Contractor agrees that rights to inventions made under the Agreement are subject to Federal patent and licensing regulations at 37 CFR Part 401 and 35 USC §§ 200-212. Further, to the extent not already granted under Article 10, Contractor hereby grants to CPC Climate Capital, Prime Recipient, and Prime Funder the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention.

10. *Legend for Documents Subject to Public Distribution.* If Contractor develops any reports, documents, publications, or other materials for public distribution as part of this Agreement, Contractor agrees to include the following statement:

This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.

11. *Electronic and Information Technology.* Contractor shall ensure that electronic and information technology (EIT) systems or products funded by this Agreement are designed to meet diverse needs of users without barriers or diminished function or quality. Such systems must include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

12. *Research Obligations.* Contractor agrees that:

- A. If its work under this Agreement will include research involving human subjects (as defined in the Prime Funder's General Terms and Conditions), Contractor will comply with the Prime Funder's General Terms and Conditions requirement on the same.
- B. If its work under this Agreement will include research involving animal subjects, Contractor will comply with the Prime Funder's General Terms and Conditions requirement on the same.
- C. If its work under this Agreement will include life science research, such research will be in compliance with EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern (EPA DURC Order) and United States Government Policy for Institutional Oversight of Life Sciences Dual use Research of Concern (DURC Policy).
- D. If it identifies any research misconduct involving research activities supported by this Agreement, it will immediately notify CPC Climate Capital. Such misconduct includes fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results or ordering, advising, or suggesting that subordinates engage in research misconduct.

13. *Scientific Integrity.* Contractor shall comply with EPA's Scientific Integrity Policy when conducting, supervising, and communicating science and when using or applying the results of science (which includes computer modeling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article

on a scientific issue). Contractor further agrees to comply with the Prime Funder's General Terms and Conditions requirements on the same.

14. *Investigators.* If Contractor personnel have been identified in the Prime Award as a principal investigator and/or major co-investigator, within 25 days, Contractor shall notify CPC Climate Policy if there is a change in support for those roles.

15. *Civil Rights Obligations.* Contractor agrees to comply with applicable civil rights statutes and implementing Federal and Prime Funder regulations, including:

- A. Title VI of the Civil Rights Act of 1964;
- B. Section 504 of the Rehabilitation Act of 1973;
- C. Age Discrimination Act of 1975;
- D. Title IX of the Education Amendments of 1972 (if an education program or activity conducting an education program or activity under the Agreement);
- E. Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (if funded under Clean Water Act);
- F. For Title IX obligations, 40 CFR Part 5;
- G. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7;
- H. For those prohibiting discrimination and those described in Executive Order 13798 promoting free speech and religious freedom, 2 CFR 200.300; and
- I. Contractor agrees it will not discriminate on the basis of race, color, national origin, sex, disability or age.

16. *Hotel and Motel Fire Safety.* Contractor shall comply with protection and control guidelines of the Hotel and Motel Fire Safety Act for all space for conferences, meetings, conventions, or training seminars paid for as part of this Agreement.

17. *Paper-Documents Requirements.* If Contractor must provide paper documents that will be provided to the Prime Funder, Contractor shall use recycled paper and double-sided printing.

18. *Anti-Trafficking Policy.* Contractor shall not take any action that would result in CPC Climate Capital (or its employees) violating the Federal Government's anti-trafficking policy, including engaging in:

- A. Severe forms of trafficking in persons;
- B. Procurement of a commercial sex act during the period of time that the Subaward is in effect;
- C. The use of forced labor in the performance of the Subaward;

D. Acts that directly support or advance trafficking in persons, including:

- i. Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
- ii. Failing to provide return transportation or pay for return transportation costs, unless an exempted under the regulations;
- iii. Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;
- iv. Charging recruited employees a placement or recruitment fee; or
- v. Providing or arranging housing that fails to meet the host country's housing and safety standards.

19. *Notification of Violations.* Contractor shall immediately notify CPC Climate Capital's Director of Compliance if it becomes aware of any violation Contractor (or Contractor's agents or employees) committed involving fraud, bribery, or gratuity violations potentially affecting this Agreement.

20. *Additional Whistleblower Protections.* Contractor shall not discharge, demote, or otherwise discriminate against any person as a reprisal for disclosing to a covered person or covered body information that the employee reasonably believes is evidence of gross mismanagement of a Federal grant or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal grant or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal grant or subaward. Contractor further agrees to inform employees in writing of whistleblower rights and protections.

21. *Environmental Data.* When collecting and managing environmental data, Contractor shall comply with all applicable state or tribal laws. Contractor may also be required to provide information regarding its competency to the extent its work involves carrying out activities involving the generation or use of environmental data; such information may require providing details on an annual basis.

22. *Additional Labor Obligations.* Contractor shall comply with all federal statutes and regulations regarding labor and equitable workforce development, including Occupational Safety and Health Administration (OSHA) requirements.

23. *Additional Statutory and Regulatory Obligations.* To the extent any of the below applies to the Agreement work, Contractor agrees to comply with:

- A. National Historic Preservation Act rules for historic buildings;
- B. If archaeologically significant artifacts are discovered, the Archaeological and Historic Preservation Act of 1974,
- C. Uniform Relocation Assistance and Real Property Act;

- D. Endangered Species Act;
- E. Federal Funding Accounting and Transparency Act;
- F. Farmland Protection Policy Act;
- G. Coastal Zone Management Act; Coastal Barriers Resource Act; Wild and Scenic Rivers Act
- H. Title VI (Civil Rights Act);
- I. Section 504 of the Rehabilitation Act of 1973;
- J. Age Discrimination Act of 1975;
- K. Executive Order 11246;
- L. Federal Geographic Data Committee endorsed standards;
- M. To the extent Consultant directly interacts with, transacts, or contracts with consumers, Equal Credit Opportunity Act; Truth in Lending Act; Consumer Financial Protection Act; and other consumer protection laws that apply;
- N. Magnuson-Stevens Fisheries Conservation and Management Act
- O. Clean Air Conformity Act; and
- P. Safe Drinking Water Act.

Contractor further acknowledges that Prime Funder or Prime Recipient may require CPC Climate Capital to comply with other or additional laws, regulations, or terms and conditions, and Contractor agrees that if CPC Climate Capital is directed to comply with other or additional laws, regulations, or terms and conditions that require Contractor's compliance, the Parties shall address the compliance via the Changes article of this Agreement.

24. *Reporting Requirements.* CPC Climate Capital will be required to provide performance reports throughout the term of its Subaward. These reporting requirements flow down to Contractor, and Contractor agrees to provide information to CPC Climate Capital to enable CPC Climate Capital to respond to all performance reporting requirements as may be required under the Subaward. Contractor shall ensure that information provided pursuant to this Section does not include personally identifiable information or confidential business information.

25. *Foreign Entity of Concern.* Contractor further represents and warrants that it is not (i) an entity owned by, controlled by, or subject to the direction of a government of a covered nation under 10 U.S.C. 4872(d); (ii) an entity headquartered in a covered nation under 10 U.S.C. 4872(d); or (iii) a subsidiary of an entity described in (i) or (ii) of this paragraph.

26. *Davis-Bacon and Related Acts, As Applicable.* By accepting this contract, the Contractor acknowledges and agrees to the terms provided in the DBRA Requirements for Contractors and Subcontractors Under EPA Grants (<https://www.epa.gov/grants/contract-provisions-davis-bacon-and-related-acts>).

## **ARTICLE 20.           GENERAL PROVISIONS**

1.       *Cooperation; Further Acts.* The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.
2.       *No Waiver of Terms and Conditions.* The failure of either Party to enforce one or more of the terms or conditions of the Agreement or to exercise any of its rights or privileges, or the waiver by CPC Climate Capital of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.
3.       *Construction, References, Captions.* Because the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to CPC Climate Capital include its officers, agents, volunteers and employees, except as otherwise specified in this Agreement. The captions of the various sections, subsections, and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
4.       *Invalidity; Severability.* If any portion of this Agreement is declared as invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
5.       *Signatures; Counterparts.* Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute the same document. A signed copy of this Agreement delivered by email (including .pdf format), or other means of electronic transmission shall be deemed to have the same legal force and effect as delivery of an original “wet ink” signed copy of this Agreement. Except where stated otherwise in this Agreement, the Parties agree that electronic signatures are permissible and have the same force and effect as original signatures, for all purposes.
6.       *Survival.* The following Articles and Sections shall survive the expiration or termination of this Agreement: Article 2 (Compensation); Article 4 (Accounting, Audit, and Records Requirements); Article 5 (Termination); Article 6 (Representations); Article 7 No Assignments; Article 8 (Relationships); Article 9 (CPC Climate Capital Name and Logo); Article 10 (Intellectual Property); Article 11 (Confidentiality); Article 12 (Indemnification); Article 14 (Disputes); Article 15 (Governing Law and Jurisdiction); Article 18, Sections 1 (Whistleblower Requirements), 9 (Prohibited Telecommunications and Video Surveillance Services or Equipment), 10 (Domestic Preference); Article 19, Sections 2 (DBE Requirements), 6 (OCIs Regarding Future Contracts), 7 (Additional Intellectual Property Rights), 8 (Inventions), 9 (Legend for Documents Subject to Public Distribution), 11 (Research Obligations), 18 (Notification of Violations), 19 (Additional Whistleblower Protections), 20 (Environmental Data); and Article 20 (General Provisions).

*[signatures on following page]*

**CPC CLIMATE CAPITAL LLC**

**[COMPANY]**

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name:

Name:

Title:

Title:

Exhibit A

Scope of Services



## Exhibit B

### Rates

Exhibit C

EPA General Terms and Conditions Effective as of October 1, 2023 and  
NCIF Terms and Conditions

Environmental Protection Agency  
General Terms and Conditions  
*Effective October 1, 2023*

**Revision History:**

The Environmental Protection Agency’s General Terms and Conditions ***are published and become effective October 1<sup>st</sup> at the start of the federal fiscal year.*** Any additions, revisions, or changes to the terms and conditions after October 1 will be summarized below.

T&C Number	Effective Date	Description of Changes
<a href="#">#48</a>	October 23, 2023	Implements new Office of Management and Budget (OMB) guidance on the Buy America preference for infrastructure projects.
<a href="#">#5</a>	January 12, 2024	Removed the customer service line for Research Triangle Park Finance Center (RTPFC).
<a href="#">#8</a>	May 21, 2024	Added clarifying guidance on Subawards to Federal Agencies.
<a href="#">#33</a>	May 21, 2024	Updated in accordance with 40 CFR 26 and EPA Order 1000.17A for human subjects research.

**Table of Contents**

Preface ..... 2

Financial Information ..... 3

Selected Items of Cost ..... 5

Reporting and Additional Post-Award Requirements..... 10

Programmatic General Terms and Conditions..... 25

Public Policy Requirements..... 33

## Preface

### 1. Introduction

- (a) The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions, and restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in [2 CFR 200.339](#) and [2 CFR 200.340](#).
- (b) If the EPA General Terms and Conditions have been revised, EPA will update the terms and conditions when it provides additional funding (incremental or supplemental) prior to the end of the period of performance of this agreement. The recipient must comply with the revised terms and conditions after the effective date of the EPA action that leads to the revision. Revised terms and conditions do not apply to the recipient's expenditures of EPA funds or activities the recipient carries out prior to the effective date of the EPA action. EPA will inform the recipient of revised terms and conditions in the action adding additional funds.

### 2. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title [2 CFR Part 200](#) and [2 CFR Part 1500](#). 2 CFR 1500.2, Adoption of 2 CFR Part 200, states the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR Part 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of [2 CFR 200.110\(a\)](#) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

**2.1 Effective Date and Incremental or Supplemental Funding.** Consistent with the OMB Frequently Asked Questions at <https://cfo.gov/cofar> on Effective Date and Incremental Funding, any new funding through an amendment (supplemental or incremental) on or after December 26, 2014, and any unobligated balances (defined at 2 CFR 200.1) remaining on the award at the time of the amendment, will be subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR Parts 200 and 1500).

### 3. Termination

Consistent with [2 CFR 200.340](#), EPA may unilaterally terminate this award in whole or in part:

- (a) If a recipient fails to comply with the terms and conditions of the award including statutory or regulatory requirements; or

- (b) If the award no longer effectuates the program goals or agency priorities. Situations in which EPA may terminate an award under this provision include when:
- i. EPA obtains evidence that was not considered in making the award that reveals that specific award objective(s) are ineffective at achieving program goals and EPA determines that it is in the government's interest to terminate the award;
  - ii. EPA obtains evidence that was not considered in making the award that causes EPA to significantly question the feasibility of the intended objective(s) of the award and EPA determines that it is in the government's interest to terminate the award;
  - iii. EPA determines that the objectives of the award are no longer consistent with funding priorities for achieving program goals.

## Financial Information

### 4. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See [2 CFR 1500.9](#).

### 5. Automated Standard Application Payments (ASAP) and Proper Payment Draw Down

**Electronic Payments.** Recipients must be enrolled or enroll in the Automated Standard Application for Payments (ASAP) system to receive payments under EPA financial assistance agreements unless:

- EPA grants a recipient-specific exception;
- The assistance program has received a waiver from this requirement;
- The recipient is exempt from this requirement under [31 CFR 208.4](#); or,
- The recipient is a fellowship recipient pursuant to [40 CFR Part 46](#).

EPA will not make payments to recipients until the ASAP enrollment requirement is met unless the recipients fall under one of the above categories. Recipients may request exceptions using the procedures below but only EPA programs may obtain waivers. To enroll in ASAP, complete the ASAP Initiate Enrollment Form located at: <https://www.epa.gov/financial/forms> and email it to [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) or mail it to:

US Environmental Protection Agency  
RTP-Finance Center (Mail Code AA216-01)  
4930 Page Rd.  
Durham, NC 27711

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved payments are credited to the account at the financial institution of the recipient organization set up by the recipient during the ASAP enrollment process. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA

Research Triangle Park Finance Center (RTPFC), at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov), or by visiting: <https://www.fiscal.treasury.gov/asap/>.

EPA will grant exceptions to the ASAP enrollment requirement only in situations in which the recipient demonstrates to EPA that receiving payment via ASAP places an undue administrative or financial management burden on the recipient or EPA determines that granting the waiver is in the public interest. Recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06-R](#).

### **Proper Payment Drawdown (for recipients other than states)**

- (a) As required by [2 CFR 200.305\(b\)](#), the recipient must draw funds from ASAP only for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds. Disbursement within 5 business days of drawdown will comply with this requirement and the recipient agrees to meet this standard when performing this award.
- (b) Recipients may not retain more than 5% of the amount drawn down, or \$1,000 whichever is less, 5 business days after drawdown to materially comply with the standard. Any EPA funds subject to this paragraph that remain undisbursed after 5 business days must be fully disbursed within 15 business days of draw down or be returned to EPA.
- (c) If the recipient draws down EPA funds in excess of that allowed by paragraph b., the recipient must contact [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) for instructions on whether to return the funds to EPA. Recipients must comply with the requirements at [2 CFR 200.305\(b\)\(8\) and \(9\)](#) regarding depositing advances of Federal funds in interest bearing accounts.
- (d) Returning Funds: [Pay.gov](#) is the preferred mechanism to return funds. It is free, secure, paperless, expedient, and does not require the recipient/vendor to create an account. Contact RTPFC-Grants at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) to obtain complete instructions. Additional information is available at the [Pay.gov website](#). Information on how to repay EPA via check is available at <https://www.epa.gov/financial/makepayment>. Instructions on how to return funds to EPA electronically via ASAP are available at <https://www.fiscal.treasury.gov/asap/>.
- (e) Failure on the part of the recipient to materially comply with this condition may, in addition to EPA recovery of the un-disbursed portions of the drawn down funds, lead to changing the payment method from advance payment to a reimbursable basis. EPA may also take other remedies for noncompliance under [2 CFR 200.208](#) and/or 2 CFR 200.339.
- (f) If the recipient believes that there are extraordinary circumstances that prevent it from complying with the 5-business day disbursement requirement throughout the performance period of this agreement, recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06-R](#). EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue

administrative or financial management burden or EPA determines that granting the exception is in the public interest.

### **Proper Payment Drawdown for State Recipients**

In accordance with [2 CFR 200.305\(a\)](#), payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified [at 31 CFR Part 205, Subparts A and B](#) and [Treasury Financial Manual \(TFM\) 4A-2000, "Overall Disbursing Rules for All Federal Agencies"](#) unless a program specific regulation (e.g. 40 CFR 35.3160 or 40 CFR 35.3560) provides otherwise. Pursuant to 31 CFR Part 205, [Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement](#), States follow their Treasury-State CMIA Agreement for major Federal programs listed in the agreement. For those programs not listed as major in the Treasury-State agreement, the State follows the default procedures in 31 CFR Part 205, [Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement](#), which directs State recipients to draw-down and disburse Federal financial assistance funds in anticipation of immediate cash needs of the State for work under the award. States must comply with [2 CFR 200.302\(a\)](#) in reconciling costs incurred and charged to EPA financial assistance agreements at time of close out unless a program specific regulation provides otherwise.

### **Selected Items of Cost**

#### **6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

This term and condition implements [2 CFR 200.216](#) and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use 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).

Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- (a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (b) Telecommunications or video surveillance services provided by such entities or using such equipment.

- (c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with [2 CFR 200.471](#), costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- (a) Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
  - (1) Procure or obtain, extend or renew a contract to procure or obtain;
  - (2) Enter into a contract (or extend or renew a contract) to procure; or
  - (3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management](#) exclusion list.

## 7. Consultant Cap

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Information on how to calculate the maximum daily rate and the daily pay limitation is available at the Office Of Personnel Management's [Fact Sheet: How to Compute Rates of Pay](#) and [Fact Sheet: Expert and Consultant Pay](#). Specifically, to determine the maximum daily rate, follow these steps:

- (1) Divide the Level IV salary by 2087 to determine the hourly rate. Rates must be rounded to the nearest cent, counting one-half cent and over as the next higher cent (e.g., round \$18.845 to \$18.85).
- (2) Multiply the hourly rate by 8 hours. The product is the maximum daily rate.

Contracts and subcontracts with firms for services that are awarded using the procurement requirements in Subpart D of 2 CFR Part 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See [2 CFR 1500.10](#).



## 8. Establishing and Managing Subawards

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the [EPA Subaward Policy](#).

**Subawards to Federal Agencies – Clarity on Applicable EPA Terms and Conditions:** If the subrecipient is federal agency, the only provisions of the EPA General Terms and Conditions implementing 2 CFR Part 200 on subawards that apply are: (1) the requirement for the federal agency to obtain a Unique Entity Identifier (UEI) in accordance with 2 CFR Part 25 as described in Item 3 below and (2) the requirement for the recipient to report on first-tier subawards as described in EPA General Term and Condition 15.1, “Reporting of first tier subawards.”

As provided within 2 CFR 200.101(a)(2), all other provisions of 2 CFR Part 200, Subparts A through E, do not apply to subawards with federal agencies. Transactions between the recipient and the federal agency subrecipient will be governed by the federal agency subrecipient’s cost reimbursement agreement with the recipient.

As a pass-through entity, the recipient agrees to:

- 1) Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at [2 CFR 200.331](#) and EPA’s supplemental guidance in [Appendix A](#) of the [EPA Subaward Policy](#).
  - (a) For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA’s Award Official for subawards to these entities unless the EPA- approved budget and work plan for this agreement contain a precise description of such subawards.
  - (b) Stipends and travel assistance for trainees (including interns) and similar individuals who are not are not employees of the pass-through entity must be classified as participant support costs rather than subawards as provided in [2 CFR 200.1 Participant support costs](#), [2 CFR 200.1 Subaward](#), and EPA’s [Guidance on Participant Support Costs](#).
  - (c) Subsidies, rebates and similar payments to participants in EPA funded programs to encourage environmental stewardship are also classified as *Participant support costs* as provided in 2 CFR 1500.1 and EPA’s [Guidance on Participant Support Costs](#).
- 2) Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(a). EPA has developed a template for subaward agreements that is available in [Appendix D](#) of the [EPA Subaward Policy](#).
- 3) Prior to making subawards, ensure that each subrecipient has a “Unique Entity Identifier (UEI).” The UEI is required by [2 CFR Part 25](#) and [2 CFR 200.332\(a\)\(1\)](#). Subrecipients are not required to complete full System for Award Management (SAM) registration to obtain a UEI. Information regarding obtaining a UEI is available at the SAM Internet site: <https://www.sam.gov/SAM/> and

in EPA's General Term and Condition "**System for Award Management and Universal Identifier Requirements**" of the pass-through entity's agreement with the EPA.

- 4) Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's EPA award as required by [2 CFR 200.332\(a\)\(2\)](#). These requirements include, among others:
  - (a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
  - (b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled "**Reporting Subawards and Executive Compensation.**"
  - (c) Limitations on individual consultant fees as set forth in 2 CFR 1500.10 and the General Condition of the pass-through entity's agreement with EPA entitled "**Consultant Fee Cap.**"
  - (d) EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees.**"
  - (e) The Procurement Standards in [2 CFR Part 200](#) including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

EPA provides general information on other statutes, regulations, and Executive Orders on the Grants internet site at <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>. Many Federal requirements are agreement or program specific, and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

- 5) Ensure, for states and other public recipients, that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.
- 6) Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by [2 CFR 200.332\(b\)](#) and document the evaluation. Risk factors may include:
  - (a) Prior experience with same or similar subawards
  - (b) Results of previous audits;
  - (c) Whether new or substantially changed personnel or systems, and;
  - (d) Extent and results of Federal awarding agency or the pass-through entity's monitoring
- 7) Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by [2 CFR 200.332\(c\)](#). Examples of additional requirements authorized by 2 CFR 200.208 include:
  - (a) Requiring payments as reimbursements rather than advance payments;
  - (b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

- (c) Requiring additional, more detailed financial reports;
  - (d) Requiring additional project monitoring;
  - (e) Requiring the non-Federal entity to obtain technical or management assistance, and
  - (f) Establishing additional prior approvals
- 8) Establish and follow a system for monitoring subrecipient performance that includes the elements required by [2 CFR 200.332\(d\)](#) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.
  - 9) Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at 2 CFR 200.1, Modified Total Direct Costs, if applicable, on including subaward costs in *Modified Total Direct Costs* for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.
  - 10) Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.
  - 11) Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with [2 CFR 200.308](#).
  - 12) Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.
  - 13) Establish and follow written procedures under [2 CFR 200.302\(b\)\(7\)](#) for determining that subaward costs are allowable in accordance with [2 CFR Part 200, Subpart E](#) and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.
  - 14) Establish and maintain a system under [2 CFR 200.332\(d\)\(3\)](#) and [2 CFR 200.521](#) for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.
  - 15) As provided in [2 CFR 200.333](#), pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with their EPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 1 through 14 above or will refrain from making subawards until the systems are designed and implemented.

## 9. Management Fees

Management Fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

## 10. Federal Employee Costs

The recipient understands that none of the funds for this project (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the recipient as authorized by a Federal statute.

## 11. Foreign Travel

**EPA policy requires that all foreign travel must be approved by its Office of International and Tribal Affairs.** The recipient agrees to obtain prior EPA approval before using funds available under this agreement for international travel unless the trip(s) are already described in the EPA approved budget for this agreement. Foreign travel includes trips to Mexico and Canada but does not include trips to Puerto Rico, the U.S. Territories or possessions. Recipients that request post-award approval to travel frequently to Mexico and Canada by motor vehicle (e.g., for sampling or meetings) may describe their proposed travel in general terms in their request for EPA approval. Requests for prior approval must be submitted to the Project Officer for this agreement.

## 12. The Fly America Act and Foreign Travel

The recipient understands that all foreign travel **funded under this assistance agreement** must comply with the Fly America Act. All travel must be on U.S. air carriers certified under 49 U.S.C. Section 40118, to the extent that service by such carriers is available even if foreign air carrier costs are less than the American air carrier.

## 13. Union Organizing

Grant funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

## Reporting and Additional Post-Award Requirements

### 14. System for Award Management and Universal Identifier Requirements

- 14.1 Requirement for System for Award Management ([SAM](#))** Unless exempted from this requirement under [2 CFR 25.110](#), the recipient must maintain current information in the SAM. This includes information on the recipient's immediate and highest-level owner and subsidiaries, as well as on all the recipient's predecessors that have been

awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.

