

# **LOUISIANA HIGHWAY SAFETY COMMISSION**

## **Manual for Subgrants**



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**Post Office Box 66336, Baton Rouge, Louisiana 70896**

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**Manual for Subgrants**

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**LOUISIANA HIGHWAY SAFETY COMMISSION  
MANUAL FOR SUBGRANTS  
February 21, 2018**

**SECTION 1: INFORMATION AVAILABILITY**

**1.1 Availability of Reports and Information**

The subgrantee shall provide all reports and information required by the Louisiana Highway Safety Commission (LHSC), federal laws and regulations, and state laws and regulations. The subgrantee shall permit access to all subgrantee's books, records, accounts, other information sources and subgrantee's facilities as may be determined by the state, the National Highway Traffic Safety Administration (NHTSA) or the Federal Highway Administration (FHWA) to ascertain compliance with the project contract. If any required information is in the exclusive possession of another who fails or refuses to provide this information, the subgrantee shall so certify and detail to the LHSC what efforts have been made to obtain the required information.

**1.2 Monitoring**

The subgrantee agrees that the LHSC and NHTSA state or federal auditors, or FHWA, as appropriate, have the right, at all reasonable times, to monitor and evaluate both programmatic and fiscal matters of the project. The monitoring visits may occur on the subgrantee and/or the subcontractor premises. The subgrantee shall provide all reasonable facilities and assistance during the monitoring visits. The monitoring visits shall be performed in such a manner as will not unduly delay the contracted work.

**SECTION 2: MAINTENANCE OF DOCUMENTATION**

**2.1 Separate File, Retention Period**

The subgrantee agrees to maintain copies of all documentation pertaining to the project in a separate file during the subgrant year and for five years from the date of the last payment under the subgrant. Failure to maintain copies of documentation for the stated period may prevent subgrantee from consideration for future subgrants.

**2.2 Additional Retention Period**

If any litigation, claim, audit finding, or other action involving the records kept pursuant to this subgrant has been started before the expiration of period contained in Section 2.1, the project director must retain the records until the final resolution of all issues which arise from such litigation, claim, negotiation, or action.

**SECTION 3: TIMELY PERFORMANCE OF WORK**

The subgrantee agrees to perform all the work required by this subgrant. The work shall be completed in accordance with the project schedule and no later than the subgrant expiration date. Failure to perform any aspect of this subgrant may result in non - payment.

**SECTION 4: REIMBURSEMENT**

**4.1 Time Frame for Incurred Expenses**

The subgrantee shall not incur expenses which are to be submitted for reimbursement prior to the

effective date of this subgrant. The subgrantee shall not submit expenses for reimbursement until final approval of the subgrant. Costs incurred before the effective date of the subgrant or after the subgrant expiration date will not be reimbursed.

#### **4.2 General Requirements**

Reimbursement of approved costs will be in accordance with:

- 23 U.S.C. Chapter 4 - Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300 - Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201 - Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Subrecipient agrees to comply with all applicable federal and state statutes and regulations.

#### **4.3 Procedure for Repayment of Ineligible Expenses**

The subgrantee shall reimburse the LHSC for any ineligible or unauthorized reimbursement payments received as determined by LHSC, state or federal audits. The LHSC has the right to withhold future reimbursement claims to make up for ineligible or unauthorized reimbursement received until such time as the ineligible payment is made or corrected by the subgrantee. The state may use any other legal remedies available to recover ineligible or unauthorized reimbursement payments.

#### **4.4 Submission of Claim Forms**

The subgrantee agrees to perform the work specified in the subgrant. To be eligible for reimbursement, a signed claim form, relevant documentation, and LHSC Annexes must be submitted to the LHSC via email to the following address: [LHSCclaims@dps.la.gov](mailto:LHSCclaims@dps.la.gov). Paper claim submissions will no longer be accepted. LHSC Annexes should be signed and then scanned as a PDF for submission. The claim containing the original signature shall be retained by the subgrantee. The supporting annexes shall be submitted in the electronic file format provided with the subgrant award package.

Reimbursement claim forms will be submitted on a monthly basis by the 20th of the following month as stipulated in the subgrant. However, in certain cases reimbursement requests may be allowed on a quarterly or a task completed basis and stipulated in the subgrant. Requests for quarterly claim submission must be in writing and receive prior approval by the LHSC.