**14.2 Requirement for Unique Entity Identifier.** If the recipient is authorized to make subawards under this award, the recipient:

- a. Must notify potential subrecipients that no entity (see definition in paragraph 14.3 of this award term) may receive a subaward unless the entity has provided its Unique Entity Identifier.
- b. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier. Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

**14.3 Definitions.** For the Purpose of this award term:

- a. **System for Award Management (SAM)** means the Federal repository into which an entity 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: <https://www.sam.gov/SAM/>.
- b. **Unique Entity Identifier** means the identifier assigned by SAM to uniquely identify business entities
- c. **Entity** includes non-Federal entities as defined as 2 CFR 200.1 and also includes all of the following:
  - 14.3.c.1. A foreign organization;
  - 14.3.c.2. A foreign public entity;
  - 14.3.c.3. A domestic for-profit organization; and
  - 14.3.c.4. A domestic or foreign for-profit organization; and
  - 14.3.c.5. A Federal agency.
- d. **Subaward** is defined at 2 CFR 200.1
- e. **Subrecipient** is defined at 2 CFR 200.1

## 15. Reporting Subawards and Executive Compensation

**15.1 Reporting of first tier subawards.**

- a. **Applicability.** Unless the recipient is exempt as provided in paragraph 15.4. of this award term, the recipient must report each action that obligates \$30,000 or more in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph 15.5 of this award term).
- b. **Where and When to Report.** (1) The recipient must report each obligating action described in paragraph 15.1.a of this award term to [www.fsrs.gov](http://www.fsrs.gov). (2) 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 any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)

- c. **What to Report.** The recipient must report the information about each obligating action as described in the submission instructions available at: <http://www.fsrs.gov>.

## 15.2 Reporting Total Compensation of Recipient Executives.

- a. **Applicability and What to Report.** The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:
  - 15.2.a.1. The total Federal funding authorized to date under this award is \$30,000 or more;
  - 15.2.a.2. In the preceding fiscal year, the recipient received: (i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards); (ii.) and \$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 CFR 170.320 (and subawards); and
  - 15.2.a.3. 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: <http://www.sec.gov/answers/execomp.htm>.)
- b. **Where and When to Report.** The recipient must report executive total compensation described in paragraph 15.2.a of this award term: (i.) As part of the registration System for Award Management profile available at <https://www.sam.gov/SAM/> (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

## 15.3 Reporting Total Compensation of Subrecipient Executives.

- a. **Applicability and What to Report.** Unless exempt as provided in paragraph 15.4. of this award term, for each first-tier non-Federal entity subrecipient under this award, the recipient 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:
  - 15.3.a.1. In the subrecipient's preceding fiscal year, the subrecipient received: (i.) 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 CFR 170.320 (and subawards); and (ii.) \$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

**15.3.a.2.** 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: [http:// www.sec.gov/answers/execomp.htm](http://www.sec.gov/answers/execomp.htm).)

**b. Where and When to Report.** The recipient must report subrecipient executive total compensation described in paragraph 15.3.a. of this award term:

**15.3.b.1.** To the recipient.

**15.3.b.2.** By the end of the month following the month during which the recipient makes 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), the recipient must report any required compensation information of the subrecipient by November 30 of that year.

#### **15.4 Exemptions**

**a.** If, in the previous tax year, the recipient had gross income, from all sources, under \$300,000, the recipient is exempt from the requirements to report:

**15.4.a.1.** (i) subawards, and (ii) the total compensation of the five most highly compensated executives of any subrecipient.

#### **15.5 Definitions.** For purposes of this award term:

**a. 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).

**b. Non-Federal entity** means all of the following, as defined in 2 CFR 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.

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

**d. Subaward:**

**15.5.d.1.** 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.

**15.5.d.2.** The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

**15.5.d.3.** A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

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

**15.5.e.1.** Receives a subaward from the recipient under this award; and

**15.5.e.2.** Is accountable to the recipient for the use of the Federal funds provided by the subaward.

**f. 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 CFR 229.402\(c\)\(2\)](#)):

**15.5.f.1.** Salary and bonus.

**15.5.f.2.** 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.

**15.5.f.3.** 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.

**15.5.f.4.** Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

**15.5.f.5.** Above-market earnings on deferred compensation which is not tax-qualified.

**15.5.f.6.** 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.

## **16. Recipient Integrity and Performance Matters – Reporting of Matters Related to Recipient Integrity and Performance**

### **16.1 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 responsibility/qualification information) 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.

### **16.2 Proceedings About Which You Must Report**

Submit the information required about each proceeding that:



- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
  - 16.2.c.1.** A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - 16.2.c.2.** A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - 16.2.c.3.** 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
  - 16.2.c.4.** Any other criminal, civil, or administrative proceeding if:
    - 16.2.c.4.1.** It could have led to an outcome described in paragraph 16.2.c.1, 16.2.c.2, or 16.2.c.3 of this award term and condition;
    - 16.2.c.4.2.** It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - 16.2.c.4.3.** The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

**16.3 Reporting Procedures**

Enter in 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.

**16.4 Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph 16.1 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.

**16.5 Definitions**

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order 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.

- b. 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.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes –
  - 16.5.c.1.** Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - 16.5.c.2.** The value of all expected funding increments under a Federal award and options, even if not yet exercised.

## 17. Federal Financial Reporting (FFR)

Pursuant to [2 CFR 200.328](#) and [2 CFR 200.344](#), EPA recipients must submit the Federal Financial Report (SF-425) at least annually and no more frequently than quarterly. EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document. EPA recipients must submit the SF-425 no later than 30 calendar days after the end of each specified reporting period for quarterly and semi-annual reports and 90 calendar days for annual reports. Final reports are due no later than 120 calendar days after the end date of the period of performance of the award. Extension of reporting due dates may be approved by EPA when requested and justified by the recipient. The FFR form is available on the internet at: <https://www.epa.gov/grants/sf-425-federal-financial-report>. All FFRs must be submitted to the Research Triangle Park Finance Center (RTPFC) via email at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) or mail it to:

US Environmental Protection Agency  
RTP-Finance Center (Mail Code AA216-01)  
4930 Page Rd.  
Durham, NC 27703

The RTPFC will make adjustments as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

## 18. Indirect Cost Rate Agreements

This term and condition provides requirements for recipients using EPA funds for indirect costs and applies to all EPA assistance agreements unless there are [statutory or regulatory limits on IDCs](#). See also [EPA's Indirect Cost Policy for Recipients of EPA Assistance Agreements](#) (IDC Policy).

In order for the assistance agreement recipient to use EPA funding for indirect costs, the IDC category of the recipient's assistance agreement award budget must include an amount for IDCs and at least one of the following must apply:

- With the exception of "exempt" agencies and Institutions of Higher Education as noted below, all recipients must have one of the following current (not expired) IDC rates, including IDC rates that have been extended by the cognizant agency:
  - Provisional
  - Final
  - Fixed rate with carry-forward
  - Predetermined
  - 10% *de minimis* rate of modified total direct costs authorized by [2 CFR 200.414\(f\)](#)
  - EPA-approved use of an expired fixed rate with carry-forward on an exception basis, as detailed in section 6.4.a. of the IDC Policy
- "Exempt" state of local governmental departments or agencies are agencies that receive up to and including \$35,000,000 in Federal funding per the department or agency's fiscal year and must have an IDC rate proposal developed in accordance with 2 CFR Part 200, Appendix VII, with documentation maintained and available for audit.
- Institutions of Higher Education must use the IDC rate in place at the time of award for the life of the assistance agreement (unless the rate was provisional at time of award, in which case the rate will change once it becomes final). As provided by 2 CFR Part 200, Appendix III(C)(7), the term "life of the assistance agreement", means each competitive segment of the project. Additional information is available in the regulation.

IDCs incurred during any period of the assistance agreement that are not covered by the provisions above are not allowable costs and must not be drawn down by the recipient. Recipients may budget for IDCs if they have submitted a proposed IDC rate to their cognizant Federal agency or requested an exception from EPA under subsection 6.4 of the IDC Policy. However, recipients may not draw down IDCs until their rate is approved, if applicable, or EPA grants an exception. IDC drawdowns must comply with the indirect rate corresponding to the period during which the costs were incurred.

This term and condition does not govern indirect rates for subrecipients or recipient procurement contractors under EPA assistance agreements. Pass-through entities are required to comply with 2 CFR 200.332(a)(4)(i) and (ii) when establishing indirect cost rates for subawards.

## **19. Audit Requirements**

In accordance with [2 CFR 200.501\(a\)](#), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year for that year.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent

auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: <https://facides.census.gov/>.

For complete information on how to accomplish the single audit submissions, the recipient will need to visit the Federal Audit Clearinghouse Web site: <https://facweb.census.gov/>

## **20. Closeout Requirements**

Reports required for closeout of the assistance agreement must be submitted in accordance with this agreement. Submission requirements and frequently asked questions can also be found at: <https://www.epa.gov/grants/frequent-questions-about-closeouts>

## **21. Suspension and Debarment**

Recipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by [2 C.F.R. Part 1532](#). Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of [2 C.F.R. Part 180](#), entitled "Covered Transactions," and [2 C.F.R. § 1532.220](#), includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. Recipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under [2 C.F.R. § 180.335](#) to the EPA office that is entering into the transaction with the recipient may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Recipients may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether an entity or individual is presently excluded or disqualified.

## **22. Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law**

This award is subject to the provisions contained in an appropriations act(s) which prohibits the Federal Government from entering into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. A "corporation" is a legal entity that is separate and distinct from the entities that own, manage, or control it. It is organized and incorporated under the jurisdictional authority of a governmental body, such as a State or the District of Columbia. A corporation may be a for-profit or non-profit organization.

As required by the appropriations act(s) prohibitions, the Government will not enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee with any corporation that — (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority

responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

By accepting this award, the recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

Alternatively, by accepting this award, the recipient represents that it disclosed unpaid Federal tax liability information and/or Federal felony conviction information to the EPA. The recipient may accept this award if the EPA Suspension and Debarment Official has considered suspension or debarment of the corporation based on tax liabilities and/or Federal felony convictions and determined that suspension or debarment is not necessary to protect the Government's interests.

If the recipient fails to comply with this term and condition, EPA will annul this agreement and may recover any funds the recipient has expended in violation of the appropriations act(s) prohibition(s). The EPA may also pursue other administrative remedies as outlined in 2 CFR 200.339 and 2 CFR 200.340 and may also pursue suspension and debarment.

## **23. Disclosing Conflict of Interest**

### **23.1 For Award to Non-Federal Entities and Individuals (other than states and fellowship recipients under 40 CFR Part 46)**

As required by [2 CFR 200.112](#), EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

EPA's COI Policy requires that recipients have systems in place to address, resolve and disclose to EPA COIs described in sections 4.0(b), (c) and/or (d) of the COI Policy that affect any contract or subaward regardless of amount funded under this award. The recipient's COI Point of Contact for the award must disclose any COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of the discovery of the potential COI and their approach for resolving the COI.

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that recipients and subrecipients disclose COI's that are discovered under their systems for addressing and resolving COI. If recipients or subrecipients do not discover a COI, they do not need to advise EPA or the pass-through entity of the absence of a COI.

Upon notice from the recipient of a potential COI and the approach for resolving it, the Agency will then make a determination regarding the effectiveness of these measures within 30 days of receipt of the recipient's notice unless a longer period is necessary due to the complexity of the matter. Recipients may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. Failure to disclose a COI may result in cost disallowances.

Disclosure of potential COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate [2 CFR 200.318\(c\)\(1\) or \(2\)](#), provided the recipient notifies EPA of measures the recipient or subrecipient has taken to eliminate, neutralize or mitigate the conflict of interest when making the disclosure.

## **23.2 For Awards to States Including State Universities that are State Agencies or Instrumentalities**

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at: <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding

(initial awards, supplemental, incremental funding) awarded on or after October 1, 2015.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.1. Any other COI are subject to state laws, regulations, and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that subrecipients disclose COI's to state pass-through entities that are discovered under their systems for addressing, resolving, and disclosing COI. If subrecipients do not discover a COI, they do not need to advise state pass-through entities of the absence of a COI.

Upon receiving notice of a potential COI and the approach for resolving it, the Agency will make a determination regarding the effectiveness of these measures within 30 days of receipt of the state's notice of a subrecipient COI unless a longer period is necessary due to the complexity of the matter. States may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. A subrecipient's failure to disclose a COI to the state and EPA may result in cost disallowances.

Disclosure of potential subrecipient COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the subrecipient has taken measures that EPA and the state agree eliminate, neutralize or mitigate the conflict of interest.

## 24. Transfer of Funds

### 24.1 Transfer of Funds

**Applicable to all assistance agreements other than Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.**

- (1) As provided at [2 CFR 200.308\(f\)](#), the recipient must obtain prior approval from EPA's Grants Management Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer with a copy to the Project Officer for this agreement.
- (2) Recipients must notify EPA's Grant Specialist and Project Officer of cumulative funding transfers among direct budget categories or programs, functions and activities that do not exceed 10% of the total budget for the agreement. Prior approval by EPA's Grant Management Officer is required if the transfer involves any of the items listed in [2 CFR 200.407](#) that EPA did not previously approve at time of award or in response to a previous post-award request by the recipient.

### 24.2 Post-Award Changes for Continuing Environmental Program Grants

**Applicable to Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.**

To determine if a post-award change in work plan commitments is significant and requires prior written approval for the purposes of [40 CFR §35.114\(a\)](#) or [40 CFR §35.514\(a\)](#), the recipient agrees to consult the EPA Project Officer (PO) before making the change. The term work plan commitments is defined at [40 CFR §35.102](#). If the PO determines the change is significant, the recipient cannot make the change without prior written approval by the EPA Award Official or Grants Management Officer.

The recipient must obtain written approval from the EPA Award Official prior to transferring funds from one budget category to another if the EPA Award Official determines that such transfer significantly changes work plan commitment(s). All transfers must be reported in required performance reports. In addition, unless approved with the budget at the time of award, Continuing Environmental Program (CEP) recipients must also obtain prior written approval from the EPA Award Official or Grants Management Officer to use EPA funds for directly charging compensation for administrative and clerical personnel under [2 CFR 200.413\(c\)](#) and the General Provisions for Selected Items of Cost allowability at [2 CFR 200.420](#) through [2 CFR 200.476](#) as supplemented by [EPA's Guidance on Selected Items of Cost](#). The recipient is not required to obtain prior written approval from the EPA Award Official for other items requiring prior EPA approval listed in [2 CFR §§ 200.407](#).



## **25. Electronic/Digital Signatures on Financial Assistance Agreement Form(s)/Document(s)**

Throughout the life of this assistance agreement, the recipient agrees to ensure that any form(s)/document(s) required to be signed by the recipient and submitted to EPA through any means including but not limited to hard copy via U.S. mail or express mail, hand delivery or through electronic means such as e-mail are: (1) signed by the individual identified on the form/document, and (2) the signer has the authority to sign the form/document for the recipient. Submission of any signed form(s)/document(s) is subject to any provisions of law on making false statements (e.g., 18 U.S.C. 1001).

## **26. Extension of Project/Budget Period Expiration Date**

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under [2 CFR 200.308\(e\)\(2\)](#). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds, the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include:** a justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

## **27. Utilization of Disadvantaged Business Enterprises**

### **General Compliance, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in [40 CFR, Part 33](#).

The following text provides updates to 40 CFR, Part 33 based upon the associated class exception or highlights a requirement.

#### **1) EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B**

EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in [2 CFR, Section 1500.4\(b\)](#).

#### **2) SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to [40 CFR Section 33.301](#), the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained. The specific six good faith efforts can be found at: [40 CFR Section 33.301 \(a\)-\(f\)](#).

However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned

economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts ([40 CFR Section 33.304](#)). If recruiting efforts are unsuccessful, the recipient must follow the six good faith efforts.

**3) CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of [40 CFR Section 33.302](#) (a)-(d) and (i).

**4) BIDDERS LIST, 40 CFR Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see [40 CFR Section 33.501 \(b\) and \(c\)](#) for specific requirements and exemptions.

**5) FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

In June 2023, EPA reinstated the requirements under 40 CFR, Part 33, Subpart D. Unless the recipient is exempted from these requirements as outlined in [40 CFR 33.411](#), the recipient agrees to submit fair share objectives for EPA approval within 120 days of acceptance of this award, and, once approved, apply them to procurements under this award in accordance with Subpart D. See [RAIN-2023-G02](#) for information on EPA's reinstatement of the fair share objectives.

**6) MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E**

When required, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at [https://www.epa.gov/system/files/documents/2021-08/epa\\_form\\_5700\\_52a.pdf](https://www.epa.gov/system/files/documents/2021-08/epa_form_5700_52a.pdf).

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category) with a cumulative total that exceed the Simplified Acquisition Threshold (SAT) (currently, \$250,000 however the threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just the portion which exceeds the SAT.

**Annual reports are due by October 30<sup>th</sup> of each year. Final reports are due 120 days after the end of the project period.**

This provision represents an approved exception from the MBE/WBE reporting requirements as described in [40 CFR Section 33.502](#).

**7) MBE/WBE RECORDKEEPING, 40 CFR, Part 33, Subpart E**

The recipient agrees to comply with all recordkeeping requirements as stipulated [in 40 CFR Part 33, Subpart E](#) including creating and maintain a bidders list, when required. Any document created as a record to demonstrate compliance with any requirements of 40 CFR Part 33 must be maintained pursuant to the requirements stated in this Subpart.

## **Programmatic General Terms and Conditions**

### **28. Sufficient Progress**

EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

### **29. Copyrighted Material and Data**

In accordance with [2 CFR 200.315](#), EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for [i.e., authorized by] the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as “co-regulators” or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA’s authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- The selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data, or
- Termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

### **30. Patents and Inventions**

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title [37 CFR Part 401](#) and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at <https://www.nist.gov/iedison>. Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at <https://www.nist.gov/iedison>. EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property “developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.”

### **31. Acknowledgement Requirements for Non-ORD Assistance Agreements**

The recipient agrees that any reports, documents, publications, or other materials developed for public distribution supported by this assistance agreement shall contain the following statement: “This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.”

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: <https://www.nsf.gov/awards/managing/rtc.jsp>. In accordance with the [Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards \(Uniform Guidance\), 2 CFR §200](#), recipients of EPA ORD research must abide by the research T&Cs.

### **32. Electronic and Information Technology Accessibility**

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in [40 CFR Part 7](#), which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology (“EIT”). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at [36 CFR Part 1194](#). While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities.

Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see <https://www.access-board.gov/about/policy/accessibility.html>).

### **33. Human Subjects**

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. Research is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Human subject means a living individual about whom an investigator (whether professional or student) conducting research: (i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens [40 CFR 26.102\(e\)\(l\)](#).

No research involving human subjects shall be conducted under this agreement without prior written approval of the EPA Human Subject Research Review Official (HSRRO) to proceed with that research. If engaged in human subjects' research as part of this agreement, the recipient agrees to comply with all applicable provisions of EPA Regulation 40 CFR 26 (Protection of Human Subjects). This includes, at Subpart A, the Basic Federal Policy for the Protection of Human Research Subjects, also known as the Common Rule. It also includes, at Subparts B, C, and D, prohibitions and additional protections for children, nursing women, pregnant women, and fetuses in research conducted or supported by EPA.

The recipient further agrees to comply with EPA's procedures for oversight of the recipient's compliance with 40 CFR 26, as given in EPA Order 1000.17A (Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research). As per this order, no human subject may be involved in any research conducted under this assistance agreement, including recruitment, until the research has been approved or determined to be exempt by the EPA HSRRO after review of the approval or exemption determination of the Institutional Review Board(s) (IRB(s)) with jurisdiction over the research under 40 CFR 26.

For HSRRO approval, the recipient must forward to the Project Officer: (1) copies of all documents upon which the IRB(s) with jurisdiction based their approval(s) or exemption determination(s), (2) copies of the IRB approval or exemption determination letter(s), (3) copy of the IRB-approved consent forms and subject recruitment materials, if applicable, and (4) copies of all supplementary IRB correspondence.

Following the initial approvals indicated above, the recipient must, as part of the annual report(s), provide evidence of continuing review and approval of the research by the IRB(s) with jurisdiction, as required by [40 CFR 26.109\(e\)](#). Materials submitted to the IRB(s) for their continuing review and approval are to be provided to the EPA HSRRO via the Project Officer upon IRB approval. During the course of the research, investigators must promptly report any unanticipated problems involving risk to subjects or others according to requirements set forth by the IRB. In addition, any event that is significant enough to result in the removal of the subject from the study should also be reported to the EPA HSRRO via the Project Officer, even if the event is not reportable to the IRB of record.

#### **34. Animal Subjects**

The recipient agrees to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 USC 2131- 2156. Recipient also agrees to abide by the “U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training.” (Federal Register 50(97): 20864-20865. May 20,1985). The nine principles can be viewed at <https://olaw.nih.gov/policies-laws/phs-policy.htm>. For additional information about the Principles, the recipient should consult the [Guide for the Care and Use of Laboratory Animals](#), prepared by the Institute of Laboratory Animal Resources, National Research Council.

#### **35. Light Refreshments and/or Meals**

##### **(a) APPLICABLE TO ALL AGREEMENTS EXCEPT STATE CONTINUING ENVIRONMENTAL PROGRAMS (AS DESCRIBED BELOW):**

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s)
- (2) A description of the purpose, agenda, location, length, and timing for the event, and
- (3) An estimated number of participants in the event and a description of their roles

Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the recipient’s EPA Project Officer; however, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon, or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. ([41 CFR 301-74.7](#))

**(b) FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:**

If the state maintains systems capable of complying with federal grant regulations at [2 CFR 200.432](#) and [2 CFR 200.438](#), EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this award, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

**36. Tangible Personal Property**

**36.1** Reporting pursuant to [2 CFR 200.312](#) and [2 CFR 200.314](#), property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to [40 CFR 35.6340](#) and [40 CFR 35.6660](#) for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

**36.2 Disposition**

**36.2.1. Most Recipients.** Consistent with [2 CFR 200.313](#), unless instructed otherwise on the official award document, this award term, or at closeout, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

**36.2.2. State Agencies.** Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

**36.2.3. Superfund Recipients.** Equipment purchased under Superfund projects is subject to specific disposal options in accordance with [40 CFR Part 35.6345](#).

### **37. Dual Use Research of Concern (DURC)**

The recipient agrees to conduct all life science research\* in compliance with [EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern](#) (EPA DURC Order) and [United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern \(iDURC Policy\)](#). If the recipient is an institution within the United States that receives funding through this agreement, or from any other source, the recipient agrees to comply with the iDURC Policy if they conduct or sponsor research involving any of the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If the institution is outside the United States and receives funding through this agreement to conduct or sponsor research involving any of those same agents or toxins, the recipient agrees to comply with the iDURC Policy. The recipient agrees to provide any additional information that may be requested by EPA regarding DURC and iDURC. The recipient agrees to immediately notify the EPA Project Officer should the project use or introduce use of any of the agents or toxins identified in the iDURC Policy. The recipient's Institution/Organization must also comply with USG iDURC policy and EPA DURC Order and will inform the appropriate government agency if funded by such agency of research with the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If privately funded the recipient agrees to notify the National Institutes of Health at [DURC@od.nih.gov](mailto:DURC@od.nih.gov).

\* "Life Sciences Research," for purposes of the EPA DURC Order, and based on the definition of research in [40 CFR §26.102\(d\)](#), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel. [Note: This is consistent with Office of Management and Budget Circular A-11.]

### **38. Research Misconduct**

In accordance with [2 CFR 200.329](#), the recipient agrees to notify the EPA Project Officer in writing about research misconduct involving research activities that are supported in whole or in part with EPA funds under this project. EPA defines research misconduct as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results [65 FR 76262. I], or ordering, advising or suggesting that subordinates engage in research misconduct. The recipient agrees to:



- (1) Immediately notify the EPA Project Officer who will then inform the EPA Office of Inspector General (OIG) if, at any time, an allegation of research misconduct falls into one of the categories listed below:
  - A. Public health or safety is at risk
  - B. Agency resources or interests are threatened
  - C. Circumstances where research activities should be suspended
  - D. There is a reasonable indication of possible violations of civil or criminal law
  - E. Federal action is required to protect the interests of those involved in the investigation
  - F. The research entity believes that the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved
  - G. Circumstances where the research community or public should be informed. [65 FR 76263.III]
- (2) Report other allegations to the OIG when they have conducted an inquiry and determined that there is sufficient evidence to proceed with an investigation. [65 FR 76263. III]

### **39. Scientific Integrity Terms and Conditions**

The recipient agrees to comply with [EPA's Scientific Integrity Policy](#) when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this award condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue. The recipient agrees to:

#### **39.1 Scientific Products**

- 39.1.1.** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines, quality policy](#), and peer review policy.
- 39.1.2.** Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.
- 39.1.3.** Adhere to [EPA's Peer Review Handbook, 4<sup>th</sup> Edition](#), for the peer review of scientific and technical work products generated through EPA grants or cooperative agreements which, by definition, are not primarily for EPA's direct use or benefit.

#### **39.2 Scientific Findings**

- 39.2.1.** Require that reviews regarding the content of a scientific product that are conducted by the project manager and other recipient managers and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.
- 39.2.2.** Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees, contractors, and program participants, who assist with developing or applying the results of scientific activities.
- 39.2.3.** Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.

**39.2.4.** Document the use of independent validation of scientific methods.

**39.2.5.** Document any independent review of the recipient's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.

**39.2.6.** Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

### **39.3 Scientific Misconduct**

**39.3.1.** Prohibit intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, recipient employees, contractors, and program participants, including scientists, managers, and other leadership, shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty.

**39.3.2.** Prohibit retaliation or other punitive actions toward recipient employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. Employees who have allegedly engaged in scientific or research misconduct shall be afforded the due process protections provided by law, regulation, and applicable collective bargaining agreements, prior to any action. Recipients shall ensure that all employees and contractors of the recipient shall be familiar with these protections and avoid the appearance of retaliatory actions.

**39.3.3.** Require all recipient employees, contractors, and program participants to act honestly and refrain from acts of research misconduct, including publication or reporting, as described in [EPA's Policy and Procedures for Addressing Research Misconduct](#), Section 9.C. Research misconduct does not include honest error or differences of opinion. While EPA retains the ultimate oversight authority for EPA-supported research, grant recipients conducting research bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

**39.3.4.** Take the actions required on the part of the recipient described in EPA's Policy and Procedures for Addressing Research Misconduct, Sections 6 through 9, when research misconduct is suspected or found.

### **39.4 Additional Resources**

For more information about the Scientific Integrity Policy, an introductory video can be accessed at: <https://youtu.be/FQJCy8BXXq8>. A training video is available at: <https://youtu.be/Zc0T7foot8>.

## **40. Post-Award Disclosure of Current and Pending Support on Research Grants**

The recipient is required to notify EPA if there has been a change in support for the principal investigator and/or major co-investigators listed on EPA Key Contacts Form, EPA Form 5700-54, since submission of its application or the last reporting period in the performance report. If there has been a change, the recipient must report the change within 30 calendar days to the EPA Project Officer. The information should also be included in the next due performance report. EPA may consult with the Principal Investigator and the Authorized Representative, to determine the impact

of the new information on the EPA-funded research grant and, where necessary, take appropriate action.

If the recipient discovers that an investigator on an active EPA research grant failed to disclose current and pending support information or provided inaccurate information as part of the proposal submission process, it must provide the revised current and pending support information to the EPA Project Officer within 30 calendar days of the identification of the undisclosed or inaccurate current and pending support information.

## **Public Policy Requirements**

### **41. Civil Rights Obligations**

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Certifications and Representations in Sam.gov or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing federal and EPA regulations.

#### **(a) Statutory Requirements**

- i. In carrying out this agreement, the recipient must comply with:
  - 1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
  - 2) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
  - 3) The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is an education program or activity (e.g., school, college, or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:
  - 1) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see [40 CFR Part 5](#) and <https://www.justice.gov/crt/title-ix>
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
  - 1) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

#### **(b) Regulatory Requirements**

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- 1) For Title IX obligations, 40 C.F.R. Part 5; and
- 2) For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, [40 CFR Part 7](#).
- 3) For statutory and national policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech and religious freedom, [2 CFR 200.300](#).
- 4) As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

**(c) TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation**

- i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at: <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>.
- ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at: <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>.
- iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

**42. Drug-Free Workplace**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title [2 CFR Part 1536 Subpart B](#). Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title [2 CFR Part 1536 Subpart C](#).

The consequences for violating this condition are detailed under Title [2 CFR Part 1536 Subpart E](#). Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at [www.ecfr.gov/](http://www.ecfr.gov/).

#### 43. Hotel-Motel Fire Safety

Pursuant to USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.

#### 44. Lobbying Restrictions

**a) This assistance agreement is subject to lobbying restrictions as described below. Applicable to all assistance agreements:**

- i. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR Part 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii. The recipient agrees to comply with Title [40 CFR Part 34](#), New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000 and require that subrecipients submit certification and disclosure forms accordingly.
- iii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv. Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v. By accepting this award, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 as required by Section 18 of the Lobbying Disclosure Act; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

**b) Applicable to assistance agreements when the amount of the award is over \$100,000:**

- i. By accepting this award, the recipient certifies, to the best of its knowledge and belief that:
  - 1) No Federal appropriated funds have been or will be paid, by or on behalf of the recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan,

the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the recipient shall complete and submit the linked [Standard Form -- LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
- 3) The recipient shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
  - ii. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

#### **45. Recycled Paper**

When directed to provide paper documents, the recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

#### **46. Resource Conservation and Recovery Act**

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in [40 CFR Part 247](#).

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and [2 CFR 200.323](#), State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

#### **47. Trafficking in Persons**

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

- i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not –

- 1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - 2) Procure a commercial sex act during the period of time that the award is an effect; or
  - 3) Use forced labor in performance of the award or subawards under the award.
- ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity –
- 1) Is determined to have violated a prohibition in paragraph a of this award term; or
  - 2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either –
    - a. Associated with performance under this award; or
    - b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in [2 CFR Part 180](#), “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non- procurement),” as implemented by our Agency at [2 CFR Part 1532](#).
- b) Provision applicable to a recipient other than a private entity.** EPA may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity –
- i. Is determined to have violated an applicable prohibition in paragraph a. of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a of this award term through conduct that is either
    - 1) Associated with performance under this award; or
    - 2) 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 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by EPA at 2 CFR Part 1532.
- c) Provisions applicable to any recipient**
- i. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph a of this award term.
  - ii. Our right to terminate unilaterally that is described in paragraph a and b:
    - 1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - 2) Is in addition to all other remedies for noncompliance that are available to us under this award.
  - iii. The recipient must include the requirements of paragraph a of this award term in any subaward made to a private entity.
- d) Definitions.** For purposes of this award term:
- i. “Employee” means either:

- 1) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
- 2) 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.
- ii. “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.
- iii. “Private Entity”
  - 1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in [2 CFR 175.25](#).
  - 2) 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 CFR 175.25(b).
    - b. A for-profit organization
- iv. “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).

**48. Build America, Buy America – Required Use of American Iron, Steel, Manufactured Products, and Construction Materials (effective October 23, 2023, and forward)**

***Buy America Preference.*** Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

- (1) All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- (3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.



***Incorporation into an infrastructure project.*** The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

***Categorization of articles, materials, and supplies.*** An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

***Application of the Buy America Preference by category.*** An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

***Determining the cost of components for manufactured products.*** In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

***Construction material standards.*** The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

- (1) Non-ferrous metals.** All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- (2) Plastic and polymer-based products.** All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- (3) Glass.** All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- (4) Fiber optic cable (including drop cable).** All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- (5) Optical fiber.** All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- (6) Lumber.** All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
- (7) Drywall.** All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- (8) Engineered wood.** All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

**Waivers.** When supported by rationale provided in IJA §70914, the recipient may submit a waiver request in writing to EPA. Recipients should request guidance on the submission instructions of an EPA waiver request from the EPA Project Officer for this agreement. A list of approved EPA waivers (general applicability and project specific) is available on the [EPA Build America, Buy America website](#).

EPA may waive the application of the Buy America Preference when it has determined that one of the following exceptions applies:

- (1)** applying the Buy America Preference would be inconsistent with the public interest;
- (2)** the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3)** the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

For questions regarding the Build America, Buy America Act requirements for this assistance agreement or to determine if there is an approved waiver in place, please contact the EPA Project Officer for this agreement.

**Definitions.** For legal definitions and sourcing requirements, the recipient must consult the [EPA Build America, Buy America website](#), [2 CFR Part 184](#), and the [Office of Management and Budget's \(OMB\)](#)

#### **49. Required Certifications and Consequences of Fraud**

Per [2 CFR 200.415\(a\)](#) Required Certifications, to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the financial reports or vouchers requesting payment under the agreement will include a certification that must be signed by an official who is authorized to legally bind the recipient which reads as follows:

“By signing 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 Federal award. 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. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

#### **50. Reporting Waste, Fraud and Abuse**

Consistent [2 CFR 200.113](#), the recipient and any subrecipients must report, in a timely manner, any violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award to the EPA Project Officer and the [EPA Office of Inspector General \(OIG\) Hotline](#). The methods to contact the OIG hotline are (1) online submission via the [EPA OIG Hotline Complaint Form](#); (2) email to [OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov); (3) phone 1-888-546-8740; or (4) mail directed to Environmental Protection Agency, Office of Inspector General, 1200 Pennsylvania Avenue, N.W. (2410T), Washington, DC 20460.

To support awareness of the OIG hotline, recipients and/or subrecipients receiving an EPA award or subaward of \$1,000,000 or more must display EPA OIG Hotline posters in facilities where the work is performed under the grant. EPA OIG Hotline posters may be [downloaded or printed](#) or may be obtained by contacting the OIG at 1- 888-546-8740. Recipients and subrecipients need not comply with this requirement if they have established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct and have provided instructions that encourage employees to make such reports.

#### **51. Whistleblower Protections**

This award is subject to whistleblower protections, including the protections established at 41 U.S.C. 4712 providing that an employee of the recipient or a subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a covered person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal grant or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal grant or subaward, a substantial and specific danger to public health or safety, or a violation

of law, rule, or regulation related to a Federal grant or subaward. These covered persons or bodies include:

- a. A member of Congress or 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 of 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.

Consistent with 41 U.S.C. 4712(d), the recipient and subrecipients shall inform their employees in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. 4712. Additional information about whistleblower protections, including protections for such employees may be found at the [EPA Office of Inspector General's Whistleblower Protection page](#).

## **52. Access to Records**

In accordance with [2 CFR 200.337](#), EPA and the EPA Office of Inspector General (OIG) have the right to access any documents, papers, or other records, including electronic records, of the recipient and subrecipient which are pertinent to this award in order to make audits, examinations, excerpts, and transcripts. This right of access also includes timely and reasonable access to the recipient and subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as the records are retained.

**National Clean Investment Fund (NCIF)  
Terms and Conditions**

<b>I. Definitions</b> .....	3
Acquisition of Intangible Property .....	3
Air Pollutant .....	3
Award Agreement .....	3
Apprentice.....	3
Environmental Information .....	3
Environmental Information Operations.....	3
EPA Award Official .....	3
EPA Project Officer.....	3
Financial Assistance .....	4
Freely Associated States .....	4
Greenhouse Gas.....	4
Low-Income and Disadvantaged Communities .....	4
Market-Building Activities.....	5
Named Subrecipient .....	5
Participant Support Costs .....	5
Period of Closeout.....	6
Period of Performance.....	6
Post-Closeout Program Income .....	6
Predevelopment Activities.....	6
Priority Project Categories .....	6
Program Administration Activities.....	7
Program Beneficiary.....	7
Program Income.....	7
Qualified Project .....	8
Senior Management .....	8
Subaward .....	8
Subrecipient .....	8
<b>II. National Programmatic Terms and Conditions</b> .....	10
A. Performance Reporting .....	10
B. Cybersecurity Condition.....	13
C. Competency Policy.....	14
D. Signage Required .....	14
E. Geospatial Data Standards.....	15
F. Leveraging and Fund Raising.....	15
G. Quality Assurance .....	16
H. Real Property .....	17
I. Program Income.....	18
J. Use of Logos.....	18
<b>III. Additional Programmatic Terms and Conditions</b> .....	20
A. Eligible Recipient.....	20
B. Workplan and Budget .....	20

C. Recipient Organizational Plan .....	20
D. Recipient Policies and Procedures.....	21
E. Allowable and Unallowable Activities .....	21
F. Foreign Entity of Concern.....	22
G. LIDAC Expenditure Requirement.....	22
H. Revolving Loan Fund Characterization .....	22
I. Subawards.....	23
J. Participant Support Costs .....	24
K. Acquisitions of Intangible Property .....	24
L. Labor and Equitable Workforce Development Requirements .....	25
M. Build America, Buy America Act .....	29
N. Governance Requirements.....	29
O. Consumer Protection Requirements.....	31
P. Financial Risk Management Requirements.....	31
Q. Historic Preservation .....	33
R. Uniform Relocation Assistance and Real Property Acquisition Policies Act.....	34
S. Remedies for Non-Compliance .....	34
T. Clarifications to EPA General Terms and Conditions .....	35
U. Period of Performance .....	36
V. Closeout Agreement .....	37
W. Legal Counsel.....	41
X. Accounting Principles.....	41
Y. Internal Controls .....	41
Z. Audits .....	41
AA. EPA Project Officer Oversight and Monitoring.....	41
AB. Compliant URL Links .....	42
AC. Conflicts of Interest .....	43
AD. Prior Approvals.....	45
AE. Flow-Down Requirements .....	46
AF. Resolution of Disputes Termination Provision .....	46
AG. Deposit Account at Financial Agent .....	47
AH. Interim SF-425 Requirement.....	47
AI. Interim Drawdown Procedures .....	47
AJ. Amendments to Award Agreement .....	49
<b>IV. Administrative Terms and Conditions.....</b>	<b>50</b>
A. General Terms and Conditions .....	50
B. Correspondence Condition .....	50
C. Intergovernmental Review Period .....	50
D. Pre-Award Costs .....	50
E. New Recipient Training Requirement .....	51
<b>V. Financial Agent Terms and Conditions.....</b>	<b>52</b>
A. Revisions to Award Agreement to Account for Financial Agent Arrangement.....	52

## I. Definitions

**Acquisition of Intangible Property:** 2 CFR 200.1 defines Intangible Property as “property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).” Acquisitions of Intangible Property involve the purchase of Intangible Property through procurement contracts.

**Air Pollutant:** Air Pollutant means any air pollutant that is listed pursuant to Section 108(a) of the Clean Air Act (or any precursor to such an air pollutant). This includes particulate matter, ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead (see 40 CFR Part 50) and their precursors (e.g., volatile organic compounds).

**Award Agreement:** Award Agreement means the set of legally binding documents between EPA and the Recipient under the federal award. Award Agreement is used interchangeably with Assistance Agreement and Notice of Award.

**Apprentice:** Apprentice means an individual working on a project receiving Financial Assistance who is participating in a Registered Apprenticeship program under the National Apprenticeship Act that meets the requirements of 29 CFR Parts 29 and 30.

**Environmental Information:** Environmental Information is defined in EPA’s [Environmental Information Quality Policy](#). Environmental Information includes “data and information that describe environmental processes or conditions which support EPA’s mission of protecting human health and the environment. Examples include but are not limited to: direct measurements of environmental parameters or processes; analytical testing results of environmental conditions (e.g., geophysical or hydrological conditions); information on physical parameters or processes collected using environmental technologies; calculations or analyses of environmental information; information provided by models; information compiled or obtained from databases, software applications, decision support tools, websites, existing literature, and other sources; development of environmental software, tools, models, methods and applications; and design, construction, and operation or application of environmental technology.”

**Environmental Information Operations:** Environmental Information Operations is defined in EPA’s [Environmental Information Quality Policy](#). Environmental Information Operations means “[a] collective term for work performed to collect, produce, evaluate, or use environmental information and the design, construction, operation or application of environmental technology.”

**EPA Award Official:** EPA Award Official means the award official from the Office of Grants and Debarment that is authorized to execute the Award Agreement, as well as any subsequent amendments to the Award Agreement, and to make any other final determinations required by law or regulation on behalf of the EPA.

**EPA Project Officer:** EPA Project Officer means the project officer from the Office of the Greenhouse Gas Reduction Fund that is assigned, along with the EPA Grants Specialist, to monitor the Recipient on programmatic and technical aspects of the project and is typically authorized to make programmatic approvals on behalf of the EPA. Where required, the Recipient must notify or request approval from the EPA Project Officer through the EPA Project Officer’s individual EPA email address as well [NCIF@epa.gov](mailto:NCIF@epa.gov)

such that the Office of the Greenhouse Gas Reduction Fund may delegate an alternative EPA Project Officer in the case of any absence.

**Financial Assistance:** Section 134(b)(1) of the Clean Air Act directs that the Recipient use funds for “Financial Assistance.” Consistent with the definition of *Federal financial assistance* in 2 CFR 200.1, Financial Assistance means financial products, including debt (such as loans, partially forgivable loans, forgivable loans, zero-interest and below-market interest loans, loans paired with interest rate buydowns, secured and unsecured loans, lines of credit, subordinated debt, warehouse lending, loan purchasing programs, and other debt instruments), equity investments (such as equity project finance investments, private equity investments, and other equity instruments), hybrids (such as mezzanine debt, preferred equity, and other hybrid instruments), and credit enhancements (such as loan guarantees, loan guarantee funds (whether full or partial), loan loss reserves, and other credit enhancement instruments). Expenditures for Financial Assistance are in the form of Subawards (other than subgrants), Participant Support Costs, or Acquisitions of Intangible Property, as defined in this Award Agreement. Subgrants are not eligible as Financial Assistance. The characterization of a Financial Assistance transaction as a Subaward, Participant Support Costs, or Acquisition of Intangible Property is limited to the transaction. For example, the same entity may be a Subrecipient for one transaction and a Program Beneficiary or a Contractor for another transaction.

**Freely Associated States:** Freely Associated States means the Republic of the Marshall Islands (the Marshalls), the Federated States of Micronesia (FSM), and the Republic of Palau (Palau).

**Greenhouse Gas:** Greenhouse Gas means carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride, as defined in Section 134(c)(2) of the Clean Air Act. Greenhouse Gas Emissions mean emissions of Greenhouse Gases.

**Low-Income and Disadvantaged Communities:** Section 134(a)(3) of the Clean Air Act appropriates funds “for the purposes of providing financial assistance and technical assistance in low-income and disadvantaged communities.” Low-Income and Disadvantaged Communities means CEJST-Identified Disadvantaged Communities, EJScreen-Identified Disadvantaged Communities, Geographically Dispersed Low-Income Households, Properties Providing Affordable Housing, and Federally Recognized Tribal Entities, as defined below.

- ***CEJST-Identified Disadvantaged Communities:*** All communities identified as disadvantaged through version 1.0 of the Climate and Economic Justice Screening Tool (CEJST), released on November 22, 2022, which includes census tracts that meet the thresholds for at least one of the tool’s categories of burden and land within the boundaries of Federally Recognized Tribes.
- ***EJScreen-Identified Disadvantaged Communities:*** All communities within version 2.2 of EJScreen that fall within either (a) the limited supplemental set of census block groups that are at or above the 90<sup>th</sup> percentile for any of EJScreen’s supplemental indexes when compared to the nation or state or (b) geographic areas within Tribal lands as included in EJScreen, which includes the following Tribal lands: Alaska Native Allotments, Alaska Native Villages, American Indian Reservations, American Indian Off-reservation Trust Lands, and Oklahoma Tribal Statistical Areas.
- ***Geographically Dispersed Low-Income Households:*** Low-income individuals and households living in Metropolitan Areas with incomes not more than 80% AMI or 200% FPL (whichever is higher), and low-income individuals and households living in Non-Metropolitan Areas with incomes not more than 80% AMI, 200% FPL, or 80% Statewide Non-Metropolitan Area AMI (whichever is highest). Federal Poverty Level (FPL) is defined using the latest publicly available



figures from the U.S. Department of Health and Human Services. Area Median Income (AMI) is defined using the latest publicly available figures from the U.S. Department of Housing and Urban Development (HUD). Metropolitan Area and Non-Metropolitan Area are defined using the latest publicly available figures for county-level designations from the Office of Management and Budget. Statewide Non-Metropolitan Area AMI is defined using the latest publicly available figures from the U.S. Department of the Treasury's CDFI Fund, with an adjustment for household size using HUD's Family Size Adjustment factor.

- ***Properties Providing Affordable Housing:*** Properties providing affordable housing that fall within either of the following two categories: (a) multifamily housing with rents not exceeding 30% of 80% AMI for at least half of residential units and with an active affordability covenant from one of the following housing assistance programs: (1) Low-Income Housing Tax Credit; (2) a housing assistance program administered by HUD, including Public Housing, Section 8 Project-Based Rental Assistance, Section 202 Housing for the Elderly, Section 811 Housing for Disabled, Housing Trust Fund, Home Investment Partnership Program Affordable Rental and Homeowner Units, Permanent Supportive Housing, and other programs focused on ending homelessness that are funded under HUD's Continuum of Care Program; (3) a housing assistance program administered by USDA under Title V of the Housing Act of 1949, including under Sections 514 and 515; (4) a housing assistance program administered by a tribally designated housing entity, as defined in Section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 USC § 4103(22)); or (5) a housing assistance program administered by the Department of Hawaiian Homelands as defined in Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996 (24 CFR 1006.10) or (b) naturally-occurring (unsubsidized) affordable housing with rents not exceeding 30% of 80% AMI for at least half of residential units.
- ***Federally Recognized Tribal Entities:*** All Federally Recognized Tribal entities, which are considered disadvantaged regardless of whether a Federally Recognized Tribe has land, consistent with [M-23-09](#) and CEJST.

**Market-Building Activities:** Market-Building Activities means activities that meet all three of the following criteria: (1) build the market for financeable Qualified Projects, (2) are not tied directly to Qualified Projects the Recipient intends to finance, and (3) are necessary and reasonable for the deployment of Financial Assistance to Qualified Projects.

**Named Subrecipient:** Named Subrecipient means an entity that is named on the EPA-approved workplan to receive a Subaward in the form of a Subgrant from the Recipient in order to carry out part of the award.

**Participant Support Costs:** 2 CFR 200.1 defines Participant Support Costs as "direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects." EPA regulations at 2 CFR 1500.1(a)(1) expand the definition of Participant Support Costs to include "subsidies, rebates, and other payments to program beneficiaries to encourage participation in statutorily authorized environmental stewardship programs," which includes the Greenhouse Gas Reduction Fund. In this program, Participant Support Costs may include expenditures by the Recipient as Predevelopment Activities, Market-Building Activities, and Program Administration Activities (which may include subsidies, rebates, and other payments) as well as Financial Assistance to Qualified Projects.

**Period of Closeout:** Period of Closeout means the time interval between the beginning of the closeout period (the date that the award has been closed out, in accordance with 2 CFR 200.344) to the end of the closeout period (the date that the Closeout Agreement has been terminated). The Period of Closeout may also be referred to as the Closeout Period.

**Period of Performance:** 2 CFR 200.1 defines Period of Performance as “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.” For the purposes of this Award Agreement, the Period of Performance means the time interval between the start of the Federal award (either the first date that the Recipient has incurred allowable pre-award costs or the date on the Notice of Award, whichever is earlier) and the end of the Federal award (the date that the award has been closed out, in accordance with 2 CFR 200.344). The Period of Performance may also be referred to as the Performance Period.

**Post-Closeout Program Income:** Post-Closeout Program Income means Program Income retained at the end of the Period of Performance, which is subject to the terms and conditions of the Closeout Agreement, as well as Program Income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the Period of Closeout, which is also subject to the terms and conditions of the Closeout Agreement. Under the Closeout Agreement, the Recipient is authorized to deduct the cost of generating Post-Closeout Program Income under 2 CFR 200.307(b) and 2 CFR 1500.8(b), provided the costs are reasonable and necessary for performance under the federal award and the costs are not charged to the EPA award. Costs incidental to the generation of Post-Closeout Program Income include origination, servicing, and management costs that are not charged as direct costs to the Federal award or to Post Closeout Program Income. Costs of generating Post-Closeout Program Income can be incurred in advance of receiving the gross income, with the Recipient incurring the costs and later using gross income to reimburse itself for no more than the actual costs incurred to generate the Post-Closeout Program Income, provided the Recipient can account for the actual costs incurred.

**Predevelopment Activities:** Predevelopment Activities means activities that meet all three of the following criteria: (1) improve the likelihood of the Recipient financing Qualified Projects, (2) are tied directly to Qualified Projects the Recipient intends to finance, and (3) are necessary and reasonable for the Recipient to deploy Financial Assistance to Qualified Projects.

**Priority Project Categories:** Priority Project Categories means Distributed Energy Generation and Storage, Net-Zero Emissions Buildings, and Zero-Emissions Transportation, as defined below.

- ***Distributed Energy Generation and Storage:*** Projects, activities, and technologies that deploy small-scale power generation and/or storage technologies (typically from 1 kW to 10,000 kW), plus enabling infrastructure necessary for deployment of such generation and/or storage technologies. Projects, activities, and technologies within this category must support *carbon pollution-free electricity*, which is electrical energy produced from resources that generate no carbon emissions, consistent with the definition specified in [Executive Order 14057](#) (Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability).
- ***Net-Zero Emissions Buildings:*** Projects, activities, and technologies that either (1) retrofit an existing building, making a substantial contribution to that building being a net-zero emissions building and as part of a plan for that building achieving net-zero emissions over time, or (2) construct a new net-zero emissions building in a Low-Income and Disadvantaged Community. A *net-zero emissions building* is a building that meets the requirements of Version 1 of the [National Definition for a Zero Emissions Building](#) (June 2024).

- ***Zero-Emissions Transportation:*** Projects, activities, and technologies that deploy zero-emissions transportation modes, plus enabling infrastructure necessary for zero-emissions transportation modes—especially in communities that are overburdened by existing diesel pollution, particulate matter concentration, and degraded air quality. Projects, activities, and technologies within this category must be consistent with the zero-emissions transportation decarbonization strategies in [The U.S. National Blueprint for Transportation Decarbonization](#).