Claims needing corrections/revisions will be returned to the submitting agencies/individuals for correction(s). The subgrantee agrees that within 30 days after subgrant termination, the final reimbursement claim form will be submitted to the LHSC. If it is anticipated that a final claim cannot be submitted within this time period, a written request with justification must be submitted to the LHSC Executive Director before the subgrant expiration date. Failure to submit final claim forms with appropriate documentation within the specified time period may result in non-reimbursement.

### **Multiple Funded Contracts:**

Claims for reimbursement from contracts which have more than one federal funding source identified on subgrantee agreement shall clearly distinguish what activities and items are claimed with the appropriate fund. In order to avoid disallowed costs, subgrantees shall carefully follow guidelines for use of funds as written in the subgrant agreement and applicable federal CFRs, this subgrant manual, reference material provided with the subgrant award packet and the DOT NHTSA Highway Safety Grants Management Manual.

### **4.5 Reimbursement Documentation**

The subgrantee agrees to submit all required documentation prior to being reimbursed for authorized expenses. This documentation includes, but is not limited to, required LHSC Annexes A, Annex A-1 (if needed), List of Documents Included to Support Costs Submitted on Annex A, completed Annexes B, and C, and the forms and records described below; unless stipulated otherwise in the subgrant.

#### **4.5.1 Description of Reimbursement Packet**

##### **List of Annex A Supporting Documents**

This form is designed to allow the subgrantee to list the documents that support the reimbursement request.

##### **LHSC Annex A**

This is the official request for payment and summarizes the costs requested by category as well as tracks the budgeted amount, total costs to date and the balance remaining in the subgrant.

##### **LHSC Annex A-1 (if applicable)**

This document is used to document overtime enforcement hours. Separate Annex A-1s are required for each funding source.

##### **Annex B – Project Status Report**

This document is a reporting tool for performance, comments, problems, plans and needs for the subgrant.

##### **Annex C**

This is a summary of the progression of planned program activities and planned budget in a tabular format.

##### **Individual Contractor's Invoice (if applicable)**

This document provides detailed breakdown of requested reimbursement from individuals performing personal services by contract.

##### **LHSC Federal Property Control Form (if applicable)**

This document describes and establishes inventory data needed to track equipment purchases made with federal funds.

## **4.5.2 Definitions of cost categories included in Budget Summary and Annexes A & C.**

### **Personal Services:**

Salaries and fringe benefits directly related to the project. These positions must be included in the subgrant agreement to be eligible for reimbursement. This section will also include overtime payment to law enforcement personnel. Employees working on the project but not paid by the subgrant are listed as match.

### **Travel:**

Travel directly related to the subgrant. Includes the cost of travel associated with routine travel, conferences, conventions and training. Out of state travel must be approved in advance by the LHSC and must include course and conference by name.

### **Contractual Services:**

Expenses incurred in paying for a service performed by any person, or organization not connected directly with the subgrant agency, for example, consultants, studies, etc. All subcontracts must be approved by the LHSC prior to implementation. The cost of each service must be itemized. Procurement of contractual services must be in accordance with state rules and regulations. Subcontracts and mini grants may not be awarded to law enforcement agencies for enforcement activities. Law enforcement agencies should apply for enforcement funding directly to the LHSC.

### **Operating Services:**

Items that represent expenditures for office operation, i.e. postage, telephone service, equipment maintenance, etc.

### **Supplies:**

Regular operating supplies. Items that may be included are office supplies, paper, forms, and other expendable materials. All purchases must be in accordance with state rules and regulations.

### **Commodities:**

Materials and/or supplies acquired for the purpose of this particular highway safety project. All public information and education materials are to be included here. Items that may be included are promotional items that encourage the general public to adopt highway safety practices during the course of the normal operation of this project. All commodity items must be approved prior to purchase by the LHSC Project Coordinator, and all commodity purchases must be made in accordance with state purchasing guidelines.

### **Equipment:**

Purchase of items that cost over \$1,000.00 per unit and have a useful life of over one year.

### **Purchase of Additional Equipment**

Purchase of any equipment not specified in the subgrant must be approved in writing, in advance by the LHSC Project Coordinator. If the actual cost of any equipment exceeds the budgeted amount, advance written approval must be received from the LHSC Project Coordinator prior to acquisition of the item.