**Program Administration Activities:** Program Administration Activities means activities that support administration of the grant program, to the extent such activities meet the requirements for allowability under 2 CFR Part 200, Subpart E as well as applicable provisions of 2 CFR Part 1500. Program Administration Activities include but are not limited to establishing and convening advisory councils, as described in Item 2 of [EPA’s Guidance on Selected Items of Cost for Recipients](#), and fund raising, as described in Item 4 of [EPA’s Guidance on Selected Items of Cost for Recipients](#).

**Program Beneficiary:** Program Beneficiary means an entity (either an individual or an organization) that receives Financial Assistance as an end-user, except when such Financial Assistance is characterized as an Acquisition of Intangible Property (in which case the entity is a Contractor, as defined in 2 CFR 200.1). Expenditures for Financial Assistance to Program Beneficiaries are in the form of Participant Support Costs, as defined in 2 CFR 1500.1. A Program Beneficiary is distinct from a Subrecipient, as defined in 2 CFR 200.1.

**Program Income:** 2 CFR 200.1 defines Program Income as “gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f).” 2 CFR 200.1 notes that Program Income “includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds.” For this program, Program Income also includes but is not limited to income from origination fees, servicing fees, and asset management fees; dividends from equity investments; revenue from asset sales; release of grant funds previously used as Financial Assistance (such as through loan guarantees, loan loss reserves, or similar transactions); interest and other earnings on disbursements of grant funds that have not been transferred to third parties; and funds raised with costs charged against the grant award (such as private debt, philanthropic contributions, and other funds raised). Program Income must be treated in accordance with the Program Income Programmatic Term and Condition. EPA-specific rules on Program Income are provided at 2 CFR 1500.8, and rules on allowable fund raising costs are provided under 2 CFR 200.442 (with additional details in Item 4 of the [EPA Guidance on Selected Items of Cost for Recipients](#)). Under this award agreement, the Recipient is authorized to deduct the cost of generating program income under 2 CFR 200.307(b) and 2 CFR 1500.8(b), provided the costs are reasonable and necessary for performance under the federal award and the costs are not charged to the EPA award. Costs incidental to the generation of program income include origination, servicing, and management costs that are not charged as direct costs to the Federal award or to Program Income. Costs of generating program income can be incurred in advance of receiving the gross income, with the Recipient incurring the costs and later using gross income to reimburse itself for no more than the actual costs incurred to generate the program income, provided the Recipient can account for the actual costs incurred. Program Income requirements flow down to Subrecipients but not to Contractors or Program Beneficiaries.

**Qualified Project:** Section 134(c)(3) of the Clean Air Act provides that a Qualified Project is any project, activity, or technology that (A) reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and by leveraging investment from, the private sector; or (B) assists communities in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution. For this Assistance Agreement, Qualified Project means any project, activity or technology meeting all six requirements listed below at the time that Financial Assistance is provided to the project, activity, or technology:

- The project, activity, or technology would reduce or avoid Greenhouse Gas Emissions, consistent with the climate goals of the United States to reduce Greenhouse Gas Emissions 50-52 percent below 2005 levels in 2030, reach 50 percent zero-emission vehicles share of all new passenger cars and light trucks sold in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050. The project, activity, or technology may reduce or avoid such emissions through its own performance or through assisting communities in their efforts to deploy projects, activities, or technologies that reduce or avoid such emissions.
- The project, activity, or technology would reduce or avoid emissions of other Air Pollutants. The project, activity, or technology may reduce or avoid such emissions through its own performance or through assisting communities in their efforts to deploy projects, activities, or technologies that reduce or avoid such emissions.
- The project, activity, or technology would deliver additional benefits (i.e., in addition to primarily reducing or avoiding emissions of greenhouse gases and other Air Pollutants) to communities within one or more of the following seven categories: climate change; clean energy and energy efficiency; clean transportation; affordable and sustainable housing; training and workforce development; remediation and reduction of legacy pollution; and development of critical clean water infrastructure.
- The project, activity, or technology may not have otherwise been financed.
- The project, activity, or technology would mobilize private capital.
- The project, activity, or technology would support only commercial technologies, defined as technologies that have been deployed for commercial purposes at least three times for a period of at least five years each in the United States for the same general purpose as the project, activity, or technology.

**Senior Management:** Senior Management means the chief executive officer, chief risk officer, general counsel, chief compliance officer, chief investment officer, chief reporting officer, and chief financial officer (or equivalent positions).

**Subaward:** 2 CFR 200.1 defines a Subaward as “an award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity.” A Subgrant refers to a Subaward in the form of a grant.

**Subrecipient:** Consistent with 2 CFR 200.1, Subrecipient means “an entity that receives a Subaward from a pass-through entity to carry out part of a Federal award but does not include an entity that is a Program Beneficiary of such an award.” A Subrecipient is distinct from a Program Beneficiary, which is referenced in 2 CFR 1500.1. In this program, there are three main types of Subrecipients: (1) a Subrecipient that receives a Subgrant that will be used, either in whole or in part, to provide Financial Assistance to Qualified Projects, or a “Financial Assistance Subrecipient”; (2) a Subrecipient that receives a Subgrant that will be used exclusively for Predevelopment Activities, Market-Building Activities, and/or

Program Administration Activities, or a “Technical Assistance Subrecipient”; and (3) a Subrecipient that receives Financial Assistance in the form of a Subaward, with the Subrecipient then using the Subaward to provide Financial Assistance to Qualified Projects, or a “Financial Intermediary Subrecipient”. In accordance with 2 CFR 200.332, each Subrecipient is accountable to the Recipient for proper use of EPA funding. Note that a financial transaction is a Subaward to a Financial Intermediary Subrecipient if the following two characteristics are true: (i) the financial transaction provides an award by a pass-through entity to a Subrecipient through a form of *Federal financial assistance*, other than a grant, and (ii) the proceeds of the award are used directly as Financial Assistance to Qualified Projects, carrying out part of a Federal award received by the pass-through entity.

The EPA Subaward Policy applies to Subgrants made to Financial Assistance Subrecipients and Technical Assistance Subrecipients, including but not limited to Named Subrecipients. However, the EPA Subaward Policy does not apply to Subawards made to Financial Intermediary Subrecipients.

## II. National Programmatic Terms and Conditions

### A. Performance Reporting

In accordance with 2 CFR 200.329 and 2 CFR 200.337, the Recipient agrees to the following four requirements of performance reporting: (1) reports, (2) transaction-level and project-level data, (3) organizational disclosures, and (4) ongoing disclosures. These performance reporting requirements “flow-down” as needed to enable the Recipient to comply with the requirements described in this term and condition. The Recipient must ensure that these reports cover its own grant-related activities, and where applicable to a certain performance report or element of a performance report, the grant-related activities of its Subrecipients, Contractors, and/or Program Beneficiaries. To comply with these performance reporting requirements, the Recipient agrees to use information collection instruments authorized by GGRF Accomplishment Reporting (EPA ICR Number 2783.01, OMB Control Number 2090-NEW), once such instruments are authorized; to the extent that information is not available for transactions that were closed prior to authorization of these instruments, the Recipient will not be out of compliance with the performance reporting requirements.

The Recipient agrees to have its chief executive officer (or equivalent) and chief reporting officer (or equivalent) review, sign, and submit performance reporting electronically to the EPA Project Officer. To the extent it is known, or should have been known, by the chief executive officer (or equivalent) and chief reporting officer (or equivalent) that the reporting is not compliant with the terms and conditions, or demonstrates material noncompliance with the terms and conditions, the chief executive officer (or equivalent) and chief reporting officer (or equivalent) must note such noncompliance to the EPA Project Officer alongside the submission. Should the chief executive officer (or equivalent) and chief reporting officer (or equivalent) signing the submission knowingly and willfully make any material false statement, they may be subject to criminal prosecution under 18 U.S.C. 1001 and/or other civil and administrative sanctions.

EPA intends to make performance reporting information available to the public, either in whole or in part, through disclosing copies of the reports as submitted or using the content of the reports to prepare EPA reporting documents. Pursuant to 2 CFR 200.338, the Recipient agrees to redact personally identifiable information (PII) and mark confidential business information (CBI) prior to submission to EPA. Information claimed as CBI will be disclosed only to the extent, and by means of the procedures, set forth in 40 CFR Part 2, Subpart B. As provided at 40 CFR 2.203(b), if no claim of confidential treatment accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the Recipient.

The EPA Project Officer may extend the due date for performance reporting requirements to the extent authorized by 2 CFR 200.329 and 2 CFR 200.344. On a case-by-case basis, the EPA Project Officer may waive or modify performance reporting requirements to the extent authorized by 2 CFR 200.329 and 2 CFR 200.344.

Where applicable, the intervals for reporting are authorized by 2 CFR 200.329(c)(1), as more frequent reporting is necessary for the effective monitoring of the Federal award and could significantly affect program outcomes.

#### **1. Reports**

### Semi-Annual Report

The Recipient agrees to submit semi-annual reports covering six months of the calendar year in accordance with information collection instruments approved through GGRF Accomplishment Reporting (EPA ICR Number 2783.01, OMB Control Number 2090-NEW). A single semi-annual report must be submitted to cover grant-related activities of the Recipient and its Subrecipients as well as the grant-related activities of its Contractors and/or Program Beneficiaries where applicable to a certain element of the semi-annual report.

The Recipient agrees to submit semi-annual reports electronically to the EPA Project Officer within 30 calendar days after the semi-annual reporting period ends. The Recipient may submit a request to the EPA Project Officer for a permanent extension to 60 calendar days. A request may be made once, and it must include (i) an explanation of the Recipient's unique circumstance as to why they need the extension; (ii) the length of the extension (i.e., up to but not more than 60 calendar days after the semi-annual reporting period ends); and (iii) the duration of the extension (i.e., up to the remainder of the Period of Performance).

The semi-annual reporting periods are as follows: July 1 to December 31; January 1 to June 30. The first semi-annual reporting period ends on December 31 and covers all activities beginning on the first day of the Period of Performance.

### Annual Report

The Recipient agrees to submit annual reports that contain detailed narratives describing program performance over the Recipient's fiscal year, supported with qualitative discussions and quantitative metrics. A single annual report must be submitted to cover grant-related activities of the Recipient and its Subrecipients as well as the grant-related activities of its Contractors and/or Program Beneficiaries where applicable to a certain element of the annual report.

The Recipient must include the following broad, non-exhaustive elements in its annual reports:

- Progress towards objectives on key performance metrics over the reporting period,
- Summary of key activities completed in the reporting period, including case studies across different types of Financial Assistance to Qualified Projects,
- Geographic coverage of Financial Assistance to Qualified Projects made in the reporting period,
- Descriptions and examples of actions taken to meaningfully involve the communities the program serves in program design and operations,
- Case studies of different types of Market-Building and/or Predevelopment Activities, and
- Plans for key activities (including anonymized current transaction pipeline) to be completed as well as outputs and outcomes to be achieved in the next reporting period.

These reports must be submitted ready to be published on the EPA website for public consumption and must not include any material that the Recipient considers to be Confidential Business Information (CBI) or Personal Identifiable Information (PII). All reports will undergo an EPA review process to verify that there is no PII or claims of CBI. Should EPA identify PII or claims of CBI in reports, the EPA Project Officer will require that the Recipient re-submit the report without the PII or claims of CBI so that it can be published without redaction.

The Recipient agrees to submit annual reports electronically to the EPA Project Officer within 90 calendar days after the Recipient's fiscal year end date. The first annual report is due 90 calendar days after the Recipient's fiscal year that ends in 2025.

### Final Report

The Recipient agrees to submit a final report containing two documents. First, the recipient must submit a report containing all of the elements described above for the annual report, covering the entire Period of Performance and overall assessment of its program performance and implementation of its EPA-approved workplan. Second, the recipient must submit its investment strategy for the Closeout Period to detail its use of Post-Closeout Program Income over the Closeout Period. EPA intends to make the investment strategy, either in whole or in part, available to the public through disclosing copies of the investment strategy as submitted or using the content of the investment strategy. Pursuant to 2 CFR 200.338, the Recipient agrees to redact personally identifiable information (PII) and mark confidential business information (CBI) accordingly. Information claimed as CBI will be disclosed only to the extent, and by means of the procedures, set forth in 40 CFR Part 2, Subpart B. As provided at 40 CFR 2.203(b), if no claim of confidential treatment accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the Recipient.

The two documents for the final report must be submitted to cover the grant-related activities of the Recipient and its Subrecipients as well as the grant-related activities of its Contractors and/or Program Beneficiaries where applicable to a certain element of the final report.

The Recipient agrees to submit the two documents for the final report electronically to the EPA Project Officer no later than 120 calendar days after the end date of the Period of Performance.

### **2. Transaction-Level and Project-Level Data**

The Recipient agrees to submit quarterly transaction-level and project-level data in accordance with information collection instruments approved through GGRF Accomplishment Reporting (EPA ICR Number 2783.01, OMB Control Number 2090-NEW). The data submission must cover the grant-related activities of the Recipient and its Subrecipients as well as the grant-related activities of its Contractors and/or Program Beneficiaries where applicable to a certain element of the data submission.

The recipient agrees to submit the transaction-level and project-level data electronically to the EPA Project Officer within 30 calendar days after the quarterly reporting period ends. The Recipient may submit a request to the EPA Project Officer for a permanent extension to 60 calendar days. A request may be made once, and it must include (i) an explanation of the Recipient's unique circumstance as to why they need the extension; (ii) the length of the extension (i.e., up to but not more than 60 calendar days after the quarterly reporting period ends); and (iii) the duration of the extension (i.e., up to the remainder of the Period of Performance).

The four quarterly reporting periods for data submission are as follows: July 1 to September 30; October 1 to December 31; January 1 to March 31; and April 1 to June 30. The data submissions must cover transactions originated in the preceding quarter. For the quarterly reporting period that ends September 30, the Recipient must provide information on transactions originated from April 1 to June 30 rather than from July 1 to September 30. For the quarterly reporting period that ends December 31, the Recipient must provide information on transactions originated from July 1 to September 30 rather than October 1 to December 31. For the quarterly reporting period that ends March 31, the Recipient must provide information on transactions originated from October 1 to December 31 rather than



January 1 to March 31. For the quarterly reporting period that ends June 30, the Recipient must provide information on transactions originated from January 1 to March 31 rather than April 1 to June 30. The first transaction-level and project-level data submission is due 30 calendar days after December 31, 2024 and must cover all transactions originated from the beginning of the Performance Period through September 30, 2024.

### **3. Organizational Disclosures**

The Recipient agrees to submit annual organizational disclosures electronically to the EPA Project Officer within 30 calendar days after submission of its Single Audit to the Federal Audit Clearinghouse's Internet Data Entry System. The organizational disclosures must cover the Recipient's fiscal year and be submitted in accordance with information collection instruments approved through GGRF Accomplishment Reporting (EPA ICR Number 2783.01, OMB Control Number 2090-NEW). Additionally, the Recipient agrees to submit such organizational disclosures for each Financial Assistance Subrecipient that has received in excess of \$10,000,000 in NCIF subgrants to provide Financial Assistance to Qualified Projects under the National Clean Investment Fund (to be delivered within 30 calendar days after submission of the Subrecipient's Single Audit to the Federal Audit Clearinghouse's Internet Data Entry System). The requirement for organizational disclosures is not applicable for any fiscal year in which the reporting entity did not meet the requirements of 2 CFR Subpart F—Audit Requirements. The first Organizational Disclosures are due in 2025.

### **4. Ongoing Disclosures**

In addition to other ongoing disclosure obligations within the regulations and terms and conditions of this Award Agreement, the Recipient agrees to notify the EPA Project Officer of the following events in accordance with 2 CFR 200.329(e):

1. Changes to the Recipient's independent certified public accounting firm;
2. Non-reliance by the Recipient or its independent auditor on previously issued financial statements or a related audit report or completed interim audit review;
3. Changes in fiscal year end of the Recipient;
4. Material impairments to the Recipient's assets;
5. Intention to file bankruptcy petition or enter into receivership;
6. Submission of annual Form 990 to the IRS, with provision of copy to EPA Project Officer upon request (only if submission of the Form 990 is otherwise required).

Additionally, the Recipient agrees to submit such ongoing disclosures for each Financial Assistance Subrecipient that has received in excess of \$10,000,000 to provide Financial Assistance to Qualified Projects under the National Clean Investment Fund. The Recipient agrees to submit ongoing disclosures electronically to the EPA Project Officer within 15 calendar days of the event.

## **B. Cybersecurity Condition**

(a) The Recipient agrees that when collecting and managing environmental data under this Assistance Agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the Recipient's network or information system and EPA networks used by the Recipient to transfer data under this agreement are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system

and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the Recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the Recipient agrees to contact the EPA Project Officer no later than 90 calendar days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the Recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The Recipient agrees that any Subawards it makes under this agreement will require the Subrecipient to comply with the requirements in (b)(1) if the Subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The Recipient will be in compliance with this condition: by including this requirement in Subaward Agreements and, during Subrecipient monitoring deemed necessary by the Recipient under 2 CFR 200.332(d), by inquiring whether the Subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the Recipient to contact the EPA Project Officer on behalf of a Subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the Subrecipient and EPA.

### **C. Competency Policy**

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, the Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the Recipient agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at <https://www.epa.gov/sites/production/files/2015-03/documents/competency-policy-aaia-new.pdf> or a copy may also be requested by contacting the EPA Project Officer for this award.

### **D. Signage Required**

#### **1. Signage Requirements**

a. Investing in America Emblem: The Recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a "project funded by President Biden's Inflation Reduction Act," where the Financial Assistance used to fund the construction project exceeds \$250,000. The Recipient will also make optional signage available for projects where the construction is less than \$250,000. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period. The Recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at: <https://www.epa.gov/invest/investing-america-signage>.

b. Procuring Signs: Consistent with section 6002 of RCRA, 42 USC 6962, and 2 CFR 200.323, the Recipient is encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this Assistance Agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, the Recipient is encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

## **2. Public or Media Events**

For public or media events that are planned more than 15 calendar days in advance, the Recipient agrees to notify the EPA Project Officer of public or media events it has organized publicizing the accomplishment of significant activities related to execution of the EPA-approved workplan and provide the opportunity for attendance and participation by federal representatives with at least 15 calendar days' notice.

## **E. Geospatial Data Standards**

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at <https://www.fgdc.gov/>.

## **F. Leveraging and Fund Raising**

### **1. Leveraging**

The Recipient agrees to make commercially reasonable efforts to provide the proposed leveraged funding that is described in its EPA-approved workplan. If the proposed leveraging does not substantially materialize during the Period of Performance, and the Recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future grant applications from the Recipient. In addition, if the proposed leveraging does not substantially materialize during the Period of Performance and the Recipient does not provide a satisfactory explanation, then EPA may reconsider the legitimacy of the award; if EPA determines that the Recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding described in the EPA-approved workplan, EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

### **2. Fund Raising**

2 CFR 200.442 provides coverage on allowable fund-raising costs, with additional details contained in Item 4 of the [EPA Guidance on Selected Items of Cost for Recipients](#). Fund raising costs are an allowable cost and may include costs that are reasonable and necessary for raising capital from private investors to provide Financial Assistance to Qualified Projects.

Allowable fund-raising costs must meet the following two criteria, in addition to meeting the requirements for allowability under 2 CFR Part 200, Subpart E as well as applicable provisions of 2 CFR Part 1500: (1) must be in support of the Greenhouse Gas Reduction Fund's third program objective to mobilize financing and private capital and (2) must be reasonable and necessary to raise capital from private investors. Funds a Recipient raises for its own use with costs borne by an EPA Financial Assistance Agreement are considered Program Income, which must be treated in accordance with the Program Income Programmatic Term and Condition. When fund raising costs are paid for by both the award as well as other sources, a portion of the funds raised equal to the share of fund-raising costs charged to the award will be treated as Program Income.

## **G. Quality Assurance**

Authority: Quality Assurance applies to all assistance agreements involving Environmental Information as defined in [2 C.F.R. § 1500.12](#) Quality Assurance.

The recipient shall ensure that subawards involving Environmental Information issued under this agreement include appropriate quality requirements for the work. The recipient shall ensure sub-award recipients develop and implement Quality Assurance (QA) planning documents in accordance with this term and condition; and/or ensure sub-award recipients implement all applicable approved QA planning documents. EPA will not approve any QA planning documents developed by a Subrecipient; the Recipient is responsible for reviewing and approving its Subrecipient QA planning document(s), if required based on the Subrecipient's Environmental Information Operations.

### **1. Quality Management Plan (QMP)**

Prior to beginning Environmental Information Operations necessary to comply with the requirements specified in the Performance Reporting Programmatic Term and Condition, the recipient must: (i) develop a QMP, (ii) prepare the QMP in accordance with the current version of EPA's [Quality Management Plan \(QMP\) Standard](#) and submit the document for EPA review, and (iii) obtain EPA Quality Assurance Manager or designee (hereafter referred to as QAM) approval. Alternatively, the Recipient may (i) submit a previously EPA-approved and current QMP and (ii) the EPA Quality Assurance Manager or designee (hereafter referred to as QAM) will notify the Recipient and EPA Project Officer (PO) in writing if the QMP is acceptable for this agreement.

The Recipient must submit the QMP within 90 calendar days after grant award, unless the Recipient requests a one-time extension that is granted by the QAM.

The Recipient must review their approved QMP at least annually. These documented reviews shall be made available to the sponsoring EPA organization if requested. When necessary, the Recipient shall revise its QMP to incorporate minor changes and notify the EPA PO and QAM of the changes. If significant changes have been made to the Quality Program that affect the performance of environmental information operations, it may be necessary to re-submit the entire QMP for re-approval. In general, a copy of any QMP revision(s) made during the year should be submitted to the EPA PO and QAM in writing when such changes occur. Conditions requiring the revision and resubmittal of an approved QMP can be found in section 6 of EPA's [Quality Management Plan \(QMP\) Standard](#).

### **2. Quality Assurance Project Plan (QAPP)**

Prior to beginning Environmental Information Operations necessary to comply with the requirements specified in the Performance Reporting Programmatic Term and Condition, the Recipient must: (i) develop a QAPP, (ii) prepare the QAPP in accordance with the current version of EPA's [Quality Assurance Project Plan \(QAPP\) Standard](#), (iii) submit the document for EPA review, and (iv) obtain EPA Quality Assurance Manager or designee (hereafter referred to as QAM) approval. Alternatively, the Recipient may (i) submit a previously EPA-approved QAPP proposed to ensure the collected, produced, evaluated, or used environmental information is of known and documented quality for the intended use(s) and (ii) the EPA Quality Assurance Manager or designee (hereafter referred to as QAM) will notify the recipient and EPA Project Officer (PO) in writing if the previously EPA-approved QAPP is acceptable for this agreement.

The Recipient must submit the QAPP within 90 calendar days after grant award, unless the Recipient requests a one-time extension that is granted by the QAM.

The Recipient must notify the PO and QAM when substantive changes are needed to the QAPP. EPA may require the QAPP be updated and re-submitted for approval.

The recipient must review their approved QAPP at least annually. The results of the QAPP review and any revisions must be submitted to the PO and the QAM at least annually and may also be submitted when changes occur.

**For Reference:**

- [Quality Management Plan \(QMP\) Standard and EPA's Quality Assurance Project Plan \(QAPP\) Standard](#); contain quality specifications for EPA and non-EPA organizations and definitions applicable to these terms and conditions.
- [EPA QA/G-5: Guidance for Quality Assurance Project Plans](#).
- [EPA's Quality Program](#) website has a [list of QA managers](#), and [Non-EPA Organizations Quality Specifications](#).

**H. Real Property**

In accordance with 2 CFR 200.311, title to Real Property acquired or improved under this agreement will vest upon acquisition by the Recipient, including but not limited to title to Real Property acquired through exercise of a remedy for default of a Financial Assistance arrangement. This Real Property must be used for the originally authorized purpose as long as needed for that purpose, during which time the Recipient must not dispose of or encumber its title or other interests. The Real Property Programmatic Term and Condition flows down to Subrecipients but not to Program Beneficiaries or Contractors that receive Financial Assistance to Qualified Projects, which may acquire title to Real Property after receiving Financial Assistance to Qualified Projects.

The Recipient must obtain prior approval from the EPA Award Official for the acquisition of Real Property. Note that the Recipient may meet this requirement by specifying the types of acquisitions of Real Property it plans to carry out (including in cases where the Recipient would acquire title to Real Property through exercise of a remedy for default) in its EPA-approved workplan.

**Disposition**

If the Recipient disposes of the Real Property and uses the proceeds for the originally authorized purpose (i.e., under the terms and conditions of the Award Agreement), then the proceeds will be treated as Program Income and there are no further disposition requirements.

Otherwise, when Real Property is no longer needed for the originally authorized purpose, the Recipient must obtain disposition instructions from EPA. The instructions will provide for one of the following alternatives:

1. Retain title after compensating EPA. The amount paid to EPA will be computed by applying EPA's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where Recipient is disposing of Real Property acquired or improved with a Federal award and acquiring replacement Real Property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

2. Sell the property and compensate EPA. The amount due to EPA will be calculated by applying EPA's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the Recipient is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
3. Transfer title to EPA or to a third party designated/approved by EPA. The Recipient is entitled to be paid an amount calculated by applying the Recipient's percentage of participation in the purchase of the Real Property (and cost of any improvements) to the current fair market value of the property.

### **Recordation**

As authorized by 2 CFR 200.316, EPA requires that Recipients who use EPA funding to purchase and improve Real Property through an EPA funded construction project record a lien or similar notice in the Real Property records for the jurisdiction in which the Real Property is located, which indicates that the Real Property has been acquired and improved with federal funding and that use and disposition conditions apply to the Real Property.

### **I. Program Income**

In accordance with Clean Air Act Section 134(b)(1)(C) as well as 2 CFR 200.307(e)(2) and 2 CFR 1500.8(b), the Recipient must retain Program Income earned during the Period of Performance. Program Income will be added to funds committed to the program by EPA and used for the purposes and under the conditions of the Assistance Agreement and beyond the Period of Performance based on a Closeout Agreement.

In any period of time before such a Closeout Agreement is effective but after the Recipient has fully used the award for allowable activities, the Recipient is authorized to use Program Income under the terms and conditions of the Assistance Agreement, as opposed to the terms and conditions outlined under the Closeout Agreement Programmatic Term and Condition. The terms and conditions outlined under the Closeout Agreement Programmatic Term and Condition will supplant the terms and conditions of the Assistance Agreement once the Closeout Agreement becomes effective.

In accordance with 2 CFR 1500.8(d) as supplemented by the Period of Performance Programmatic Term and Condition, under ordinary circumstances, the Recipient may only use Program Income once the initial award funds are fully used for allowable activities or the Period of Performance ends for a different reason. However, Program Income may be used by the Recipient in advance of the initial award funds being fully used where reasonable and necessary to execute the activities in the EPA-approved workplan.

### **J. Use of Logos**

If the EPA logo is appearing along with logos from other participating entities on websites, outreach materials, or reports, it must not be prominently displayed to imply that any of the Recipient or Subrecipient's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the Recipient received financial support from the EPA under an

Assistance Agreement. More information is available at: <https://www.epa.gov/stylebook/using-epa-seal-and-logo#policy>.

### III. Additional Programmatic Terms and Conditions

#### A. Eligible Recipient

The Recipient agrees to maintain its status as an Eligible Recipient, which includes:

- a. Meeting the definition of *Nonprofit organization* set forth in 2 CFR 200.1;
- b. Having an organizational mission consistent with being “designed to provide capital, leverage private capital, and provide other forms of financial assistance for the rapid deployment of low- and zero-emission products, technologies, and services;”
- c. Not receiving any “deposit” (as defined in Section 3(l) of the Federal Deposit Insurance Act) or “member account” or “account” (as defined in Section 101 of the Federal Credit Union Act);
- d. Being funded by public or charitable contributions; and
- e. Having the legal authority to invest in or finance projects.

#### B. Workplan and Budget

The Recipient agrees to execute the EPA-approved workplan. This document, once approved by the EPA, will reflect an agreement between the Parties and will be incorporated into and be a part of the agreement between the Recipient and the EPA.

The Recipient agrees to conduct an annual review of the EPA-approved workplan within 90 calendar days of June 30 of each calendar year. If material changes are made during the annual review or in between annual reviews, the Recipient agrees to submit the updated workplan to the EPA Project Officer.

The Recipient also agrees to conduct an annual review of the EPA-approved detailed budget table within 90 calendar days of June 30 of each calendar year. If material changes are made during the annual review or in between annual reviews, the Recipient agrees to submit the updated detailed budget table to the EPA Project Officer. Such submissions are not subject to prior approval unless otherwise required by the regulations or the terms and conditions of the Award Agreement.

#### C. Recipient Organizational Plan

The Recipient agrees to execute the workplan in accordance with the documents listed below, as submitted to EPA through Grants.gov for EPA-R-HQ-NCIF-23 or provided to EPA after the application submission deadline.

1. Organizational Plan, pursuant to *Section IV.C: Content of Application Submission* of the Notice of Funding Opportunity;
2. Legal Entity Structure Diagram, pursuant to *Section IV.B: Application Materials* of the Notice of Funding Opportunity; and
3. Organizational and Governing Documents, pursuant to *Section IV.B: Application Materials* of the Notice of Funding Opportunity.

The Recipient agrees to maintain its incorporation in the United States, as reflected in the above documents.



The Recipient agrees to conduct an annual review of the documents within 90 calendar days of June 30 of each calendar year. If material changes are made during the annual review or in between annual reviews, the Recipient agrees to submit the updated documents to the EPA Project Officer. Such submissions are not subject to prior approval unless otherwise required by the regulations or the terms and conditions of the Award Agreement.

#### **D. Recipient Policies and Procedures**

The Recipient agrees to execute the workplan in accordance with the documents listed below (or other documents submitted in lieu of the documents listed below), as submitted to EPA through Grants.gov for EPA-R-HQ-NCIF-23 or provided to EPA after the application submission deadline.

1. Legal and Compliance Risk Management Policies and Procedures, pursuant to *Section IV.B: Application Materials* of the Notice of Funding Opportunity;
2. Financial Risk Management Policies and Procedures, pursuant to *Section IV.B: Application Materials* of the Notice of Funding Opportunity;
3. Board Policies and Procedures, pursuant to *Section IV.B: Application Materials* of the Notice of Funding Opportunity;
4. Management Policies and Procedures, pursuant to *Section IV.B: Application Materials* of the Notice of Funding Opportunity;
5. Consumer Protection Policies and Procedures, pursuant to *Section IV.B: Application Materials* of the Notice of Funding Opportunity;
6. Equity Policies and Practices, pursuant to *Section IV.B: Application Materials* of the Notice of Funding Opportunity; and
7. Conflict of Interest Mitigation Plan, which include all documents submitted upon EPA's request regarding measures that will be taken to eliminate, neutralize, mitigate or otherwise resolve conflicts of interest.
8. Documentation of Personnel and Fringe Benefit Charges, which includes all documents submitted upon EPA's request to document how personnel and fringe benefits will be charged against the grant award in accordance with 2 CFR 200.430 *Compensation—personal services* and 2 CFR 200.431 *Compensation—fringe benefits*. Notwithstanding the content of the Recipient's EPA-approved budget, the Recipient is not authorized to charge the grant award for personnel and fringe benefits against employees without using the W-2 as the definitive definition of "employee" until the Documentation of Personnel and Fringe Benefit Charges has been reviewed and approved by the EPA, as communicated by the EPA Project Officer.

The Recipient agrees to conduct an annual review of the documents within 90 calendar days of June 30 of each calendar year. If material changes are made during the annual review or in between annual reviews, the Recipient agrees to submit the updated documents to the EPA Project Officer. With the exception of the Documentation of Personnel and Fringe Benefit Charges, where changes will be subject to prior approval, such submissions are not subject to prior approval unless otherwise required by the regulations or the terms and conditions of the Award Agreement.

#### **E. Allowable and Unallowable Activities**

The Recipient agrees to only use the award to support the following allowable activities: Financial Assistance to Qualified Projects; Predevelopment Activities; Market-Building Activities; and Program

Administration Activities. The Recipient must use awards funds exclusively for allowable activities within the ten EPA regions, with the exception of the Freely Associated States. All costs charged to the award to support these activities must meet the requirements for allowability under 2 CFR Part 200, Subpart E as well as applicable provisions of 2 CFR Part 1500.

The Recipient agrees to not use the award for the following unallowable activities: (a) Financial Assistance to Qualified Projects in the form of Subgrants; (b) Subgrants for the purposes of providing Financial Assistance to Qualified Projects (other than Subgrants from the Recipient to first-tier Subrecipients); and (c) activities that support deployment of projects that do not meet the definition of Qualified Projects. The Recipient also agrees not to use the award for activities associated with defending against, settling, or satisfying a claim by a litigant, except when (1) the claim stems from the Recipient's implementation of its EPA-approved workplan in compliance with the terms and conditions of the Award Agreement and (2) the Recipient has obtained prior written approval from the EPA Award Official.

#### **F. Foreign Entity of Concern**

As part of carrying out this award, the Recipient agrees to ensure that entities the Recipient contracts with, the Recipient makes Subawards to, or that receive funds as Program Beneficiaries at any tier of funding under this grant agreement are not—

- (A) an entity owned by, controlled by, or subject to the direction of a government of a covered nation under 10 U.S.C. 4872(d);
- (B) an entity headquartered in a covered nation under 10 U.S.C. 4872(d); or
- (C) a subsidiary of an entity described in (A) or (B).

As of the date these terms and conditions become effective, covered nations under 10 U.S.C. § 4872(d) are the Democratic People's Republic of North Korea; the People's Republic of China; the Russian Federation; and the Islamic Republic of Iran.

#### **G. LIDAC Expenditure Requirement**

The Recipient agrees to ensure that a minimum of 40% of the award is used for the purposes of providing Financial Assistance in Low-Income and Disadvantaged Communities, with compliance maintained over each annual reporting period (i.e., from July 1 to June 30). Funds used for the purposes of providing Financial Assistance may include Financial Assistance to Qualified Projects; Predevelopment Activities; Market-Building Activities; and Program Administration Activities. This requirement applies to the entire award provided to the Recipient but does not "flow down" to each Subrecipient.

#### **H. Revolving Loan Fund Characterization**

EPA considers the portion of the award used to provide Financial Assistance to Qualified Projects that may generate Program Income as a capitalization of a revolving loan fund for the purposes of 2 CFR 1500.8(d). Such Financial Assistance may include Subawards, Participant Support Costs, and/or Acquisitions of Intangible Property. In accordance with section 2.0 *Applicability and Effective Date* and the definition of *Subaward* in section 3.0 of the EPA Subaward Policy, the EPA Subaward Policy does not apply to the Recipient's Subawards from the capitalization of a revolving loan fund.

EPA does not consider the remaining portion of the award as a capitalization of a revolving loan fund for the purposes of 2 CFR 1500.8(d). As such, all Subgrants made by the Recipient are subject to the EPA Subaward Policy.

## **I. Subawards**

### Subawards to Technical Assistance Subrecipients

The Establishing and Managing Subawards General Term and Conditions applies to Technical Assistance Subrecipients.

### Subawards to Financial Intermediary Subrecipients

The following requirements apply when the Recipient provides a Subaward to a Financial Intermediary Subrecipient. These requirements apply to the Recipient and Subrecipient in lieu of those specified in the Establishing and Managing Subawards General Term and Condition, as the EPA Subaward Policy does not apply to Financial Intermediary Subrecipients.

1. The Recipient must establish and follow a system that ensures all Subawards to Financial Intermediary Subrecipients are in writing and contain all of the elements required by 2 CFR 200.332(a), with the exception of the indirect cost provision of 2 CFR 200.332(a)(4) (which does not apply to loans). EPA has developed an optional template for Subaward Agreements available in Appendix D of the EPA Subaward Policy, which may also be used for such Subaward Agreements with Financial Intermediary Subrecipients.
2. The Financial Intermediary Subrecipient must comply with the internal control requirements specified at 2 CFR 200.303 and is subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The pass-through entity must include a condition in all Subawards that requires Financial Intermediary Subrecipients to comply with these requirements. No other provisions of the Uniform Grant Guidance, including the Procurement Standards, apply directly to the Subrecipient.
3. Prior to making the Subaward, the Recipient must ensure that the Financial Intermediary Subrecipient has a "unique entity identifier." This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR 200.332(a)(1). The unique entity identifier (UEI) is generated when an entity registers in SAM. Information on registering in SAM and obtaining a UEI is available in the General Condition of the pass-through entity's agreement with EPA entitled "*System for Award Management and Universal Identifier Requirements*."

### Subawards to Financial Assistance Subrecipients

The following requirements apply when the Recipient provides a Subaward to a Financial Assistance Subrecipient. These requirements apply to the Recipient and Subrecipient in addition to those specified in the Establishing and Managing Subawards General Term and Condition.

1. The Recipient must obtain written approval from the EPA Award Official prior to providing a Subgrant to a Financial Assistance Subrecipient that would exceed \$10,000,000 cumulatively in Financial Assistance Subawards under the National Clean Investment Fund and Capitalization Funding under the Clean Communities Investment Accelerator.
2. Prior to providing a Subgrant not named on the application to a Financial Assistance Subrecipient, the Recipient must obtain disclosure from the potential Subgrantee regarding award funds that it has sought and/or received under the National Clean Investment and Clean Communities Investment Accelerator programs.

## **J. Participant Support Costs**

The Recipient may provide Financial Assistance to Qualified Projects in the form of Participant Support Costs. In addition, the Recipient may provide Participant Support Costs for other purposes, including Predevelopment Activities, Market-Building Activities, and Program Administration Activities, to the extent such purposes are authorized under the Award Agreement.

The Recipient agrees to the following eligibility, restrictions, timelines, and other programmatic requirements on Participant Support Costs, in addition to other requirements included in the terms and conditions of this Award Agreement:

1. The Recipient and Program Beneficiaries are responsible for taxes, if any, on payments made to or on behalf of entities participating in this program that are allowable as Participant Support Costs under 2 CFR 200.1, 2 CFR 200.456, or 2 CFR 1500.1. EPA encourages the Recipient and Program Beneficiaries to consult their tax advisers, the U.S. Internal Revenue Service, or state and local tax authorities regarding the taxability of subsidies, rebates, and other participant support cost payments. However, EPA does not provide advice on tax issues relating to these payments.
2. Participant support cost payments are lower tiered covered Nonprocurement transactions for the purposes of 2 CFR 180.300 and the Suspension and Debarment General Term and Condition. The Recipient, therefore, may not make participant support cost payments to entities excluded from participation in Federal Nonprocurement programs under 2 CFR Part 180 and must ensure that Subrecipients adhere to this requirement as well. The Recipient is responsible for checking that Program Beneficiaries (i.e., entities receiving Participant Support Costs) are not excluded from participation through either (1) checking the System for Award Management (SAM) or (2) obtaining eligibility certifications from the Program Beneficiaries.

The Recipient agrees to provide written guidelines for Participant Support Costs that must be approved by the EPA prior to making payments to Program Beneficiaries, unless already described in the Recipient's EPA-approved workplan. These guidelines must: (a) describe the activities that will be supported by the Participant Support Costs; (b) specify the range of funding to be provided through the Participant Support Costs; (c) identify which types of entities will have title to equipment (if any) purchased with the funds; (d) establish source documentation requirements (e.g., invoices) for accounting records; and (e) describe purchasing controls to ensure that the amount of the participant support cost is determined in a commercially reasonable manner as required by 2 CFR 200.404.

## **K. Acquisitions of Intangible Property**

### **2 CFR 200 Procurement Standards**

The Recipient may provide Financial Assistance to Qualified Projects in the form of Acquisitions of Intangible Property. The Recipient agrees to acquire Intangible Property in compliance with the conflict of interest and competition requirements described in the 2 CFR Part 200 Procurement Standards. This includes but is not limited to the requirements at 2 CFR 200.318 to:

- Have and use documented procurement procedures to govern acquisitions of Intangible Property;
- Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts;

- Maintain written standards of conduct covering conflicts of interest and governing the actions of employees engaged in the selection, award, and administration of contracts as well as maintain written standards of conduct covering organizational conflicts of interest;
- Prioritize entering into inter-entity agreements where appropriate for procurement or use of common or shared goods and services as the Recipient seeks to mobilize financing and private capital;
- Award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement; and
- Maintain records sufficient to detail the history of procurement.

### **Disposition**

If the Recipient disposes of the Intangible Property and uses the proceeds for the originally authorized purpose (i.e., under the terms and conditions of the Award Agreement), then the proceeds will be treated as Program Income and there are no further disposition requirements.

### **Recordation**

The Recipient agrees to record liens or other appropriate notices of record to indicate that Intangible Property has been acquired with Federal funding and that use and disposition conditions apply to the Intangible Property, in cases where Financial Assistance to Qualified Projects is in the form of an Acquisition of Intangible Property. As provided in 2 CFR 200.1: "...loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible)" are *Intangible Property* for the purposes of the restrictions described at 2 CFR 200.315(a). "Other appropriate notices of record" is not limited to filing Uniform Commercial Code instruments and may also include a notice of record in the legally-binding transaction documents.

Additional guidance is available at [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).

## **L. Labor and Equitable Workforce Development Requirements**

### **1. Davis-Bacon and Related Acts (DBRA)**

#### **A. Program Applicability**

As provided in Section 314 of the Clean Air Act (42 USC § 7614) (DBRA), Davis-Bacon Act (42 USC §§ 3141-3144) labor standards apply to projects assisted by grants and cooperative agreements made under the Greenhouse Gas Reduction Fund. Accordingly, all laborers and mechanics employed by contractors or subcontractors on projects assisted under this Award Agreement shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor in accordance with 40 USC Subtitle II, Part A, Chapter 31, Subchapter IV (Wage Rate Requirements). Under the Greenhouse Gas Reduction Fund, the relevant construction type and prevailing wage classifications would be "Building" and "Residential." The Secretary of Labor's wage determinations are available at <https://sam.gov/content/wage-determinations>.

Therefore, the Recipient must ensure that any construction work financed in whole or in part with such Financial Assistance, as defined in these Terms and Conditions, provided under this agreement complies with Davis-Bacon and Related Act requirements and the requirements of these Terms and Conditions. The Recipient must ensure that these requirements apply to all construction projects assisted by such Financial Assistance.

If the Recipient encounters a situation that presents uncertainties regarding DBRA applicability under this Assistance Agreement, the Recipient must discuss the situation with the EPA Project Officer before authorizing work on the project.

In the event that a periodic project site visit, audit, or routine communication with a Subrecipient, Program Beneficiary, contractor, or subcontractor determines any instances of non-compliance or potential non-compliance with the requirements of this Term and Condition or the Davis-Bacon and Related Act, the Recipient agrees to promptly inform the EPA Project Officer for possible referral to the U.S. Department of Labor for guidance or enforcement action.

Note, the use of the term project in this term and condition is distinct from the use of the term project within the definition of Qualified Project under Clean Air Act Section 134(c)(3), which is broader and includes “any project, activity, or technology.” Consistent with the definitions at 29 CFR § 5.2, the term “construction” refers to all types of work done on a particular building or work at the site of the work by laborers and mechanics employed by a contractor or subcontractor. Additional guidance is available in the definition of the term “building or work” in 29 CFR § 5.2.

#### **B. Davis-Bacon and Related Acts**

[Davis-Bacon and Related Acts \(DBRA\)](#) is a collection of labor standards provisions administered by the Department of Labor, that are applicable to grants involving construction. These labor standards include the:

- Davis-Bacon Act, which requires payment of prevailing wage rates for laborers and mechanics on construction contracts of \$2,000 or more;
- Copeland “Anti-Kickback” Act, which prohibits a contractor or subcontractor from inducing an employee into giving up any part of the compensation to which he or she is entitled; and
- Contract Work Hours and Safety Standards Act, which requires overtime wages to be paid for over 40 hours of work per week, under contracts in excess of \$100,000.

#### **C. Recipient Responsibilities When Entering Into and Managing Contracts:**

##### **a. Solicitation and Contract Requirements:**

###### **i. Include the Correct Wage Determinations in Bid Solicitations and Contracts:**

Recipients are responsible for complying with the procedures provided in [29 CFR 1.6\(b\)](#) when soliciting bids and awarding contracts.

###### **ii. Include DBRA Requirements in All Contracts:** Include “By accepting this contract, the contractor acknowledges and agrees to the terms provided in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants.](#)”

##### **b. After Award of Contract:**

###### **i. Approve and Submit Requests for Additional Wages Rates:** Work with contractors to request additional wage rates if required for contracts under this grant, as provided in [29 CFR 5.5\(a\)\(1\)\(iii\)](#).

###### **ii. Provide Oversight of Contractors to Ensure Compliance with DBRA Provisions:** Ensure contractor compliance with the terms of the contract, as required by [29 CFR 5.6](#).

#### **D. Recipient Responsibilities When Establishing and Managing Additional Subawards:**

- a. **Include DBRA Requirements in All Subawards (including Loans):** Include the following text on all Subawards under this grant: “By accepting this award, the EPA Subrecipient acknowledges and agrees to the terms and conditions provided in the [DBRA Requirements for EPA Subrecipients.](#)”
- b. **Provide Oversight to Ensure Compliance with DBRA Provisions:** Recipients are responsible for oversight of Subrecipients and must ensure Subrecipients comply with the requirements in [29 CFR 5.6.](#)
- c. **Provide Oversight to Ensure Compliance with Participant Support Cost Requirements:** Recipients are responsible for oversight of Subrecipients and must ensure that Subrecipients comply with the requirements in subsection E, below.

**E. Recipient/Subrecipient Responsibilities When Managing Participant Support Costs to Program Beneficiaries**

Any Financial Assistance provided in the form of a participant support cost to a Program Beneficiary shall include the following text:

“[Name of Recipient/Subrecipient providing the Financial Assistance] retains the following responsibilities for all contracts and subcontracts assisted by this [form of Financial Assistance]:

- a. **Solicitation and Contract Requirements:**
  - i. **Include the Correct Wage Determinations in Bid Solicitations and Contracts:** “[Name of Recipient/Subrecipient providing the Financial Assistance] is responsible for ensuring that any contracts or subcontracts made by Program Beneficiaries and/or assisted by Participant Support Costs comply with the procedures provided in [29 CFR 1.6\(b\)](#) when soliciting bids and awarding contracts.
  - ii. **Include DBRA Requirements in All Contracts:** Include the following text “By accepting this contract, the contractor acknowledges and agrees to the terms provided in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants.](#)”
- b. **After Award of Contract:**
  - i. **Approve and Submit Requests for Additional Wages Rates:** Work with contractors to request additional wage rates if required for contracts under this grant, as provided in [29 CFR 5.5\(a\)\(1\)\(iii\)](#).
  - ii. **Provide Oversight of Contractors to Ensure Compliance with DBRA Provisions:** Ensure contractor compliance with the terms of the contract, as required by [29 CFR 5.6.](#)

The contract clauses set forth in this term and condition, along with the correct wage determinations, will be considered to be a part of every prime contract covered by Davis-Bacon and Related Acts (see [29 CFR 5.1](#)), and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Department of Labor grants a variance, tolerance, or exemption. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

**F. DBRA Compliance Monitoring Requirement**

Reasonable and necessary costs for DBRA compliance are allowable and allocable grant costs. Such costs include, but are not limited to, the procurement of a payroll reporting and compliance management software product to meet the documentation and reporting requirements under [29 CFR 5.5\(a\)\(3\)\(ii\)](#) for all construction projects assisted under this award.

## **2. Mega Construction Project Program**

The Recipient must work with the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) to identify projects that are within the scope of OFCCP's Mega Construction Project Program, which includes federally-assisted projects with a total project value above \$35,000,000. If those projects are selected from a wide range of federally-assisted projects over which OFCCP has jurisdiction, those projects will be required to participate and partner with OFCCP in the OFCCP Mega Construction Projects program.

## **3. Compliance with Federal Statutes and Regulations**

The Recipient agrees to comply with other applicable federal statutes and regulations related to labor and equitable workforce development as well as to enforce compliance with Subrecipients, contractors, and other partners (e.g., by including such provisions in contractual agreements). This includes but is not limited to applicable health and safety regulations as administered by the Occupational Safety and Health Administration.

## **4. Free and Fair Choice to Join a Union**

In accordance with Executive Order 14082 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022), the Recipient agrees to design and implement a policy to increase high-quality job opportunities for American workers and improving equitable access to these jobs, including in traditional energy communities, through the timely implementation of requirements for prevailing wages and registered apprenticeships and by focusing on high labor standards and the free and fair chance to join a union.

In accordance with the EPA General Terms and Conditions, grant funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

## **5. Labor and Equitable Workforce Development Implementation Plan**

In accordance with Executive Order 14082 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022), by December 31, 2024, the Recipient must submit a Labor and Equitable Workforce Development Implementation Plan to the EPA Project Officer. The Implementation Plan should articulate policies, practices, and procedures adopted by the Recipient to maximize high-quality jobs and workforce development outcomes on projects assisted with the award. Examples of how this can be demonstrated include, but are not limited to:

- Mechanisms for promoting job quality and evaluating labor standards on projects being considered for and/or receiving Financial Assistance;
- Plans to support workforce development as part of Market-Building Activities;
- Current and planned partnerships with labor and workforce development organizations, including the purpose of those partnerships;
- Mechanisms for maximizing training and employment opportunities for participants in Registered Apprenticeship Programs on projects, including apprenticeship utilization targets, as applicable;



- Mechanisms for creating high-quality job training and employment opportunities available to residents of low-income and disadvantaged communities through projects and other program activities; and
- Processes for promoting Project Labor Agreements on construction projects above \$25,000,000, as appropriate, in alignment with Executive Order 14063 (Use of Project Labor Agreements for Federal Construction Projects) and Executive Order 13502 (Use of Project Labor Agreements for Federal Construction Projects), as well as other types of binding agreements that promote strong workforce outcomes, such as Community Workforce Agreements and Community Benefits Agreements.