### **Public Information and Educational (PI & E) Items**

PI & E items must be traffic safety related or contain a traffic safety message that supports the project goals and objectives.

### **Program Income**

Income earned by subgrantee as a result of the conduct of this subgrant must be applied to project purposes and/or used to reduce the LHSC project reimbursement costs as cost sharing or matching. Program income must be reported on LHSC Annex A-5 with the monthly reimbursement claim. Program income must be approved prior to the issuance of the subgrant.

### **Indirect Costs**

Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

### **Matching Expenditures**

The subgrantee agrees to provide matching expenditures as outlined on the subgrant Budget Summary Page. Matching expenditures must be included on the Annex A. The Project Director agrees to maintain supporting documentation during the subgrant year and three years from the contract expiration date. Matching funds are auditable and may not be used to match more than one federal award. Federal funds may not be used to match other federal awards.

## **4.5.3 Reimbursement Documentation Required by Category**

### **4.5.3.1 Personal Services.**

Reimbursement for personnel costs must include an official Time Distribution Record containing name(s) of employee(s) who worked during the claim period, dates worked, beginning and ending times worked, pay rate(s), and total amount incurred. **Law enforcement agencies shall record overtime personnel costs on LHSC Annex A-1 or on a previously established agency form as approved by LHSC.** LHSC Annex A - 1 must be signed and dated by the Project Director. If the Project Director worked the LHSC Subgrant, the LHSC Annex A - 1 must also be signed by the Project Director's Supervisor.

Reimbursement requests for full time employees must include amount of annual/sick leave taken during each pay period based on the subgrantee's policy. The LHSC reimbursement for excessive leave taken during the subgrant period shall be determined by the LHSC Program Coordinator and/or LHSC Executive Director. Each Reimbursement Claim Packet Annex A must be signed and dated by the Project Director. **Requests for reimbursement must also include an individual listing of activities performed, number/type training classes conducted, travel locations, etc.** LHSC has an Individual Contractor Invoice template that may be used but other documents are acceptable as long as all of the required information is provided.

Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation as contained in [2 CFR 225, Appendix B, 8h](#).

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having firsthand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection 8.h.(5) of this appendix unless a statistical sampling system (see subsection 8.h.(6) of this appendix) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:



(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Temporary Assistance to Needy Families (TANF), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection 8.h.(6)(c) of this appendix;

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection 8.h.(6)(a) of this appendix may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

#### **4.5.3.2 Personal Services - Travel**

All travel will be performed in accordance with current Louisiana State Travel Regulations - P.P.M. 49. Travel not specified on the subgrant Budget Summary Page must be approved in advance, and in writing, by the LHSC Executive Director. Requests for travel cost reimbursements must include a Travel Expense Account Form DPSMF 1382, or equivalent form.

For guidelines, refer to the Louisiana Office of State Travel web site at: <http://www.doa.louisiana.gov/osp/travel/travelpolicy.htm>

#### **4.5.3.3 Contractual Services**

Each reimbursement request for contractual services must include a signed invoice for services submitted by the contractor, to include the amount claimed, services provided and dates of service.

#### **4.5.3.4. Operating Services, Supplies, Commodities and Equipment**

Each reimbursement request for operating services, supplies, commodities, and equipment must include a copy of the purchase order (if issued), vendor invoice, and/or receipt and documentation of payment. Requests for reimbursement of equipment with a per-item cost of \$1,000 or above must include a completed LHSC Federal Property Inventory Control Form. The LHSC may require a property inventory control form on items under \$1,000.

#### **4.5.3.5 Indirect Costs**

All indirect costs must be approved by the LHSC. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

Indirect costs include the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards.

Typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc. The approved indirect cost rate must be verified in writing by the agency's accounting entity.

#### **4.5.5 Final Reimbursement**

Final LHSC reimbursement to the subgrantee may be withheld until all required work is completed, delivered, accepted and approved by the LHSC Executive Director. **Note: Final claims must be received within 30 days of the project end date unless prior approval is granted.**

#### **4.5.6. Required Signatures and Verification**

The Project Director's signature on LHSC Annexes and other LHSC documents submitted with the claim reimbursement indicate verification that all costs have been incurred by the subgrantee, for the purpose specified in this subgrant, prior to making a claim to the LHSC for reimbursement.