The Recipient may use or reference materials already submitted to EPA as part of its submission of the Implementation Plan, where relevant.

Note that EPA may make the information from this plan available to the public, either in whole or in part, through disclosing copies of the reports as submitted or using the content of the reports to prepare EPA reporting documents. Pursuant to 2 CFR 200.338, the Recipient agrees to redact personally identifiable information (PII) and mark confidential business information (CBI) accordingly. Information claimed as CBI will be disclosed only to the extent, and by means of the procedures, set forth in 40 CFR Part 2, Subpart B. As provided at 40 CFR 2.203(b), if no claim of confidential treatment accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the Recipient.

#### **M. Build America, Buy America Act**

The Build America, Buy America Act – Public Law 117-58, requires the EPA to ensure that for any activity related to the construction, alteration, maintenance, or repair of infrastructure, “none of the funds made available for a Federal Financial Assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” (P.L. 117-58, Secs 70911 – 70917).

The Recipient is bound to the [EPA Build America, Buy America General Term and Condition](#), which outlines the Build America, Buy America requirements that all Recipients of EPA Financial Assistance awards must comply with.

If the Recipient encounters a situation that presents uncertainties regarding Build America, Buy America applicability under this Assistance Agreement, the Recipient must discuss the situation with the EPA Project Officer before authorizing work on the project.

#### **N. Governance Requirements**

The Recipient agrees to comply with the following governance requirements starting December 31, 2024. The governance requirements “flow-down” to Financial Assistance Subrecipients that have received in excess of \$10,000,000 in NCIF subgrants but not to other subrecipients. The governance requirements are waived for (i) any entity that has been determined by the U.S. Treasury’s CDFI Fund to meet the CDFI certification requirements set forth in 12 CFR 1805.201 and (ii) any entity whose specific governance structure is set forth in State, Tribal, or local law.

The Recipient (or Subrecipient) may meet all or some of the governance requirements through the parent entity, provided the Recipient (or Subrecipient) is subject to the governance of the parent entity and the Recipient (or Subrecipient) is wholly-controlled by the parent entity. Similarly, the governance requirements may be waived for the Recipient (or Subrecipient) through the parent entity meeting the CDFI certification requirements set forth in 12 CFR 1805.201, provided the Recipient (or Subrecipient) is wholly-controlled by the parent entity.

### **1. Board Size and Composition**

The Recipient agrees to ensure that its board size in terms of number of members (excluding advisory committees) is commensurate with the scope of oversight and monitoring activities as well as the scale, complexity, and risk profile of the Recipient's EPA-approved workplan as well as other business activities. The board must have a sufficient number of members to adequately staff each of its committees.

The Recipient agrees to ensure that its board consists of members that are qualified with relevant expertise, skills, and track record as well as representative members (including from Low-Income and Disadvantaged Communities).

### **2. Board Independence**

The Recipient agrees to ensure that the majority of the board is independent, in accordance with the Internal Revenue Service's definition of "independent" for the purposes of Form 990 reporting.

### **3. Board Committees**

The Recipient agrees to have the following board-level committees to oversee and monitor management, with each committee staffed by members qualified to execute the committee's objectives. While the Recipient need not adhere to the exact naming convention or structure in this term and condition, each of the responsibilities must be covered by board-level committees at all times during the Period of Performance; for the avoidance of doubt, one committee may perform the responsibilities of one or more of the committees specified below.

1. An investment or credit committee to oversee and approve investment or credit decisions;
2. A risk management committee to oversee the formulation and operationalization of the risk management framework;
3. An audit committee to oversee the integrity of reporting and internal controls and the performance of audit functions, with a majority independent members on such committee;
4. A nomination/governance committee to oversee nomination and succession of board and senior management, with a majority independent members on such committee; and
5. A compensation committee to oversee board as well as senior management and staff compensation, with a majority independent members on such committee.

Further, the Recipient agrees to act in good faith to ensure each committee obtains information from management, auditors, or other third-parties necessary to discharge their duties.

### **4. Board Policies and Procedures**

The Recipient agrees to enforce board policies and procedures including, among others, those that ensure strong ethics and mitigate conflicts of interest; ensure appropriate board training to review and assess internal risk assessments for all of the organization's significant activities; and ensure regular board engagement, including frequency of meetings and attendance procedures.

The Recipient agrees to require recusals from any officers or members of the board of directors with a personal or organizational conflict of interest in the decision-making and management related to financial transactions under this award. Such recusals must include but not be limited to decision-making and management of Subawards, participant support cost payments, Acquisitions of Intangible Property to or from any organization in which an officer or member of the board of directors or their immediate family is directly employed by or has a consulting or other contractual relationship with, serves on the board, or is otherwise affiliated with the organization. The term “immediate family” has the same meaning as that term in the [EPA's Final Financial Assistance Conflict of Interest Policy](#).

## **O. Consumer Protection Requirements**

The Recipient agrees to carry out the following consumer protection requirements to the extent that the Recipient directly interacts, transacts, or contracts with consumers in the provision of Financial Assistance to Qualified Projects:

1. Comply with the Equal Credit Opportunity Act, the Truth in Lending Act, the Consumer Financial Protection Act, and other federal consumer protection laws that apply;
2. Provide written disclosures to consumers containing information in clear and understandable language regarding purchasing, leasing, or financing as well as the costs associated with a consumer’s transaction;
3. With regard to solar products or services, provide written disclosures on the impact of the solar project on the consumer’s ability to sell or refinance their home and recording of any liens on the home; consumer rights; contact information for the solar project provider; and complaint procedures for the consumer if they have a problem with the solar project or sales process;
4. Require that all in-person and telephone marketing that directly interacts, transacts, or contracts with consumers be conducted in a language in which the consumer subject to the marketing is able to understand and communicate; and
5. Maintain a process for receiving, monitoring, and resolving consumer complaints, including ensuring that complaints are appropriately addressed and referring complaints, when necessary, to the appropriate government regulatory agency.

The Recipient agrees to monitor and oversee Subrecipients and contractors with respect to these consumer financial protection requirements to the extent that they directly interact, transact, or contract with consumers, in accordance with 2 CFR 200.332(d) and 2 CFR 200.318.

## **P. Financial Risk Management Requirements**

### **1. Cash Management Requirements**

The Recipient must deposit and maintain advance payments of Federal funds exclusively in insured accounts, in accordance with 2 CFR 200.305(b)(7)(ii). As provided in 2 CFR 200.1, an advance payment is “a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes;” a Recipient drawing down funds from ASAP prior to disbursement for actual and allowable project costs constitutes an advance payment. Interest income earned on the advance payment from EPA to the Recipient prior to disbursement is subject to the requirements on interest earned within 2 CFR 200.305(b)(8) and 2 CFR 200.305(b)(9); consequently, such interest earned in excess of \$500 must be remitted annually to the Department of Health and Human Services Payment Management System.

The Recipient is authorized to maintain Program Income in two types of accounts:

1. Insured accounts, including in amounts in excess of the federal insurance limit of \$250,000.
2. Accounts where such income is used to purchase (i) U.S. Savings Bonds, U.S. Treasury Marketable Securities, and U.S. Agency Marketable Securities, provided the duration of such instruments is no longer than 90 calendar days and that such instruments are held-to-maturity if purchased directly, or (ii) short-term money market funds consisting solely of the aforementioned investment instruments and offering daily investor redemptions.

Interest income and other returns earned on funds that have already been disbursed is considered additional Program Income consistent with 2 CFR 1500.8(d) and is not subject to the requirements on interest earned within 2 CFR 200.305(b)(8) and 2 CFR 200.305(b)(9).

## **2. Financial Health Metrics**

The Recipient agrees to report the following financial health metrics at the entity-level on an annual basis in accordance with its fiscal year as well as on behalf of each Financial Assistance Subrecipient that receives in excess of \$10,000,000 in NCIF subgrants. The metrics are due to the EPA Project Officer within 30 calendar days after submission of the reporting entity's Single Audit to the Federal Audit Clearinghouse's Internet Data Entry System and may be submitted through the Organizational Disclosures form. The requirement for submission of financial health metrics is not applicable for any fiscal year in which the reporting entity did not meet the requirements of 2 CFR Subpart F—Audit Requirements. The first financial health metrics are due in 2025.

1. Net Asset Ratio: The net asset ratio is defined as net assets divided by total assets.
2. Current Ratio: The current ratio is defined as current assets divided by current liabilities, where current assets is equal to the value of all assets that are reasonably expected to be converted into cash within the coming 12-month period in the normal course of business and current liabilities is equal to the total value of all debts or obligations that must be paid in the coming 12-month period.
3. Delinquency Rate: The delinquency rate is defined as the value of loans outstanding that are 90+ calendar days delinquent divided by the value of loans outstanding, where loans 90+ calendar days delinquent includes those with outstanding balances 90+ calendar days overdue and still accruing interest as well as those in nonaccrual status.
4. Net Charge-Off Rate: The net charge-off rate is defined as the value of loans charged-off over the past fiscal year, minus the value of loan recoveries over the past fiscal year, divided by the value of loans outstanding.
5. Concentration: The concentration of the portfolio, as demonstrated by calculating and reporting on recipient-level exposure, defined as on-balance sheet exposures to a single consolidated entity over all on-balance sheet exposures, for top ten highest exposures.

Note, the Delinquency Rate and Net Charge-Off Rate may exclude the value of loans which include an element of forgiveness, if and only if such forgiveness was established in the terms governing the financial product at origination.

The EPA Project Officer will consider Recipient and, where applicable, Subrecipient performance against these financial health metrics only to the extent by which they materially impair the Recipient's ability to execute the EPA-approved workplan when assessing whether the Recipient is making sufficient progress in implementing the EPA-approved workplan under this Assistance Agreement, as specified in the Sufficient Progress General Term and Condition.

### **3. Climate-Related Financial Risks**

The Recipient agrees to comply with Executive Order 11988 (Floodplain Management). This may include accounting for and evaluating practicable alternatives or other mitigation related to ameliorating flood risks and protecting flood plains as part of its financial risk management policies and procedures.

The Recipient agrees to comply with Executive Order 14030 (Climate-Related Financial Risk). This may include accounting for climate-related financial risks—including physical and transition risks—in its financial risk management policies and procedures.

### **4. Additional Requirements**

The Recipient agrees to not subordinate EPA's interest in grant funds that have not yet been used for program purposes in a manner that waives EPA's claim for compensation under any applicable statutory claims, 2 CFR Part 200, or common law. Once a Recipient uses grant funds for program purposes and incurs a financial obligation, as defined under 2 CFR 200.339, EPA will only seek claims on those funds in the event that they were used for costs that do not comply with the terms and conditions of the Award Agreement or if there is adequate evidence of waste, fraud, or abuse, prompting adverse action by EPA per 2 CFR 200.339. This does not prohibit the use of subordinated debt as a form of Financial Assistance.

The Recipient agrees to provide Financial Assistance Subrecipients with training and technical assistance on program-related matters, including on prudent financial risk management practices, in accordance with 2 CFR 200.332(e).

## **Q. Historic Preservation**

### **National Historic Preservation Act (NHPA)**

Section 106 of the NHPA requires all federal agencies to consider the effects of their undertakings, including the act of awarding a grant, on historic properties, and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. The Recipient must assist the EPA Project Officer in complying with NHPA if any activities funded under this grant impact a historic property. Historic properties can include: (a) land or buildings listed in or eligible for listing on the National Register of Historic Places; (b) archaeologically sensitive areas or in an area where traditional cultural properties are located; and (c) properties that are associated with significant historic events, are associated with significant people, embody distinctive characteristics, and contain important precontact information.

The Recipient should work with their Project Officer to ensure that Subrecipients are available to work with EPA on any required consultation process with the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) prior to commencing the project to ensure compliance with Section 106 of the NHPA.

If NHPA compliance is required, necessary Section 106 consultation activities, such as historic or architectural surveys, structural engineering analysis of buildings, public meetings, and archival photographs, can be considered allowable and allocable grant costs.

### **Archeological and Historic Preservation Act (AHPA)**

This law applies if archeologically significant artifacts or similar items are discovered after an EPA-funded construction project has begun, and compliance may be coordinated with the NHPA, discussed above. The AHPA requires federal agencies to identify relics, specimens, and other forms of scientific,

prehistorical, historical, or archaeological data that may be lost during the construction of federally-sponsored projects to ensure that these resources are not inadvertently transferred, sold, demolished or substantially altered, or allowed to deteriorate significantly. The Recipient must ensure that Subrecipients performing construction projects are aware of this requirement, and the Recipient must notify EPA if the AHPA is triggered.

#### **R. Uniform Relocation Assistance and Real Property Acquisition Policies Act**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) applies to acquisitions of property and displacements of individuals and businesses that result from federally assisted programs. The URA and Federal Highway Administration's implementing regulations at 49 CFR Part 24 require the Recipient to follow certain procedures for acquiring property for purposes under the federal award, such as notice, negotiation, and appraisal requirements. The statute and regulations also contain requirements for carrying out relocations of displaced persons and businesses, such as reimbursement requirements for moving expenses and standards for replacement housing. The Recipient must comply with, and ensure Subrecipients comply with, the URA and 49 CFR Part 24 if an EPA-funded acquisition of property results in permanent displacement of individuals or businesses. Note that although the URA does not apply to temporary displacement of residents, the cost for temporary relocation of residents may be an allowable cost under the "necessary and reasonable for the performance of the federal award" provision of 2 CFR 200.403(a). The Recipient must obtain prior approval of the EPA Project Officer and EPA Award Official for the allowability of costs for temporary relocation of residents.

#### **S. Remedies for Non-Compliance**

The Recipient agrees to comply with the terms and conditions of the Award Agreement. Should the Recipient fail to adhere to the terms and conditions of the Award Agreement, the EPA may impose additional conditions as set forth in 2 CFR 200.208. If the EPA determines that noncompliance cannot be remedied by imposing additional conditions, the EPA may seek remedies under 2 CFR 200.339 up to and including termination and the recovery of unallowable costs as provided in 2 CFR 200.343. As specified in 2 CFR 200.343, which will remain in effect throughout the term of this award, costs during suspension or after termination are allowable if (a) the costs result from financial obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it, and (b) the costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

The Recipient agrees to comply with the statutory requirements of Section 134 of the Clean Air Act. Should the Recipient violate the statutory requirements of Section 134 by failing to use grant funds in accordance with Section 134 or by failing to ensure that the activities of Subrecipients are in accordance with Section 134, EPA may seek remedies under Section 113, which may subject the Recipient to civil administrative penalties through an EPA administrative enforcement action, civil penalties and/or injunctive relief through a civil judicial enforcement action by the U.S. Department of Justice (DOJ), or criminal penalties through a DOJ criminal judicial enforcement action.

Notwithstanding any other provision of this Award Agreement, EPA will not determine that Recipient has failed to comply with the terms and conditions of the Award Agreement, without providing an opportunity to remedy under 2 CFR 200.208, for good faith efforts to comply with the Additional

Programmatic Terms and Conditions regarding Build America, Buy America or Labor and Equitable Workforce Development Requirements.

## **T. Clarifications to EPA General Terms and Conditions**

EPA agrees to make the following clarifications to the EPA General Terms and Conditions. These clarifications expand on, rather than replace or modify, the EPA General Terms and Conditions. The Recipient agrees to comply with these clarifications.

### **1. Access to Records**

In accordance with 2 CFR 200.337, EPA and the EPA Office of Inspector General (OIG) have the right to access any documents, papers, or other records, including electronic records, of the Recipient and any Subrecipient which are pertinent to this award in order to make audits, examinations, excerpts, and transcripts. This right of access also includes timely and reasonable access to the Recipient and Subrecipient's personnel for the purpose of interview, discussion, and on-site review related to such documents. This right of access shall continue as long as the records are retained.

### **2. Indirect Cost Rate**

The Recipient must exclude costs for acquisitions of Intangible Property from any calculations of modified total direct costs (MTDC), as defined in 2 CFR 200.1. Intangible Property is not a "service" and therefore is not included in MTDC. The Recipient should note that Subrecipients that receive loans cannot charge an indirect cost rate against their loans and that entities that receive Participant Support Costs cannot charge an indirect cost rate against their participant support cost payments.

*MTDC* means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each Subaward (regardless of the Period of Performance of the Subawards under the award). *MTDC* excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, Participant Support Costs and the portion of each Subaward in excess of \$25,000.

In the event that the Recipient is compensating an affiliated entity for its direct and indirect costs related to use of employees, the Recipient must not charge its indirect cost rate against any of these costs.

### **3. Sufficient Progress**

The EPA Project Officer may assess whether the Recipient is making sufficient progress in implementing the EPA-approved workplan under this Assistance Agreement within 90 calendar days of June 30, 2025 as well as within 90 calendar days of June 30 of each year thereafter during the Period of Performance. "Sufficient progress" shall be assessed based on a comparison of the Recipient's planned versus actual expenditures as well as planned versus actual outputs/outcomes. As noted under the Financial Risk Management Programmatic Term and Condition, the Recipient's financial health, as measured by the required Financial Health Metrics, are also an input in this process. This term and condition "flows down" to Subrecipients, with the Recipient required to assess whether each Subrecipient is making sufficient progress in implementing the workplan under its Subaward Agreement; the Recipient may increase the frequency and scope of the review of sufficient progress of Subrecipients, in accordance with 2 CFR 200.332 *Requirements for Pass-Through Entities*.

If the EPA Project Officer determines that the Recipient has not made sufficient progress in implementing its EPA-approved workplan, the Recipient, if directed to do so, must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer pursuant to 2 CFR 200.208.

EPA will not find that the Recipient has failed to make sufficient progress in implementing its EPA-approved workplan based on shifts between types of Financial Assistance and/or Qualified Projects over the Period of Performance (or other shifts in portfolio allocation, such as by region or market segment, over the Period of Performance). If EPA finds the Recipient has failed to achieve sufficient progress on deployment of Financial Assistance to Qualified Projects in general, the Recipient will have an opportunity to implement a corrective action plan pursuant to 2 CFR 200.208.

#### **4. Termination**

Notwithstanding the General Term and Condition “Termination,” EPA maintains the right to terminate the Assistance Agreement only as specified in 2 CFR 200.339 and the version of 2 CFR 200.340 applicable to EPA grants as of July 1, 2024, pursuant to 89 FR 55262 (July 3, 2024), when the noncompliance with the terms and conditions is substantial such that effective performance of the Assistance Agreement is materially impaired or there is adequate evidence of waste, fraud, material misrepresentation of eligibility status, or abuse, prompting adverse action by EPA per 2 CFR 200.339, through either a partial or full termination. If EPA partially or fully terminates the Assistance Agreement, EPA must (1) de-obligate uncommitted funds and re-obligate them to another Eligible Recipient to effectuate the objectives of Section 134 of the Clean Air Act, 42 USC § 7434 within 90 days of the de-obligation and (2) amend the Recipient’s Assistance Agreement to reflect the reduced amount, based on the de-obligation. In accordance with 2 CFR 200.341, EPA will provide the Recipient notice of termination.

#### **U. Period of Performance**

The Period of Performance under this Award Agreement will end on the date specified in the Notice of Award. However, the Period of Performance may end prior to the date specified in the Notice of Award if all required work of the Federal award has been completed, in accordance with 2 CFR 200.344. In accordance with 2 CFR 200.344(b), the Recipient agrees to liquidate all financial obligations incurred under the award no later than 120 calendar days after the end date of the Period of Performance. In this context, to “liquidate all financial obligations” means to pay outstanding bills, such as the payment of staff salaries accrued during the Period of Performance but for which the due date falls after the end date of the Period of Performance. To “liquidate all financial obligations” does not mean to liquidate, terminate, or accelerate outstanding obligations related to the provision of Financial Assistance to Qualified Projects at the end of the Period of Performance, which would continue to be subject to the Closeout Agreement.

The Recipient should note that the Recipient will not be considered to have met the requirements for closeout under its award under 2 CFR 200.344 so long as any Subrecipient has not met the requirements for closeout under its subaward under 2 CFR 200.344.

Notwithstanding the Extension of Project/Budget Period Expiration Date General Term and Condition, in accordance with 2 CFR 200.308(e)(2), the Recipient is authorized to initiate a one-time extension of the Period of Performance by up to 12 months without prior EPA approval, provided that the extension complies with the requirements 2 CFR 200.308(e)(2). In accordance with 2 CFR 200.308(e)(2), the Recipient must “notify the Federal awarding agency in writing with the supporting reasons and revised



period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award.”

## **V. Closeout Agreement**

As provided at 2 CFR 200.307(f) and 2 CFR 1500.8(d), after the end of the Period of Performance of the Assistance Agreement, the Recipient may keep and use Program Income remaining at the end of the Assistance Agreement and use Post-Closeout Program Income in accordance with this term and condition. The Closeout Agreement goes into effect for this Assistance Agreement the day after the Assistance Agreement Period of Performance ends, unless the Recipient and the EPA Grants Management Officer or Award Official mutually agree on an alternative date.

In accordance with 2 CFR 200.344, EPA will proceed to closeout the Award Agreement and enter the Closeout Period even if the Recipient has not met the requirements for closeout (including but not limited to submitting the final report as specified in the Performance Reporting Programmatic Term and Condition). As provided in 2 CFR 200.344: “If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close out the Federal award with the information available.” This Closeout Agreement is therefore self-executing.

This term and condition is the entire Closeout Agreement between the EPA and the Recipient. If any provisions of this Closeout Agreement are invalidated by a court of law, the parties shall remain bound to comply with the provisions of this Closeout Agreement that have not been invalidated. The Closeout Agreement will be interpreted and, if necessary, enforced under Federal law and regulations. The Recipient shall comply with the requirements specified below as part of the Closeout Agreement. Definitions within 2 CFR 200.1, including as supplemented through *I. Definitions* of this award agreement, apply identically to how they do under the Period of Performance, unless otherwise noted.

As specified in the Flow-Down Requirements Programmatic Term and Condition, the Closeout Agreement Programmatic Term and Condition flows down to Subrecipients such that the Recipient must enter into a corresponding Closeout Agreement with any Subrecipient that has Program Income or anticipates generating Post-Closeout Program Income at the end of the Subrecipient’s Period of Performance.

### **1. Allowable Activities**

The Recipient shall use Post-Closeout Program Income in accordance with the Allowable and Unallowable Activities Programmatic Term and Condition, as applicable.

### **2. Reporting Requirements**

The Recipient shall submit program performance reports to the EPA Project Officer in accordance with the Performance Reporting Programmatic Term and Condition through September 30, 2031, as applicable. After September 30, 2031, the Recipient shall disclose annual reports publicly, as described in the Performance Reporting Programmatic Term and Condition, rather than meeting the reporting requirements described in the Performance Reporting Programmatic Term and Condition.

### **3. LIDAC Expenditure Requirements**

The Recipient shall expend 40% of Post-Closeout Program Income for the purposes of providing Financial Assistance in Low-Income and Disadvantaged Communities and comply with this requirement in accordance with the LIDAC Expenditure Requirement Programmatic Term and Condition, as

applicable. Funds used for the purposes of providing Financial Assistance may include Financial Assistance to Qualified Projects; Predevelopment Activities; Market-Building Activities; and Program Administration Activities. This requirement applies to the entire award provided to the Recipient but does not “flow down” to each Subrecipient.

#### **4. Cash Management Requirements**

The Recipient must maintain Post-Closeout Program Income in accordance with the Cash Management Requirements in the Financial Risk Management Requirements Programmatic Term and Condition, as applicable. However, the Recipient may submit a Cash Management Policy for review and approval by the EPA Project Officer, which can authorize the Recipient to deviate from the aforementioned Cash Management Requirements.

#### **5. Financial Health Metrics**

The Recipient agrees to report financial health metrics to the EPA Project Officer in accordance with the Financial Health Metrics in the Financial Risk Management Requirements Programmatic Term and Condition (on behalf of the Recipient as well as any Financial Assistance Subrecipient that has received in excess of \$10,000,000 in NCIF subgrants) through September 30, 2031, as applicable. The requirement for submission of financial health metrics is not applicable for any fiscal year in which the reporting entity did not meet the requirements of 2 CFR Subpart F—Audit Requirements. The Recipient agrees to add the following two financial health metrics as part of the financial health metrics for the Closeout Period.

1. Self-Sufficiency Ratio: The self-sufficiency ratio is defined as earned revenue divided by operating expenses, where earned revenue is equal to the value of all income earned from normal business transactions and operating expenses is equal to the value of all expenses incurred as a part of normal business operations over the prior 12-month period, not including interest, financing, depreciation, amortization, and loan loss provision expense.
2. Operating Cash Ratio: The operating cash ratio is defined as cash and cash equivalents divided by operating expenses, where cash and cash equivalents is equal to the total value of all cash and cash equivalent items that can be converted into cash immediately and operating expenses is equal to the value of all expenses incurred as a part of normal business operations over the prior 12-month period, not including interest, financing, depreciation, amortization, and loan loss provision expense.

After September 30, 2031, the Recipient shall report on these financial health metrics publicly rather than disclosing the metrics to the EPA.

#### **6. Conflicts of Interest**

The Recipient agrees to comply with the conflict of interest requirements described in the Conflicts of Interest Programmatic Term and Condition through September 30, 2031.

#### **7. Remedies for Non-Compliance**

The Recipient agrees to identical remedies for non-compliance that are specified in the Remedies for Non-Compliance Programmatic Term and Condition, as applicable. During the Closeout Period, the workplan and budget submitted for the Period of Performance are no longer applicable.

#### **8. Suspension and Debarment**

The Recipient agrees to ensure that Post-Closeout Program Income is not transferred to entities that are currently suspended, debarred, or otherwise declared ineligible under 2 CFR Part 180. The Recipient can maintain compliance with this requirement through either (1) checking the System for Award

Management (for Subrecipients, Contractors, or Program Beneficiaries) or (2) obtaining eligibility certifications from counterparties (for Program Beneficiaries). The Recipient may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM> to determine whether an entity is presently excluded or disqualified.

### **9. Non-Discrimination**

The Recipient must use Post-Closeout Program Income in compliance with EPA regulations at 40 CFR Part 7 regarding non-discrimination in EPA-funded programs, as applicable.

**Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, The Age Discrimination Act of 1975.** The Recipient agrees to comply with these laws, prohibiting discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability or age, in programs or activities receiving federal financial assistance.

Pursuant to EPA's regulations on "Nondiscrimination in Programs receiving Federal Assistance from the Environmental Protection Agency" in 40 CFR Part 5 and 40 CFR Part 7, the Recipient agrees, and will require all Subrecipients to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age.

**Executive Order 11246 Part III of Executive Order No. 11246 (September 24, 1965) as amended prohibits discrimination in Federally assisted construction activities.** As provided in section 301 of the Executive Order, the Recipient will ensure that Subrecipients include the seven clauses specified in section 202 of the Order in all construction contracts. Section 302 defines "Construction contract" as "any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to Real Property." Contracts less than \$10,000 are exempt from the requirements of the Order.

### **10. Record-Keeping**

In accordance with 2 CFR 200.334(e), the Recipient shall maintain appropriate records to document compliance with the requirements of the Closeout Agreement (i.e., records relating to the use of Post-Closeout Program Income) for a three-year period following the end of the Closeout Agreement, unless one of the conditions specified in the regulation applies. Note that this requirement applies if and when the Closeout Agreement is terminated, in accordance *with Item 14. Termination of the Closeout Agreement*. EPA may obtain access to these records to verify that Post-Closeout Program Income has been used in accordance with the terms and conditions of this Closeout Agreement. Records and documents relating solely to performing the grant agreement prior to closeout may be disposed of in accordance with 2 CFR 200.334.

Additionally, the Recipient must maintain adequate accounting records for how Post-Closeout Program Income is managed and spent as well as all other appropriate records and documents related to the activities conducted using Program Income.

The Recipient agrees to ensure that Subrecipients comply with Federal Funding Accountability and Transparency Act (FFATA) reporting requirements. The Recipient may use the terms of its Subaward Agreements or other effective means to meet its responsibilities.

### **11. Other Federal Requirements**

The following other federal requirements apply to the use of Post-Closeout Program Income under the Closeout Period to the same extent they do under the terms of the Performance Period:

- Davis-Bacon and Related Acts, as specified in the Labor and Equitable Workforce Development Requirements Programmatic Term and Condition;
- Build America, Buy America Act, as specified in the Build America, Buy America Act Programmatic Term and Condition and Build America, Buy America General Term and Condition; and
- National Historic Preservation Act, as specified in the Historic Preservation Programmatic Term and Condition.

No other federal requirements apply to the use of Post-Closeout Program Income under the terms of this Closeout Agreement, other than those specified in this Closeout Agreement.

### **12. Audit Requirements**

The Recipient agrees to meet the requirements of [2 CFR Subpart F—Audit Requirements](#) during the Closeout Period, as activities related to the Federal award referenced in 2 CFR 200.502(a) include activities during the Closeout Period.

Through September 30, 2031, the Recipient agrees to notify the EPA Project Officer within 30 calendar days of the submission of the Recipient’s Single Audit to the Federal Audit Clearinghouse’s Internet Data Entry System. This requirement “flows-down” to each Subrecipient in that the Recipient must also notify the EPA Project Officer within 30 calendar days of the Subrecipient’s Single Audit to the Federal Audit Clearinghouse’s Internet Data Entry System.

### **13. Amendments to the Closeout Agreement**

The EPA Award Official or Grants Management Officer and the Recipient must agree to any modifications to the terms and conditions of this Closeout Agreement. Agreed-upon modifications must be in writing. Oral or unilateral modifications shall not be effective or binding.

### **14. Termination of the Closeout Agreement**

The Closeout Agreement terminates when either of the following situations occur: (1) the Recipient holds a de minimis amount of Post-Closeout Program Income and does not anticipate generating more than a de minimis amount of additional Post-Closeout Program Income or (2) the Recipient and the EPA Award Official or Grants Management Officer mutually agree to terminate the Closeout Agreement, with the Recipient remitting current and future Post-Closeout Program Income to the federal government.

The ability to terminate the Closeout Agreement flows down to Subrecipients, as a Closeout Agreement between the Recipient and Subrecipient terminates when either (1) the Subrecipient holds a de minimis amount of Post-Closeout Program Income and does not anticipate generating more than a de minimis amount of additional Post-Closeout Program Income or (2) the Subrecipient and the Recipient mutually agree to terminate the Closeout Agreement, with the Subrecipient remitting current and future Post-Closeout Program Income to the Recipient.

The de minimis amount must be agreed-upon in writing by the Recipient and the Director of the Office of the Greenhouse Gas Reduction Fund (or equivalent), prior to the Recipient using the “de minimis” criteria to terminate the Closeout Agreement.

### **15. Points of Contact**

The points of contact for the Closeout Agreement are the EPA Project Officer (for the EPA) and the Authorized Representative on the EPA Key Contacts Form most recent submitted to the EPA Project Officer (for the Recipient). If changes are made to these points of contact, the respective party must notify the other within 30 calendar days of the planned change.

### **W. Legal Counsel**

The Recipient agrees to appoint appropriate legal counsel if counsel is not already available.

### **X. Accounting Principles**

The Recipient must account for all award funds in accordance with Generally Accepted Accounting Principles (GAAP) as in effect in the United States.

The Recipient must segregate and account for the award funds separately from all other program and business accounts. Additionally, the Recipient must segregate and account for Program Income separately from all other program and business accounts.

### **Y. Internal Controls**

The Recipient must comply with standards for internal controls described at [2 CFR 200.303](#). 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 <https://www.gao.gov/assets/gao-14-704g.pdf>

### **Z. Audits**

The Recipient agrees to meet the requirements of [2 CFR Subpart F—Audit Requirements](#) during the Period of Performance, as described in the Audit Requirements General Term and Condition. Additionally, in accordance with 2 CFR 200.332 and 2 CFR 200.501(h), the Recipient agrees to disclose directly to the EPA Project Officer audited financial statements from any for-profit Subrecipient that expends \$750,000 or more of EPA funds from the Recipient’s grant program in the Subrecipient’s fiscal year. Any for-profit Subrecipient that must disclose such financial statements is required to select an independent auditor consistent with the criteria set forth in 2 CFR 200.509 and obtain an independent audit substantially similar in scope and quality to that of the Single Audit (see 2 CFR 200.500 et. seq.). The Subrecipient must submit the audit to the Recipient within 9 months of the end of the Recipient’s fiscal year or 30 days after receiving the report from an independent auditor, whichever is earlier.

The Recipient agrees to notify the EPA Project Officer within 30 calendar days of the submission of the Recipient’s Single Audit to the Federal Audit Clearinghouse’s Internet Data Entry System. This requirement “flows-down” to each Subrecipient in that the Recipient must also notify the EPA Project Officer within 30 calendar days of the Subrecipient’s Single Audit to the Federal Audit Clearinghouse’s Internet Data Entry System.

### **AA. EPA Project Officer Oversight and Monitoring**

Pursuant to 2 CFR 200.206(b) and (c), 2 CFR 200.208(b)(1), and 2 CFR 200.208(c)(3)(4) and (6), EPA has determined that specific conditions are necessary to ensure that the National Clean Investment Fund program is effectively carried out by Eligible Recipients that have not previously managed grants with the same scale and complexity of this agreement. These specific conditions will remain in effect throughout the Period of Performance unless the EPA Award Official determines, based on a request by the Recipient or EPA Project Officer, that some or all of the specific conditions are no longer necessary for EPA to manage programmatic or financial risks.

The EPA Project Officer, or other EPA staff designated by the EPA Project Officer, will oversee and monitor the grant agreement through activities including:

1. Upon request, requiring the Recipient to participate in an annual workshop (i.e., one workshop per calendar year) with other Recipients under the National Clean Investment Fund and/or Clean Communities Investment Accelerator; the EPA Project Officer will contact the Recipient to finalize details for each annual workshop.
2. Participating in project activities, to the extent permissible under EPA policies, such as: consultation on effective methods of carrying out the workplan, provided the Recipient makes the final decision on how to perform authorized activities; coordination by EPA staff with other Recipients under the Greenhouse Gas Reduction Fund and with other EPA programs; and coordination by EPA staff with other federal programs to avoid duplication of effort;
3. Closely monitoring the Recipient's management and oversight of Subrecipients and procedures for ensuring that Program Beneficiaries adhere to program participation guidelines;
4. Closely monitoring the Recipient's performance to verify compliance with the EPA-approved workplan and achievement of environmental results;
5. Participating in periodic telephone conference calls with Recipient personnel to discuss project successes and challenges as well as similar items impacting program performance;
6. Reviewing and commenting on performance reports prepared under the Award Agreement. Note that the final decision on the content of performance reports rests with the Recipient;
7. Verifying that the Recipient is expending the award on allowable activities, including but not limited to reviewing a sample of Financial Assistance transactions to verify compliance with regulatory requirements and the terms and conditions of the Award Agreement; and
8. Periodically reviewing costs incurred by the Recipient as well as its contractors and Subrecipients if needed to ensure appropriate expenditure of grant funds. Note that Recipients are not required to submit documentation of costs incurred before obtaining payments of grant funds.

Subject to approval by the EPA Award Official, the EPA Project Officer and the Recipient may agree to additional areas of oversight and monitoring.

*Method for Reconsideration.* If the Recipient believes that one or more of these specific conditions are not warranted or requires modification, the Recipient must file a written objection naming the specific condition(s) within 21 calendar days of the EPA award or amendment mailing date and must not draw down funds until the objection is resolved. The Recipient must submit the written objection via email to the Award Official, Grant Specialist, and Project Officer identified in the Notice of Award.

#### **AB. Compliant URL Links**

The EPA may elect to develop informational materials to publicize the key characteristics of the

Recipient's GGRF award. These materials may include links to Recipient and/or Subrecipients' websites. The Recipient agrees to work with the EPA Project Officer or another member of GGRF program staff to ensure any such links are compliant with pertinent EPA and government-wide standards.

### **AC. Conflicts of Interest**

The Recipient must comply with requirements on transfers of funds that create actual and potential conflicts of interest, as specified in this term and condition. Transfers of funds include Subawards, Contracts (including but not limited to Acquisitions of Intangible Property), and Participant Support Costs. The definitions in the [EPA's Financial Assistance Conflict of Interest Policy](#) (COI Policy) apply to this term and condition.

There are three categories of transfers of funds, with the requirements differing by each category (as specified in this term and condition):

1. **Transfers with Affiliated Entities:** Subawards, Contracts, and Participant Support Costs to Affiliated Entities or co-invested in projects with Affiliated Entities. An Affiliated Entity is any entity that is related to the Recipient in accordance with the indicia of control described in [2 CFR 180.905](#).
2. **Financial Assistance to Qualified Projects:** Subawards, Contracts (in the form of Acquisitions of Intangible Property), and Participant Support Costs as forms of Financial Assistance to Qualified Projects, unless such transfers are with Affiliated Entities. These transfers are not within the scope of the COI Policy, which states that "subawards in the form of loans, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or similar transactions entered into with borrowers by recipients of revolving loan fund capitalization grants or other EPA financial assistance agreements where Agency funds may be used for lending activities."
3. **Subgrants and Contracts:** Subgrants and Contracts (other than Acquisitions of Intangible Property), unless such transfers are with Affiliated Entities.

Note that all Contracts (including Acquisitions of Intangible Property) must also comply with the conflict of interest standards in 2 CFR 200.318(c).

#### **1. Transfers with Affiliated Entities**

##### **Prior Approval of COI Mitigation Plan**

The Recipient must not transfer funds with Affiliated Entities unless those transfers have been included in an EPA-approved COI Mitigation Plan on Transfers of Funds with Affiliated Entities. The Recipient agrees to seek prior EPA approval for changes to the COI Mitigation Plan on Transfers of Funds with Affiliated Entities.

##### **Quarterly Disclosure Requirement**

The Recipient agrees to disclose, on a quarterly basis, a list of newly originated transfers of funds with Affiliated Entities that are within the scope of its EPA-approved COI Mitigation Plan on Transfers of Funds with Affiliated Entities. Each quarterly disclosure must include (1) a list of such transfers of funds made over the quarter and (2) steps taken to eliminate, neutralize or mitigate any conflicts of interest, in accordance with the EPA-approved COI Mitigation Plan on Transfers of Funds with Affiliated Entities. The Recipient must disclose its own transfers as well as transfers made by Subrecipients.

The quarterly periods for such disclosures are defined as follows: April 1 to June 30; July 1 to September 30; October 1 to December 31; and January 1 to March 31. The Recipient must make the disclosures to the EPA Project Officer within 30 calendar days of the end of the quarterly period.

#### **Project Officer Review**

In accordance with 2 CFR 200.337, the EPA Project Officer may access records relating to a subset of transactions disclosed to review for compliance with the Recipient's EPA-approved COI Mitigation Plan on Transfers of Funds with Affiliated Entities as well as this term and condition. The EPA Project Officer will not have approve transfers of funds in advance but rather will review transfers of funds that have already occurred for compliance.

#### **Waivers and Modifications**

EPA agrees that, for transfers of funds with Affiliated Entities, the requirements of this term and condition apply in lieu of the requirements of the Disclosing Conflict of Interest General Term and Condition.

On a case-by-cases basis, the EPA Project Officer may extend the due date for disclosures on transfers of funds with Affiliated Entities. On a case-by-case basis, the EPA Project Officer may waive or modify the disclosure requirements on transfers of funds with Affiliated Entities.

### **2. Financial Assistance to Qualified Projects**

#### **Quarterly Disclosure Requirement**

The Recipient agrees to disclose, on a quarterly basis, a list of transfers of funds as Financial Assistance to Qualified Projects with actual and potential conflicts of interest. Each quarterly disclosure must include (1) a list of such transfers of funds made over the quarter and (2) steps taken to taken to eliminate, neutralize or mitigate any conflicts of interest, in accordance with any EPA-approved documents related to eliminating, neutralizing, and mitigating conflicts of interest. The Recipient must disclose its own transfers as well as transfers made by Subrecipients.

The quarterly periods for such disclosures are defined as follows: April 1 to June 30; July 1 to September 30; October 1 to December 31; and January 1 to March 31. The Recipient must make the disclosures to the EPA Project Officer within 30 calendar days of the end of the quarterly period.

#### **Project Officer Review**

In accordance with 2 CFR 200.337, the EPA Project Officer may access records relating to a subset of transactions disclosed to review for compliance with the Recipient's EPA-approved documents related to eliminating, neutralizing, and mitigating conflicts of interest as well as this term and condition. The EPA Project Officer will not have approve transfers of funds in advance but rather will review transfers of funds that have already occurred for compliance.

#### **Waivers and Modifications**

On a case-by-cases basis, the EPA Project Officer may extend the due date for disclosures on transfers of funds as Financial Assistance to Qualified Projects. On a case-by-case basis, the EPA Project Officer may waive or modify the disclosure requirements on transfers of funds as Financial Assistance to Qualified Projects.

### **3. Subgrants and Contracts**



The Recipient agrees to comply with the Disclosing Conflict of Interest General Term and Condition for Subgrants and Contracts (excluding Acquisitions of Intangible Property), unless such transfers are with Affiliated Entities. If such transfers are with Affiliated Entities, then the Recipient is required to include them in the process specified in *1. Transfers with Affiliated Entities*.

#### **AD. Prior Approvals**

EPA will only have authority to review and approve revisions to the Recipient's EPA-approved workplan, budget, and other documents if authorized by [2 CFR 200.308](#) or [2 CFR 200.208](#). The Recipient must contact the EPA Project Officer when the EPA has prior approval authority specified below.

##### **Workplan**

For the purposes of this Award Agreement, EPA interprets 2 CFR 200.308(c)(1) to enable the Recipient to revise the activities specified in its **EPA-approved workplan** without prior EPA approval, provided the activities still comply with the terms and conditions of the Award Agreement. The allowable and allocable grant costs are narrowly defined, pursuant to the terms and conditions of the Award Agreement; in accordance with 2 CFR 200.308(c)(1), any changes to the EPA-approved workplan that comply with the statute as well as the terms and conditions would not be a "change in the scope or objective of the project or program." Therefore, so long as the Recipient is updating its EPA-approved workplan with the revised activities in accordance with the terms and conditions of the Award Agreement, EPA will not require prior approval.

##### **Budget**

For the purposes of this Award Agreement, EPA implements 2 CFR 200.308(f) in accordance with Item 1 of the Transfer of Funds General Term and Condition to enable the Recipient to revise the **EPA-approved budget** included in its Award Agreement without prior EPA approval, provided the cumulative funding transfers among Object Class Categories (Personnel, Fringe Benefits, Travel, Equipment, Supplies, Contractual, Construction, Other, Indirect) do not exceed 10% of the total budget approved at time of award. Therefore, so long as the Recipient is updating its EPA-approved budget by transferring funds by less than or equal to these amounts, EPA will not require prior approval.

However, notwithstanding the requirements of 2 CFR 200.308(f), if the Recipient seeks to increase the **amount of funds budgeted for Participant Support Costs**, then it must seek prior approval pursuant to 2 CFR 200.308(c)(5). Further, if the Recipient seeks to **transfer funds for any of the items listed in 2 CFR 200.407**, then it must seek prior approval pursuant to that regulation as well as Item 2 of the Transfer of Funds General Term and Condition.

##### **Transfers of Funds**

2 CFR 200.308(c)(6) requires the Recipient to obtain prior agency approval for "Subawarding, transferring or contracting out of any work under a Federal award." If the **types of transfers are described in the EPA-approved workplan** (including types of transfers to be conducted through Subawards, Participant Support Costs, Acquisitions of Intangible Property, and other Contracts as defined in 2 CFR 200.1), then EPA has provided approval only for the purposes of 2 CFR 200.308(c)(6). Approval for the purposes of this regulation does not mean that such transfers of funds are compliant with the statutes, regulations, and terms and conditions.

##### **Changes in Key Personnel**

2 CFR 200.308(c)(2) requires the Recipient to obtain prior agency approval for a “[c]hange in a key person specified in the application or the Federal award.” If the Recipient is seeking to change a “key person,” as defined by members of the board of directors and senior management whose roles are specified in the most recently submitted Organizational Plan, then the Recipient must obtain prior EPA approval of the qualifications of the key person.

The Recipient must request prior agency approval for a change in “key person” via email through the EPA Project Officer, who will have 8 calendar days to communicate EPA’s disapproval of their qualifications via email. If 8 calendar days have passed without notification of EPA disapproval of the key person’s qualifications pursuant to 2 CFR 200.308(c)(2), the Recipient is authorized to change the “key person.” Once the change is effective, the Recipient must submit an updated Organizational Plan to the EPA Project Officer.

### **AE. Flow-Down Requirements**

As described in 2 CFR 200.101, the terms and conditions of Federal awards flow down to Subawards unless a particular section of 2 CFR 200.101 or the terms and conditions of the Federal award specifically indicate otherwise. As required by 2 CFR 200.332(a)(2) and in accordance with the Establishing and Managing Subawards General Term and Condition, the Recipient agrees to ensure that Subrecipients are subject to the same requirements as those that apply to the pass-through entity’s EPA award.

For the purposes of this Award Agreement, all terms and conditions must flow down to Subawards to the extent they are applicable. The EPA Project Officer is authorized to waive the applicability of programmatic terms and conditions to Subawards, unless the term and condition implements statutory, regulatory, or executive order requirements.

### **AF. Resolution of Disputes Termination Provision**

The Recipient is precluded from drawing down more than 78.46% of the Total Approved Assistance Amount until this condition is removed, which will occur when: a) the EPA Award Official, at the direction of the Grants Competition Disputes Decision Official (GCDDO), provides written confirmation that all administrative disputes under the National Clean Investment Fund and the Clean Communities Investment Accelerator are resolved in accordance with the dispute resolution procedures in Appendix A of the EPA Order 5700: Policy for Competition of Assistance Agreements; or b) the administrative disputes are withdrawn, abandoned or dismissed; or c) December 31, 2024, whichever is sooner.

If EPA does need to alter the Selection Official’s selection and partial funding decisions for this agreement based on a GCDDO determination the EPA Award Official will partially terminate this assistance agreement, de-obligate a portion of the funds that have been obligated and use the de-obligated funds to satisfy the terms of a GCDDO remedy benefiting another entity. The Recipient will then provide an updated workplan and budget information, as needed, to amend the agreement.

For the purposes of this term and condition, EPA’s partial termination may apply not just to obligated funds that have not been drawn down from ASAP but also to Program Income that has been generated and retained by the Recipient under 2 CFR 1500.8(d) and the Program Income Programmatic Term and Condition of this agreement. In accordance with 2 CFR 200.307(e)(1), EPA may require that the amount of funds committed by EPA to the Recipient be reduced by all or some of the Program Income that has been generated by the Recipient.

## **AG. Deposit Account at Financial Agent**

When a depository institution is designated as a financial agent of the United States (the Financial Agent) for the Greenhouse Gas Reduction Fund, then the Recipient will be required to set up and utilize an Account or Accounts at the Financial Agent in accordance with the terms of the Account or Accounts that EPA will set forth in the Award Agreement, including but not limited to through amendments to the Award Agreement.

## **AH. Interim SF-425 Requirement**

The Recipient must submit an SF-425 within 30 calendar days of receiving access to an Account or Accounts at the Financial Agent, with the SF-425 covering all activities supported by funds drawn from ASAP and disbursed for actual and allowable costs, other than funds disbursed into the Account or Accounts at the Financial Agent.

## **AI. Interim Drawdown Procedures**

### **Authority**

Pursuant to 2 CFR 200.206(b) and (c), 2 CFR 200.208(b)(1), and 2 CFR 200.208(c)(3)(4) and (6), EPA has determined that specific conditions are necessary to ensure that the National Clean Investment Fund and Clean Communities Investment Accelerator programs are effectively carried out by Eligible Recipients that have not previously managed grants with the same scale and complexity of this agreement. These specific conditions will remain in effect throughout the Period of Performance unless the EPA Award Official determines, based on a request by the Recipient or EPA Project Officer, that some or all of the specific conditions are no longer necessary for EPA to manage programmatic or financial risks.

### **General Term and Condition**

During the interim period between the start of the Federal award and the date on which the Deposit Account at the Financial Agent is first made available and accessible to the Recipient, the Recipient is subject to the Automated Standard Application Payments (ASAP) and Proper Payment Draw Down General Term and Condition.

This requirement “flows down” to Subrecipients; if a Subrecipient has an actual and immediate cash requirement, then the Recipient is required to draw funds from ASAP on behalf of the subrecipient and disburse the funds to the Subrecipient and the Subrecipient is required to disburse the funds for the actual and immediate cash requirement. Alternatively, as authorized by 2 CFR 200.332(c), the Recipient may impose the reimbursement method as opposed to the advance payment method with Subrecipients as part of “specific subaward conditions” if appropriate as described in 2 CFR 200.208.