## **SECTION 5: PROCUREMENT PROCEDURES**

### **5.1 State Procurement Procedures**

The subgrantee will use state procurement procedures. For further information, refer to the Louisiana Office of State Purchasing web site at: <http://doa.louisiana.gov/osp/osp.htm>

## **SECTION 6: PROPERTY CONTROL**

### **6.1 Title of Property**

Title of property purchased in connection with this subgrant as an authorized expense and properly reimbursed by the LHSC shall vest in the subgrantee.

#### **6.1.1 Failure to Perform**

The subgrantee agrees to convey title of such property to the LHSC if the subgrantee fails to perform the work as specified in this subgrant. Subgrantee will deliver such property into the possession of the LHSC at the time title is conveyed to the LHSC.

##### **6.1.1.1 Failure to Comply with Section 6.1.1**

The subgrantee's failure to complete the obligation in Section 6.1.1 within thirty (30) days of the date of termination shall subject the subgrantee to paying reasonable attorney fees if the matter is turned over to an attorney to recover the property.

##### **6.1.1.2 Recovery of Property**

If litigation as outlined in Section 6.1.1.1 is commenced, the LHSC at its discretion, may seek to recover all involved property or the residual value of the involved property.

### **6.2 Use of Property/Equipment During the Term of Subgrant**

The subgrantee agrees that property and/or equipment purchased under the terms of this subgrant with federal project funds will be used only in the program and/or project area and for the purpose for which these program and/or project funds were provided. The subgrantee shall immediately notify the LHSC Executive Director, in writing, if any property and/or equipment purchased under this project/program, during its useful life, ceases to be used in the manner set forth by the subgrant. In such event, the subgrantee further agrees to give credit to the project/program for the residual value of such property and/or equipment in an amount to be determined by the LHSC, or to transfer or otherwise dispose of such equipment as directed by the LHSC. State agencies will dispose of equipment only in accordance with Louisiana's Division of Administration policy and regulations.

### **6.3 Use of Property/Equipment after the Term of Subgrant**

Upon completion or termination of a traffic safety subgrant, or if it is determined by the LHSC that the equipment is no longer needed for the purpose for which it was acquired, the equipment may, at the option of the LHSC, become the property of the LHSC. Permission for any other disposition must be obtained from the LHSC before any action can be taken regarding the equipment. Subgrantees wishing to continue use of the equipment should make request to the Executive Director of LHSC for continued use within program funding criteria to include an explanation of how the equipment will be used for highway safety purposes.

#### **6.4 Transfer of Property**

The transfer of property purchased with federal funds pursuant to this subgrant during the terms of this subgrant shall be considered a failure to perform the work specified in this subgrant, and the LHSC may proceed to recover the value of the property as outlined in Section 6.1.1.

#### **6.5 Maintenance**

It is mutually agreed and promised that the subgrantee shall maintain or cause to be maintained in good working order all equipment purchased with federal funds under this project during the period of its useful life.

#### **6.6 Useful Life**

The minimum useful life of equipment assets purchased under this subgrant will be determined by the Internal Revenue Service Useful Life Guidance. Refer to the LHSC website [LHSC Table of Useful Life](#) for more information.

#### **6.7 Value**

Equipment assets purchased under this project will have an initial value equal to the purchase price. Residual value will be determined in accordance with generally accepted depreciation methods.

#### **6.8 Purchase of Authorized Property**

Purchase of property or equipment with a purchase price of \$1,000.00 or more must be specifically authorized in the subgrant to be reimbursed by the LHSC. Refer to Paragraph 4.5.3.4 for exceptions.

#### **6.9 Property Control Inventory Form**

The subgrantee will submit a completed LHSC Federal Property Inventory Control Form to the LHSC Project Coordinator at the time of possession of property or equipment. The subgrantee will notify LHSC if there is a change in the use, location, or person responsible for the property or equipment.

#### **6.10 Maintaining Inventory**

Subgrantee agrees to maintain an inventory of federal property or equipment if the original purchase price is \$1,000.00 or more for the useful life of the property or equipment as determined by the LHSC. The inventory will include as a minimum: purchase price, purchase date, useful life; state or local property tag number and manufacturer's serial number; and location of each item.