### **Interim ASAP Cap**

During the interim period between the start of the Federal award and the date on which the Deposit Account at the Financial Agent is first made available and accessible to the Recipient, the Recipient is subject to a cap on the cumulative amount of its drawdowns. This cap starts at 8.33% (or one-twelfth) of the Recipient’s EPA-approved first-year budget, plus allowable pre-award costs, and increases by 8.33% (or one-twelfth) of the Recipient’s EPA-approved first-year budget on the first calendar day of each month after the date on the Notice of Award until the Deposit Account at the Financial Agent is available

and accessible to the Recipient. The cap shall not exceed 25% (or one-fourth) of the Recipient's EPA-approved first-year budget, plus allowable pre-award costs. The cap shall cease to apply once the Deposit Account at the Financial Agent is available and accessible to the Recipient.

Note that this cap is in addition to, rather than in lieu of, the cap described in the Resolution of Disputes Termination Provision.

### **Interim ASAP Payment Request**

During the interim period between the start of the Federal award and the date on which the Deposit Account at the Financial Agent is first made available and accessible to the Recipient, the Recipient must abide by the following process for ASAP payment requests.

1. The Recipient must only initiate payment requests from ASAP each Thursday (for next business day payments) or Friday (for same business day payments).
2. The Recipient must submit payment requests to ASAP falling into the following four categories, with no more than one payment request in each category per week: (1) Recipient Financial Assistance Activities; (2) Recipient Other Allowable Activities; (3) First-Tier Subrecipient Financial Assistance Activities; or (4) First-Tier Subrecipient Other Allowable Activities. The first category is not applicable under the CCIA.
3. Prior to receiving the payment, the Recipient must provide the EPA Project Officer with the following information: (a) amount of payment requested, (b) category of payment, (c) type(s) of Financial Assistance anticipated, (d) descriptions of Qualified Project(s) anticipated, and (e) a certification from the Recipient's chief executive officer (or equivalent), chief financial officer (or equivalent), chief reporting officer (or equivalent), or chief compliance officer (or equivalent) that the amount of the payment is necessary to execute against the EPA-approved workplan and that financing agreements for identified Qualified Project(s) necessitating the payment have been reviewed by the Recipient's counsel for legal sufficiency. The certification must include the following language: "This certification is a material representation for the purposes of an EPA Financial Assistance Agreement, and knowing and willful false statements may be subject to prosecution under 18 U.S.C. 1001 and other applicable criminal, civil and administrative sanctions." Requirements (c), (d), and (e) are applicable to payment requests for Recipient Financial Assistance Activities and "flow-down" as part of payment requests for First-Tier Subrecipient Financial Assistance Activities, as described below.

The EPA Project Officer is authorized to provide case-by-case modifications or exceptions to these requirements, provided those modifications or exceptions remain compliant with the ASAP and Proper Payment Draw Down General Term and Condition.

These requirements "flow down" to Subrecipients; if a Subrecipient has an actual and immediate cash requirement, then it must submit payment requests to the Recipient pursuant to these requirements. As authorized at 2 CFR 200.337, EPA may request records of payment requests to the Recipient and would expect documentation to show that, for each payment to a Subrecipient, the Subrecipient has provided the Recipient with the information described above.

### **Disbursement of Payment**

During the interim period between the start of the Federal award and the date on which the Deposit Account at the Financial Agent is first made available and accessible to the Recipient, for each payment,

if the Recipient has not disbursed the entire payment amount within 5 business days of drawdown, the Recipient must provide the EPA Project Officer with the amount of payment not yet disbursed. The Recipient must then follow the procedures described in the ASAP and Proper Payment Drawdown General Term and Condition for the amount of payment not yet disbursed within 5 business days of drawdown.

**Method for Reconsideration**

If the Recipient believes that one or more of these specific conditions are not warranted or requires modification, the Recipient must file a written objection naming the specific condition(s) within 21 calendar days of the EPA award or amendment mailing date and must not draw down funds until the objection is resolved. The Recipient must submit the written objection via email to the Award Official, Grant Specialist, and Project Officer identified in the Notice of Award.

**AJ. Amendments to Award Agreement**

The EPA Award Official or Grants Management Officer and the Recipient must agree to any modifications to the terms and conditions of this Award Agreement. Agreed-upon modifications must be in writing. Oral or unilateral modifications shall not be effective or binding.

## IV. Administrative Terms and Conditions

### A. General Terms and Conditions

The Recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2023-or-later>. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

### B. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) and EPA Grants Specialist listed on the award
- MBE/WBE reports (EPA Form 5700-52A): [OMS-OGD-MBE\\_WBE@epa.gov](mailto:OMS-OGD-MBE_WBE@epa.gov) and EPA Grants Specialist listed on the award
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to Recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: EPA Grants Specialist and EPA Project Officer listed on the award
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: EPA Project Officer listed on the award

### C. Intergovernmental Review Period

In accordance with 40 CFR Part 29, EPA must allow for an intergovernmental review comment period when a Recipient or Subrecipient intends to provide Financial Assistance to Qualified Project(s) that involves construction or land use planning. With the exception of Qualified Project(s) that will be carried out in the State of California, the Recipient must ensure that directly affected State, areawide, regional, and local government entities have 60 calendar days to review the description of the Qualified Project(s) and provide comments to the EPA Project Officer. Qualified Project(s) that will be carried out in the State of California must be submitted to the California Single Point of Contact at <https://cfda.opr.ca.gov> for review as provided in California law.

The Recipient agrees to comply with the provisions of 40 CFR Part 29, implementing the Demonstration Cities, Metropolitan Development Act, the Intergovernmental Cooperation Act, and Executive Order 12372 as amended in 1983, to ensure that projects funded under federal programs are consistent with local planning requirements.

### D. Pre-Award Costs

As provided in [2 CFR 200.458](#), Recipients are authorized to incur pre-award costs, which are costs that would have been allowable if incurred after the date of the Federal award. For competitive grants, EPA interprets the requirement in the regulation that pre-award costs be incurred “directly pursuant to the negotiation and in anticipation of the Federal award” to limit allowable pre-award costs to those a Recipient incurs after EPA has notified the Recipient that its application has been selected for award consideration. The pre-award costs must be included in the workplan and budget to be eligible. As provided in 2 CFR 1500.9, Recipients incur pre-award costs at their own risk. Please refer to *Section I.C: Pre-Award Costs* of the [Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance](#) for additional information.

#### **E. New Recipient Training Requirement**

The Recipient agrees to complete the [EPA Grants Management Training for Applicants and Recipients](#) and the [How to Develop a Budget](#) training within 90 calendar days of the date of award of this agreement. The Recipient must notify the Grant Specialist via email when the required training is complete. For additional information on this training requirement, the Recipient should refer to [RAIN-2024-G01](#).

## V. Financial Agent Terms and Conditions

### A. Revisions to Award Agreement to Account for Financial Agent Arrangement

When a depository institution is designated as a financial agent of the United States (the Financial Agent) for the Greenhouse Gas Reduction Fund, the following revisions to the Award Agreement will become effective without further action or notice required by the Recipient or EPA.

#### 1. Revisions to Section I. Definitions

*The following **new definition** will be added to the Award Agreement:*

**Capitalization by Nonexchange Capital Contribution:** Capitalization by Nonexchange Capital Contribution means award funds that (1) the Recipient draws down from the Automated Standard Application Payments (ASAP) system and (2) disburses into the ‘Budget Account’ as defined under the Deposit Account at Financial Agent Programmatic Term and Condition to capitalize itself for subsequent use for any of the following Allowable Activities: Financial Assistance to Qualified Projects; Predevelopment Activities; Market-Building Activities; and Program Administration Activities. Under this two-step transaction, which involves both a drawdown and disbursement, the Recipient’s drawdown from ASAP is deemed (a) an advance payment of Federal funds in accordance with 2 CFR 200.305(b)(1); while the disbursement into the Deposit Account at Financial Agent is deemed (b) an allowable cost to be charged to the EPA award, and (c) a “nonexchange transaction”, consistent with the definition of this term in the [Statement of Federal Financial Accounting Standards No. 5](#). The full amount of the Capitalization by Nonexchange Capital Contribution must be recognized, reported, and accounted for as Program Income in accordance with the Program Income Programmatic Term and Condition once clauses (a) and (b) are fulfilled. Any Subrecipient with a Deposit Account at Financial Agent will be entitled to receive its payments from Recipient as a Capitalization by Nonexchange Capital Contribution.

*The definition of **Program Income** under the Award Agreement will be amended and replaced with:*

**Program Income:** 2 CFR 200.1 defines Program Income as “gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f).” 2 CFR 200.1 notes that Program Income “includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds.” For this program, there are two types of Program Income: (1) “Program Income from Operations” and (2) “Program Income from Capitalization by Nonexchange Capital Contribution”.

Program Income from Operations includes but is not limited to income from origination fees, servicing fees, and asset management fees; dividends from equity investments; revenue from asset sales; release of grant funds previously used as Financial Assistance (such as through loan guarantees, loan loss reserves, or similar transactions); interest and other earnings on disbursements of grant funds that have not been transferred to third parties; and funds raised with costs charged against the grant award (such as private debt, philanthropic contributions, and other funds raised). Under this award agreement, the Recipient is authorized to deduct the cost of generating Program Income from Operations under 2 CFR 200.307(b) and 2 CFR 1500.8(b), provided the costs are reasonable and necessary for performance under the federal award and the costs are not charged to the EPA award. Costs incidental to the generation of



Program Income from Operations include origination, servicing, and management costs that are not charged as direct costs to the Federal award. Program Income from Operations can be earned prior to the availability of the 'Program Income from Operations' account as defined under the Deposit Account at Financial Agent Programmatic Term and Condition.

Program Income from Capitalization by Nonexchange Capital Contribution means award funds from the ASAP system that the Recipient draws down and immediately deposits into the 'Budget Account' at the Financial Agent in accordance with (a) the definition of Capitalization by Nonexchange Capital Contribution and (b) the Deposit Account at Financial Agent Programmatic Term and Condition. Program Income from Capitalization by Nonexchange Capital Contribution cannot be earned prior to the availability of the 'Budget Account' as defined under the Deposit Account at Financial Agent Programmatic Term and Condition.

Both forms of Program Income under this program must be treated in accordance with the Program Income Programmatic Term and Condition. EPA-specific rules on Program Income are provided at 2 CFR 1500.8, and rules on allowable fund raising costs are provided under 2 CFR 200.442 (with additional details in Item 4 of the [EPA Guidance on Selected Items of Cost for Recipients](#)). Program Income requirements flow down to Subrecipients but not to Contractors or Program Beneficiaries.

## **2. Revisions to Section II. National Programmatic Terms and Conditions**

*The **Program Income Programmatic Term and Condition** will be amended and replaced with:*

### **Program Income**

In accordance with Clean Air Act Section 134(b)(1)(C) as well as 2 CFR 200.307(e)(2) and 2 CFR 1500.8(b), the Recipient must retain Program Income earned during the Period of Performance. Program Income will be added to funds committed to the program by EPA and used for the purposes and under the conditions of the Assistance Agreement and beyond the Period of Performance based on a Closeout Agreement.

In any period of time before such a Closeout Agreement is effective but after the Recipient has fully used the award for allowable activities, the Recipient is authorized to use Program Income under the terms and conditions of the Assistance Agreement, as opposed to the terms and conditions outlined under the Closeout Agreement Programmatic Term and Condition. The terms and conditions outlined under the Closeout Agreement Programmatic Term and Condition will supplant the terms and conditions of the Assistance Agreement once the Closeout Agreement becomes effective.

In accordance with 2 CFR 1500.8(d) as supplemented by the Period of Performance Programmatic Term and Condition, under ordinary circumstances, the Recipient may only use Program Income from Operations once the initial award funds are fully used for allowable activities or the Period of Performance ends for a different reason. However, Program Income from Operations may be used by the Recipient in advance of the initial award funds being fully used where reasonable and necessary to execute the activities in the EPA-approved workplan.

## **3. Revisions to Section III. Additional Programmatic Terms and Conditions**

*The **Allowable and Unallowable Activities Programmatic Term and Condition** will be amended and replaced with:*

### **Allowable and Unallowable Activities**

The Recipient agrees to only use the award to support the following allowable activities: Capitalization by Nonexchange Capital Contribution; Financial Assistance to Qualified Projects; Predevelopment Activities; Market-Building Activities; and Program Administration Activities. All costs charged to the award to support these activities must meet the requirements for allowability under 2 CFR Part 200, Subpart E as well as applicable provisions of 2 CFR Part 1500.

Capitalization by Nonexchange Capital Contribution generates Program Income for the Recipient in an amount equal to the available EPA award balance drawn down from ASAP into the 'Budget Account' as defined under the Deposit Account at Financial Agent Programmatic Term and Condition. Program Income from Capitalization by Nonexchange Capital Contribution must be expended on Financial Assistance to Qualified Projects, Predevelopment Activities, Market-Building Activities, and Program Administration activities in accordance with the EPA-approved workplan.

The Recipient agrees to not use the award for the following unallowable activities: (a) Financial Assistance to Qualified Projects in the form of Subgrants; (b) Subgrants for the purposes of providing Financial Assistance to Qualified Projects (other than Subgrants from the Recipient to first-tier Subrecipients); (c) activities that support deployment of projects that do not meet the definition of Qualified Projects; and (d) activities that support deployment of projects outside the boundaries of the ten EPA regions. The Recipient also agrees not to use the award for activities associated with defending against, settling, or satisfying a claim by a litigant, except when (a) the claim stems from the Recipient's implementation of its EPA-approved workplan in compliance with the terms and conditions of the Award Agreement and (b) the Recipient has obtained prior written approval from the EPA Award Official.

*The Deposit Account at Financial Agent Programmatic Term and Condition will be amended and replaced with:*

### **Deposit Account at Financial Agent**

The Recipient will open a Deposit Account at a depository institution that has been designated as a financial agent of the United States (the Financial Agent). Such account will be used as Recipient's operating account for the award. Upon establishment of the Deposit Account, the Recipient will drawdown the entire available EPA award balance from ASAP and disburse it into the Deposit Account, where it must be maintained until the Closeout Agreement goes into effect in accordance with the Closeout Agreement Programmatic Term and Condition. Note, this requirement applies to any and all drawdowns from ASAP by the Recipient while the Deposit Account is available and accessible. Once the Closeout Agreement goes into effect, the Recipient will be entitled to transfer any remaining funds in the Deposit Account to an account at a financial institution of its choosing, provided such account is insured.

The Recipient will grant EPA a perfected security interest in all funds held in the Deposit Account. The Recipient will take all such actions, enter into all such agreements, and execute and deliver all such documentation as may be necessary and/or as directed by EPA from time to time to establish and maintain such security interest, including but not necessarily limited to entering into a deposit account control agreement (DACA) with the Financial Agent and EPA.

Notwithstanding any other provision of this Award Agreement, EPA will only furnish the Financial Agent with a Notice of Exclusive Control under a DACA when EPA issues a written determination and finding that the Recipient has failed to comply with the terms and conditions of this Award Agreement, and that noncompliance is substantial such that effective performance of the Assistance Agreement is materially impaired or there is adequate evidence of waste, fraud, material misrepresentation of eligibility status, or abuse, and that EPA has initiated action under 2 CFR 200.339 to wholly or partly suspend or terminate the Federal award, as authorized in the terms of the Award Agreement. Note, funds in the Deposit Account that were legally committed to 3rd parties under valid financing agreements prior to the issuance of, but not in anticipation of, a Notice of Exclusive Control constitute “financial obligations which were properly incurred” by the Recipient in accordance with 2 CFR 200.343 and are to remain allowable costs during suspension or after termination.

Funds held in the Recipient’s account at the Financial Agent may be invested in accordance with the Cash Management Requirements in the Financial Risk Management Programmatic Term and Condition. The Financial Agent will be compensated in accordance with the terms of a valid Financial Agency Agreement (FAA).

The Deposit Account will consist of three distinct account types (‘Budget,’ ‘Reserve,’ and ‘Program Income from Operations’), each of which serves a distinct purpose (while the exact naming convention and structure of these accounts may differ from the below, the accounts must perform a substantively similar function). The Recipient is required to utilize the accounts at the Financial Agent for their intended purpose during any period in which the accounts are available and accessible, with exceptions to this requirement permitted by the EPA Project Officer only on a case-by-case basis, to the extent such exceptions are necessary to execute against the EPA-approved workplan.

### **1. Budget Account**

This account within the Deposit Account will hold funds that have yet to be used for any of the following allowable activities: Financial Assistance to Qualified Projects; Predevelopment Activities; Market-Building Activities; and Program Administration Activities. It will hold funds within a number of sub-accounts that correspond to more specific allowable expenditures under the particular type of award or subaward.

**Transferring Funds Into the Budget Account.** Upon establishment of the Deposit Account, the Recipient will drawdown the entire available EPA award balance from ASAP directly into the Budget Account. The Recipient will direct the Financial Agent to allocate funds across the various sub-accounts in the Budget Account in accordance with its EPA-approved workplan. Recipient need not submit a certification notice to transfer funds within the Budget Account, but remains subject to the Transfer of Funds EPA General Term and Condition and any associated pre-approval or notification requirements therein.

**Transferring Funds Out of the Budget Account.** When transferring award funds out of the Budget Account to provide Financial Assistance to Qualified Projects, Recipient must provide the EPA Project Officer with a certification notice from the Recipient’s chief executive officer (or equivalent), chief financial officer (or equivalent), chief reporting officer (or equivalent), or chief compliance officer (or equivalent) that the amount of the payment is necessary to execute against the EPA-approved workplan and that financing agreements for identified Qualified Projects necessitating the payment have been reviewed by the Recipient’s counsel for legal sufficiency, with notice provided to the Financial Agent with the transfer request. The certification notice must include the following language: “This

certification is a material representation for the purposes of an EPA Financial Assistance Agreement, and knowing and willful false statements may be subject to prosecution under 18 U.S.C. 1001 and other applicable criminal, civil and administrative sanctions.” The Recipient must “flow-down” this requirement to Subrecipients, with each Subrecipient required to provide a substantively similar certification notice to Recipient when transferring subaward funds out of the Budget Account to provide Financial Assistance to Qualified Projects, with notice provided to the Financial Agent with the transfer request. In accordance with 2 CFR 200.337, the Recipient must make those certifications available to the EPA, upon request.

While transfers out of the Budget Account are not formally subject to any of the requirements established in either the EPA General Term and Condition on Automated Standard Application Payments (ASAP) and Proper Payment Draw Down or the Interim Drawdown Procedures Programmatic Term and Condition, Recipient agrees to the following requirements:

- a) When the need for a longer disbursement window is known in advance of the transfer, Recipient must notify the EPA Project Officer prior to executing the transfer and follow-up to inform the EPA Project Officer of the amount of the transfer that has been disbursed for an Allowable Activity in 5, 10, and 14 business days. Recipient must return any undisbursed amounts to the Deposit Account at the Financial Agent on the 15th business day, or
- b) When the need for a longer disbursement window is not known in advance of the transfer, Recipient must notify the EPA Project Officer of the delay no later than 5 business days after the transfer and follow-up to inform the EPA Project Officer of the amount of the transfer that has been disbursed for an Allowable Activity in 10 and 14 business days. Recipient must return any undisbursed amounts to the Deposit Account at the Financial Agent on the 15th business day.

Recipients must obtain prior written approval from the EPA Project Officer (who will in turn notify the EPA Award Official) for any transfers that will not be disbursed for an Allowable Activity within 15 business days.

These requirements “flow down” to Subrecipients, who agree to provide the same notifications to and seek prior approval from Recipients where applicable.

## **2. Reserve Account**

This account within the Deposit Account is intended to enable funds to be set-aside within the Financial Agent for use for any form of Financial Assistance that requires the Recipient to pledge award funds for a future expenditure to a third party to meet a legal obligation.

**Transferring Funds Into the Reserve Account.** The Recipient may only transfer award funds into the Reserve Account for grant performance purposes if the Recipient’s chief executive officer (or equivalent), chief financial officer (or equivalent), chief reporting officer (or equivalent), or chief compliance officer (or equivalent) certify to the EPA Project Officer, with notice provided to the Financial Agent with the transfer request, that the amount of the expenditure is necessary to execute against the EPA-approved workplan, and that financing agreements for identified qualified projects necessitating the expenditure have been reviewed by Recipient’s counsel for legal sufficiency. The certification notice must include the following language: “This certification is a material representation for the purposes of an EPA financial Assistance Agreement and knowing and willful false statements may be subject to prosecution under 18 U.S.C. 1001 and other applicable criminal, civil and administrative sanctions.” The

Recipient must “flow-down” this requirement to Subrecipients, with each Subrecipient required to provide a substantively similar certification notice to Recipient when transferring subaward funds into the Reserve Account to provide Financial Assistance to Qualified Projects, with notice provided to the Financial Agent with the transfer request. In accordance with 2 CFR 200.337, the Recipient must make those certifications available to the EPA, upon request.

#### **Transferring Funds Out of the Reserve Account.**

##### **a. To Third Parties to Meet Legal Obligations**

Funds in the Reserve Account may not be disbursed to Program Beneficiaries, Subrecipients, Contractors, or any other third parties, unless the funds are necessary for the Recipient to satisfy a legal obligation. The Recipient may only transfer award funds out of the Reserve Account to meet legal obligations to such parties if the recipient’s chief executive officer (or equivalent), chief financial officer (or equivalent), chief reporting officer (or equivalent), or chief compliance officer (or equivalent) certify to the EPA Project Officer, with notice provided to the Financial Agent with the transfer request, that the amount of the expenditure is necessary to pay a third party pursuant to a financing agreement that has been reviewed by recipient’s counsel for legal sufficiency. The certification notice must include the following language: “This certification is a material representation for the purposes of an EPA financial Assistance Agreement and knowing and willful false statements may be subject to prosecution under 18 U.S.C. 1001 and other applicable criminal, civil and administrative sanctions.” The Recipient must “flow-down” this requirement to Subrecipients, with each Subrecipient required to provide a substantively similar certification notice to Recipient when transferring subaward funds out of the Reserve Account to provide Financial Assistance to Qualified Projects, with notice provided to the Financial Agent with the transfer request. In accordance with 2 CFR 200.337, the Recipient must make those certifications available to the EPA, upon request.

While transfers out of the Reserve Account are not formally subject to any of the requirements established in either the EPA General Term and Condition on Automated Standard Application Payments (ASAP) and Proper Payment Draw Down or the Interim Drawdown Procedures Programmatic Term and Condition, Recipient agrees to the following requirements:

a) When the need for a longer disbursement window is known in advance of the transfer, Recipient must notify the EPA Project Officer prior to executing the transfer and follow-up to inform the EPA Project Officer of the amount of the transfer that has been disbursed for an Allowable Activity in 5, 10, and 14 business days. Recipient must return any undisbursed amounts to the Deposit Account at the Financial Agent on the 15th business day, or

b) When the need for a longer disbursement window is not known in advance of the transfer, Recipient must notify the EPA Project Officer of the delay no later than 5 business days after the transfer and follow-up to inform the EPA Project Officer of the amount of the transfer that has been disbursed for an Allowable Activity in 10 and 14 business days. Recipient must return any undisbursed amounts to the Deposit Account at the Financial Agent on the 15th business day.

Recipients must obtain prior written approval from the EPA Project Officer (who will in turn notify the EPA Award Official) for any transfers that will not be disbursed for an Allowable Activity within 15 business days.

These requirements “flow down” to Subrecipients, who agree to provide the same notifications to and seek prior approval from Recipients where applicable.

**b. To Program Income from Operations Account**

When funds in the Reserve Account are no longer necessary to meet prudent capital management practices consistent with the Recipient’s overall risk portfolio and a potential legal obligation to a third party pursuant to a financing agreement, the Recipient may transfer such funds to the Program Income from Operations Account. Recipient need not submit a certification notice to effectuate such a transfer.

**3. Program Income from Operations Account**

This account within the Deposit Account will enable Program Income from Operations (as defined under the definition of Program Income) to be held, tracked, and segregated in accordance with the Accounting Principles Programmatic Term and Condition.

**Transferring Funds Into the Program Income from Operations Account.** When Recipient earns Program Income from Operations, it must deposit such funds into the Program Income from Operations Account. Recipient need not submit a certification notice to effectuate such a transfer. When Financial Agent generates interest income on behalf of Recipient by investing Recipient liquidity in accordance with the Cash Management Requirements under the Financial Risk Management Requirements Programmatic Term and Condition, it must deposit such income into the Program Income from Operations Account in accordance with the terms of the FAA. Such interest income is considered additional Program Income consistent with 2 CFR 1500.8(d) and is not subject to the requirements on interest earned within 2 CFR 200.305(b)(8) and 2 CFR 200.305(b)(9).

**Transferring Funds Out of the Program Income from Operations Account.** Funds in this account may be transferred to either the Budget Account or Reserve Account to be used for grant performance purposes in accordance with the Program Income Programmatic Term and Condition. Recipient need not submit a certification notice to effectuate such a transfer.

**Flow-Down Requirements of Deposit Account at Financial Agent.** EPA may elect to extend the requirements under this term and condition to any and all Subrecipients of the Recipient at EPA’s sole discretion, including but not limited to establishing and maintaining a security interest on all award funds held by the Subrecipient at the Financial Agent.