#### **6.11 Disposal of Federally Owned Property**

Disposition of equipment with a useful life of more than one year and an acquisition cost of \$5,000.00 or more must receive prior written approval from the approving official (NHTSA Regional Administrator). Subgrantees will submit request letters to the LHSC Executive Director, who will forward the requests to NHTSA Region.

### **SECTION 7: SUBCONTRACTS, THIRD PARTY CONTRACTS AND/OR ASSIGNMENTS**

#### **7.1 Provisions**

The subgrantee shall notify all potential subcontractors or third party contractors that all

subcontracts or third party contracts must incorporate this contract and that all subcontracts or third party contracts are subject to this contract.

### **7.2 Approval**

All subcontracts or third party contracts, as outlined in the subgrant, must be submitted to the LHSC Project Coordinator for approval and inclusion in the project file.

The subgrantee may, with prior written permission from the State, enter into subcontracts with third parties for the performance of any part of the subgrantee's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the subgrantee to the State and/or State Agency for any breach in the performance of the subgrantee's duties. The subgrantee will be the single point of contact for all subcontractor work.

### **7.3 Assignment of Subgrant**

No subgrantee shall assign any interest in this subgrant by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the subgrantee from assigning to a bank, trust company, or other financial institution any money due or to become due from approved subgrants without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

## **SECTION 8: OWNERSHIP**

### **8.1 Materials, Discoveries, Inventions and Results Developed, Produced or Discovered**

All records, reports, documents and other material delivered or transmitted to subgrantee by LHSC shall remain the property of LHSC, and shall be returned by subgrantee to LHSC at subgrantee's expense, at termination or expiration of this subgrant. All records, reports, documents or other material related to this subgrant and/or obtained or prepared by subgrantee in connection with performance of the services contracted for herein shall become the property of LHSC, and shall upon request, be returned by LHSC to subgrantee, at subgrantee's expense, at termination or expiration of this subgrant.

### **8.2 Reports, Studies or Material Developed for Publication**

Reports, studies or other materials approved for publication or printing is to be regarded as information in the public domain and its further use does not require approval. The subgrantee agrees that the published version of reports, studies or other materials shall not be copyrighted nor contain any restriction which prohibits distribution and reproduction. The subgrantee will not sell copies of such reports or other materials prepared under the terms of this contract.

## **SECTION 9: REQUIREMENTS PRIOR TO PUBLIC RELEASE OF ITEMS LISTED IN SECTION 8**

### **9.1 Approval**

The subgrantee agrees that before public release of any item listed in Section 9, it shall be submitted to the LHSC Executive Director for approval.

### **9.2 Required Reports**

The subgrantee agrees to provide two (2) copies of the item to the LHSC Executive Director,

unless otherwise stated in the Project Description.

## **SECTION 10: CHANGES IN THE CONTRACT**

### **10.1 Major Changes**

Any requests for changes in this subgrant that changes the scope or increases or decreases the amount of obligated funding shall require a written amendment to this subgrant subject to compliance with LHSC policies and state and federal laws and regulations, except minor changes as outlined in this subgrant manual.

No amendment or variation of the terms of this subgrant shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the subgrant is binding on any of the parties.

### **10.2 Minor Change Approval**

Any minor change may be agreed upon in writing, in advance, by the subgrantee and the LHSC Project Coordinator without the necessity of a new subgrant agreement.

### **10.3 Minor Change Definition**

A minor change is defined as an increase or decrease between any category or subcategory of the subgrant not to exceed 10% of the total budget for this subgrant. The minor change shall not increase or decrease the amount of funds obligated by the LHSC.

## **SECTION 11: SUBSTITUTION OF KEY PERSONNEL**

The subgrantee's personnel assigned to this Subgrant shall not be replaced without the written consent of the State. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any State or subgrantee's personnel become unavailable due to resignation, illness, or other factors, excluding assignment to project outside this subgrant, outside of the State's or subgrantee's reasonable control, as the case may be, the State or the subgrantee, shall be responsible for providing an equally qualified replacement in time to avoid delays in completing tasks. The subgrantee will make every reasonable attempt to assign the personnel listed in his proposal.

## **SECTION 12: CONTRACT CONTROVERSIES**

Any claim or controversy arising out of the subgrant shall be resolved by the provisions of Louisiana Revised Statutes 39:1672.2-1672.4.

## **SECTION 13: SANCTIONS FOR NONCOMPLIANCE**

In the event of the subgrantee's noncompliance with the provisions of this subgrant, the LHSC Executive Director shall impose such sanctions as it may determine to be appropriate, including but not limited to: (1) withholding of payments to the subgrantee until the subgrantee complies: and/or (2) cancellation, termination or suspension of the subgrant.

## **SECTION 14: TERMINATION**

### **14.1 Termination For Convenience**

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State may terminate the Contract at any time without penalty by giving thirty (30) calendar days' written notice to the sungrantee of such termination or negotiating with the subgrantee an effective date. Sungrantee shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

### **14.2 Termination For Cause**

State may terminate this Subgrant for cause based upon the failure of subgrantee to comply with the terms and/or conditions of the Subgrant; provided that the State shall give the subgrantee written notice specifying the subgrantee's failure. If within thirty (30) calendar days after receipt of such notice, the subgrantee shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) calendar days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the subgrantee in default and the Subgrant shall terminate on the date specified in such notice. Failure to perform within the time agreed upon in the subgrant may constitute default and may cause cancellation of the subgrant.

Subgrantee may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this subgrant provided that the Subgrantee shall give the State written notice specifying the State agency's failure and a reasonable opportunity for the state to cure the defect

## **SECTION 15: SINGLE AUDIT ACT**

### **15.1 State or Local Governments and Nonprofit Organizations Receiving \$750,000 or More in Total Federal Funds**

State or local governments and nonprofit organizations receiving \$750,000 or more a year in total federal funds shall have an audit made in accordance with OMB Circular – Part 200: Cost principles, Audit and Administrative Requirements for Federal Awards, Subpart F. Audits should be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. Copies of audit reports shall be provided to the LHSC upon completion.

### **15.2 State or Local Governments and Nonprofits Receiving Less than \$500,000 in Total Federal Funds**

State or local governments and nonprofits receiving less than \$500,000 a year in total federal funds shall be governed by audit requirements prescribed by state or local law or regulations. Copies of audit reports shall be provided to the LHSC upon completion.

### **15.3 Subgrantee is required to provide a signed audit certification letter prior to submission of the first claim.**

## **15.4 Auditors**

The State Legislative Auditor, LHSC, and/or federal auditors and internal auditors of the Division of Administration shall have the option to audit all accounts directly pertaining to the subgrant for a period of five (5) years from the date of the last payment made under this subgrant. Records shall be made available during normal working hours for this purpose.

## **SECTION 16: CONTINUATION OF PROJECT**

It is the intent of the parties that this subgrant is awarded for the purpose of initiating the work statement contained in this project description.

## **SECTION 17: SUPPLANTING**

The subgrantee agrees not to use subgrant funds to replace routine and/or existing State or local expenditures. The subgrantee agrees not to use subgrant funds for costs of activities that constitute general expenses required to carry out the overall responsibilities of State, local or federally recognized Indian tribal governments.

## **SECTION 18: FISCAL FUNDING**

The continuation of this subgrant is contingent upon the appropriation of funds to fulfill the requirements of the subgrant by congress and the legislature. If congress or the legislature fail to appropriate sufficient monies to provide for the continuation of the subgrant, or if such appropriation is reduced by the veto of the President or the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the subgrant, the subgrant shall terminate or be reduced at the time which funds are not appropriated. If funds are reduced, then all Annexes will be changed to reflect the new budget amount.

## **SECTION 19: DISCLOSURE OF OWNERSHIP**

If the subgrantee is a “for profit corporation” whose stock is not publicly traded, then a Disclosure of Ownership affidavit must be filed with the Louisiana Secretary of State’s Office on Form 320, obtained from the Secretary of State’s Office.

## **SECTION 20: BOARD RESOLUTION**

A Board Resolution is required to be submitted to the LHSC if the subgrantee is a corporation, either profit or non - profit.

## **SECTION 21: CERTIFICATE OF AUTHORITY**

A Certificate of Authority is required to be submitted to the LHSC if the subgrantee is an out - of – state corporation.

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## **SECTION 22: FAIR LABOR STANDARDS**

The subgrantee shall comply with the [Fair Labor Standards Act \(FLSA\)](#) as amended.

## **SECTION 23: TAXES**

Subgrantee is responsible for payment of all applicable taxes from the funds to be received under this subgrant and identified under the subgrantee's federal tax identification number.

## **SECTION 24: CERTIFICATIONS AND ASSURANCES**

### **NONDISCRIMINATION**

The Subgrantee will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Authorities"). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 *et seq.*), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, sub-recipients and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin

discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 7100).

The subgrantee agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and subgrantee agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Subgrantee agrees not to discriminate in its employment practices, and will render services under this subgrant without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, disability, or age in any matter relating to employment. Any act of discrimination committed by subgrantee, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this subgrant.

### **POLITICAL ACTIVITY (HATCH ACT)**

The Subrecipient will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

### **CERTIFICATION REGARDING FEDERAL LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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, 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.

## **FUND USE**

Subgrantee agrees not to use subgrant proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

## **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

### Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1300.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarment*, *suspension*, *ineligible*, *lower tier*, *participant*, *person*, *primary tier*, *principal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 2 CFR Part 180. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification\Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1300.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency with which this transaction originated may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

*Certification Regarding Debarment, Suspension, ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:*

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in

this certification, such prospective participant shall attach an explanation to this proposal.

## **BUY AMERICA ACT**

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase only steel, iron and manufactured products produced in the United States with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

## **PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE**

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

## **SECTION 25: MINORITY BUSINESS ENTERPRISE (MBE) REQUIREMENTS**

It is the policy of the U.S. Department of Transportation that minority business enterprises, as defined in [49 CFR Part 23](#), shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR 23 applies to this agreement.

The recipient or its contractor agrees to ensure that minority enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities in the award and performance of DOT - assisted contracts.

## **SECTION 26: PRIVACY ACT**

Performance of work by the subgrantee under this contract may involve the design, development and/or operation of a system of records on individuals that is to be operated by the subgrantee to accomplish an agency function. When such work is to be performed, the subgrantee shall comply with the [Privacy Act of 1974](#) and applicable agency regulations. Violations of the act may involve the imposition of criminal penalties.

## **SECTION 27: DRUG - FREE WORKPLACE**

The subgrantee certifies that it will provide a drug - free workplace in accordance with the [Drug - Free Workplace Act of 1988 \(41 U.S.C. 702\)](#).



## **SECTION 28: ENVIRONMENTAL IMPACT**

Both parties to this subgrant have reviewed the possible environmental impact of activities to be performed under this project and have determined the benefits outweigh any potential negative environmental impact.

## **SECTION 29: ENERGY POLICY AND CONSERVATION ACT**

The subgrantee hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the state energy and conservation plan issued in compliance with the federal [Energy Policy and Conservation Act](#).

## **SECTION 30: NONCOLLUSION CERTIFICATION**

All parties to this subgrant certify that the subgrantee has not been required, directly or indirectly, as a condition to obtaining this subgrant, to: (1) employ or retain for a commission, percentage, brokerage, contingent fee, or other consideration, any firm/agency, or person (other than bona fide employee working solely for subgrantee or a consultant) to solicit or secure this subgrant; (2) agree, as an express or implied condition for obtaining this subgrant, to employ or retain the services of any firm or person in connection with carrying out the subgrant; or (3) paid, or agreed to pay, to any firm, organization or person, other than a bona fide employee working solely for the LHSC any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying the subgrant; except as here expressly stated (if any).

## **SECTION 31: OCCUPANT PROTECTION**

The subgrantee shall adopt (if none presently exists) and enforce an occupant protection use policy requiring all employees and others riding in subgrantee vehicles and/or on subgrant business to use occupant protection devices in accordance with Louisiana state law. The subgrantee shall further support all traffic safety statutes defining occupant protection usage.

## **SECTION 32: TEXT MESSAGING WHILE DRIVING/DISTRACTED DRIVING**

The subgrantee should adopt (if none presently exists) and enforce safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving in accordance with Louisiana state law.

## **SECTION 33: CHILD PROTECTION ACT**

The subgrantee agrees to comply with all provisions of the [Louisiana Child Protection Act \(LSA – RS 15:587.1\)](#) if subgrantee, or its agents, employees, or assignees have any supervisory or disciplinary authority over children under the age of 18.

## **SECTION 34: FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)**

### **34.1 Provisions**

The State will comply with FFATA guidance, OMB Guidance on FFATA Subaward and Executive Compensation Reporting, August 27, 2010, ([https://www.fsrs.gov/documents/OMB\\_Guidance\\_on\\_FFATA\\_Subaward\\_and\\_Executive\\_Compensation\\_Reporting\\_08272010.pdf](https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf)) by reporting to FSRS.gov for each sub-grant awarded:

- Name of the entity receiving the award;
- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- A unique identifier (DUNS);
- The names and total compensation of the five most highly compensated officers of the entity if-- of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity;

(i) the entity in the preceding fiscal year received—

(I) 80 percent or more of its annual gross revenues in Federal awards; and (II) \$25,000,000 or more in annual gross revenues from Federal awards; and (ii) the public does not have access to information about the compensation of the senior executives of the entity 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;

- Other relevant information specified by OMB guidance.

### **34.2 Subgrantee Responsibilities**

Dun and Bradstreet (D&B) maintains a repository of unique identifiers (DUNS Numbers), which are nine-digit sequences recognized as the universal standard for identifying business entities and corporate hierarchies. Any organization that has a Federal contract or grant must have a DUNS Number. All subgrant recipients are required to register with D&B and acquire a DUNS Number.

Subgrantee shall obtain a unique identifier or DUNS Number at: <https://iupdate.dnb.com/iUpdate/companylookup.htm>

## **SECTION 35: INTERNAL CONTROL POLICY**

In accordance with [OMB Circular A-123 – Management’s Responsibility for Internal Control](#), the subgrantee shall maintain and provide a copy of the internal control policies for grant management and financial reporting for their agency to the LHSC. Documentation may be electronic or hard

copy. Documentation could include organizational charts, flow charts, questionnaires, decision tables, or memoranda. The agency internal control policy should ensure that the agency has internal accounting and other controls in place to provide reasonable assurance that it is managing its federal programs in compliance with applicable laws and regulations. At a minimum, the policy should describe levels of supervisor approval for grant funded activities, regular and overtime hours worked, and other eligible expenses.

### **SECTION 36: CODE OF ETHICS**

The subgrantee acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the subgrantee in the performance of services called for in this subgrant. The subgrantee agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this subgrant.

### **SECTION 37: SEVERABILITY**

If any term or condition of this Subgrant or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this subgrant are declared severable.

### **SECTION 38: INDEMNIFICATION & LIMITATION OF LIABILITY**

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this subgrant.

Subgrantee shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State and its Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by subgrantee, its agents, employees, partners or subcontractors, without limitation; provided, however, that the subgrantee shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

If applicable, subgrantee will indemnify, defend and hold the State and its Authorized Users harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the subgrantee: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at subgrantee's sole expense, and (iii) assistance in the defense of any such action at the expense of subgrantee. Where a dispute or claim arises relative to a real or anticipated infringement, the State or its Authorized Users may require subgrantee, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The subgrantee shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product, Material or Service; ii)



Authorized User's use of the Product in combination with other products not furnished by subgrantee; iii) Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if subgrantee believes that it may be enjoined, subgrantee shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the subgrant.

For all other claims against the subgrantee where liability is not otherwise set forth in the subgrant as being "without limitation", and regardless of the basis on which the claim is made, subgrantee's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the subgrant, or two (2) times the charges rendered by the subgrantee under the subgrant. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the subgrantee is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the subgrantee, retain such monies from amounts due subgrantee, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

### **SECTION 39: GOVERNING LAW**

This subgrant shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this subgrant shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

### **SECTION 40: COMPLETE CONTRACT**

This Manual For Subgrants, combined with the LHSC contract, is the complete contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this contract and there are no other agreements or understanding changing or modifying the terms. This contract shall become effective upon final statutory approval.

### **SECTION 41: CONFIDENTIALITY OF DATA**

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the subgrantee in order to carry out this subgrant, or which become available to the subgrantee in carrying out this subgrant, shall be protected by the subgrantee from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural

requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the subgrantee. If the methods and procedures employed by the subgrantee for the protection of the subgrantee's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The subgrantee shall not be required under the provisions of the paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the subgrantee's possession, is independently developed by the subgrantee outside the scope of the subgrant, or is rightfully obtained from third parties.

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