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State of New Hampshire

DEPARTMENT OF SAFETY
JAMES H. HAYES BLDG. 33 HAZEN DR.
CONCORD, N.H. 03305
(603) 271-2791

ROBERT L. QUINN
COMMISSIONER

EDDIE EDWARDS
ASSISTANT COMMISSIONER

STEVEN R. LAVOIE
ASSISTANT COMMISSIONER

December 30, 2024

The Honorable Ken Weyler, Chairman
Fiscal Committee of the General Court and

Her Excellency, Governor Kelly A. Ayotte
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 14:30-a, VI, authorize the Department of Safety to accept and expend $648,718.00 from the U.S Department of Transportation, Federal Motor Carrier Safety Agency (FMCSA) for software upgrades to the Division of Motor Vehicles (DMV) State to State (S2S) interface, effective upon Fiscal Committee and Governor and Council approvals through June 30, 2025. **100% Federal Funds.**

02-23-23-233010-NEWXXXXX – Safety Dept – Division of Motor Vehicles- S2S DHR-NRII Grant Program

Class	Description	SFY 2025 Current Authorized	Requested Action	SFY 2025 Adjusted Authorized
000-404492-16	Federal Funds	-	($648,718.00)	($648,718.00)
040-500800	Indirect Costs	-	3,167.00	3,167.00
041-500801	Audit fund Set Aside	-	649.00	649.00
072-509073	Grants Federal	-	644,902.00	644,902.00
	Total Expenses	-	$648,718.00	$648,718.00

EXPLANATION

The Federal Motor Carrier Safety Agency (FMCSA) requires all State Driver Licensing Agencies to accept the electronic exchange of Commercial Driver Medical Cards directly from the National Registry of Certified Medical Examiners (NRCME) by June 23, 2025. These federal funds will be used to update the Division of Motor Vehicles (DMV) driver license system interface to State to State (S2S) Driver History Record (DHR) 6.4 standards.

The S2S verification program is operated by the American Association of Motor Vehicle Administrators (AAMVA) and ensures accurate and complete data on a New Hampshire driver record including real-time transmission of violations, convictions and withdrawals between States. Updating to DHR 6.4 will enable the DMV to electronically accept Commercial Driver Medical Cards directly from the NRCME, ensuring compliance with FMCSA regulations.

Funds were not budgeted in FY25 because this was a competitive grant with no guarantee of being awarded and the application was submitted after the Department of Safety's budget was submitted to the Governor's Office.

Funds are to be budgeted in the following accounts:

Class 040	Funds are available to fund the .1% Audit Fund Set Aside for this grant program
Class 041	Funds are available to fund 12.67% Indirect Costs associated with this grant program
Class 072	Funds are available to award a contract with the state's current vendor to make the appropriate updates to become compliant with federal rules and regulations.

Highway Funds or General Funds will not be used should federal funds become unavailable.

Respectfully Submitted,

Robert L. Quinn
Commissioner of Safety

DOS Division
Grant Program
Fiscal Situation - NO FUNDS AVAILABLE

Federal Funds Awarded:	
69A3602441449CDL0NH	$648,718.00
Total Grant Funds Awarded	**$648,718.00**
Prior Fiscal Year Actual Expenses:	
Less expenses in FY 2024	$0.00
Total Prior Fiscal Year Actual Expenses	**$0.00**
Net Grant Funds Remaining as of July 1, 2024	**$0.00**
Less SFY 2024 Appropriation including prior year encumbrances	**$0.00**
Excess grant funds available to appropriate	**$0.00**
This Request	**$648,718.00**

U.S Department of Transportation

Federal Motor Carrier Safety Administration

Grant Agreement

1. RECIPIENT NAME AND ADDRESS
NEW HAMPSHIRE DEPARTMENT OF SAFETY

33 Hazen Dr
Concord, NH 03305-0011

2. AGREEMENT NUMBER: 69A3602441449CDL0NH

3. AMENDMENT NO. 0

4. PROJECT PERFORMANCE PERIOD: FROM 09/01/2024 TO 09/30/2028

5. FEDERAL FUNDING PERIOD: FROM 09/01/2024 TO 09/30/2028

1A. IRS/VENDOR NO. 026000618

6. PRE-AWARD AUTHORITY? No 6A. PRE-AWARD DATE (MM/DD/YYYY) N/A

1B. UEI. V9GSW38ZEVC5 1C. DUNS. 060340564

7. ACTION New

8. CFDA#: 20.232

9. PROJECT TITLE
FY 2024 CDLPI Grant Program

TITLE	FEDERAL	NON-FEDERAL	TOTAL
10. PREVIOUS AGREEMENTS	0.00	0.00	0.00
11. THIS AGREEMENT	648,718.00	0.00	648,718.00
12. TOTAL AGREEMENT	648,718.00	0.00	648,718.00

12A. OTHER FEDERAL FUNDING 0.00

13. INCORPORATED ATTACHMENTS
THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREIN AND MADE A PART HEREOF:

FMCSA Financial Assistance Agreement General Terms and Conditions, Recipient project narrative and indirect cost rate agreement (if applicable) are incorporated by reference unless/except as noted below.

14. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT
49 U.S.C. § § 31104 and 31313 (as amended by the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58 (2021), § 23001(b)), Title VIII of Division J of IIJA, and the Consolidated Appropriations Act, 2024, P.L. 118–42 (2024)

15. REMARKS
See Award Conditions.

GRANTEE ACCEPTANCE		AGENCY APPROVAL	
16. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Brandy Cassada Administrator II		18. NAME AND TITLE OF AUTHORIZED FMCSA OFFICIAL Mr. Thomas Martin Division Chief, Grants	
17. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL Electronically Signed	17A. DATE 09/27/2024	19. SIGNATURE OF AUTHORIZED FMCSA OFFICIAL Electronically Signed	19A. DATE 09/27/2024

AGENCY USE ONLY

20. OBJECT CLASS CODE: 41000

21. ORGANIZATION CODE: M500000000

22. ACCOUNTING CLASSIFICATION CODES

DOCUMENT NUMBER	FUND	BY	BPAC	AMOUNT
FM-CDL-0577-24-01-00	17815824CD	2024	0905710CDL	648,718.00

Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/01/2024	09/30/2024	Quarterly	10/30/2024
10/01/2024	12/31/2024	Quarterly	01/30/2025
01/01/2025	03/31/2025	Quarterly	04/30/2025
04/01/2025	06/30/2025	Quarterly	07/30/2025
07/01/2025	09/30/2025	Quarterly	10/30/2025
10/01/2025	12/31/2025	Quarterly	01/30/2026
01/01/2026	03/31/2026	Quarterly	04/30/2026
04/01/2026	06/30/2026	Quarterly	07/30/2026
07/01/2026	09/30/2026	Quarterly	10/30/2026
10/01/2026	12/31/2026	Quarterly	01/30/2027
01/01/2027	03/31/2027	Quarterly	04/30/2027
04/01/2027	06/30/2027	Quarterly	07/30/2027
07/01/2027	09/30/2027	Quarterly	10/30/2027
10/01/2027	12/31/2027	Quarterly	01/30/2028
01/01/2028	03/31/2028	Quarterly	04/30/2028
04/01/2028	06/30/2028	Quarterly	07/30/2028
07/01/2028	09/30/2028	Final	01/28/2029

Performance Progress Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/01/2024	09/30/2024	Quarterly	10/30/2024
10/01/2024	12/31/2024	Quarterly	01/30/2025
01/01/2025	03/31/2025	Quarterly	04/30/2025
04/01/2025	06/30/2025	Quarterly	07/30/2025
07/01/2025	09/30/2025	Quarterly	10/30/2025
10/01/2025	12/31/2025	Quarterly	01/30/2026
01/01/2026	03/31/2026	Quarterly	04/30/2026
04/01/2026	06/30/2026	Quarterly	07/30/2026
07/01/2026	09/30/2026	Quarterly	10/30/2026
10/01/2026	12/31/2026	Quarterly	01/30/2027
01/01/2027	03/31/2027	Quarterly	04/30/2027
04/01/2027	06/30/2027	Quarterly	07/30/2027
07/01/2027	09/30/2027	Quarterly	10/30/2027
10/01/2027	12/31/2027	Quarterly	01/30/2028
01/01/2028	03/31/2028	Quarterly	04/30/2028
04/01/2028	06/30/2028	Quarterly	07/30/2028
07/01/2028	09/30/2028	Final	01/28/2029

AWARD CONDITIONS

1. This Notice of Grant Award (NGA) is to award the Recipient with the total award amount authorized in Block 11 to implement the FY 2024 Commercial Driver's License Program Implementation Grant Program.

   The FMCSA approves the project plan, line item budget, and budget narrative as requested on the originial application. The FY 2024 total recommended amount is $648,718 (Federal award = $648,718/State match = $0).

   If the recipient is requesting indirect costs, the recipient may not request these costs for reimbursement until it has submitted a current approved indirect cost rate agreement to the FMCSA Division Office, and the GMO mailbox below:

   FMCSAESCGMOHelpDesk@dot.gov

   The recipient and any sub-recipient must also comply with the applicable FMCSA general terms and conditions attached to this NGA. Failure to comply with the terms and conditions attached and any additional provisions directly reflected in this NGA may result in enforcement actions as outlined in 2 CFR §§ 200.338 and 200.339.

Project Abstract Summary

1. The purpose of this award to the New Hampshire Department of Safety is to implement the NR II regulations.

AWARD ATTACHMENTS

NEW HAMPSHIRE DEPARTMENT OF SAFETY 69A3602441449CDL0NH

1. Standard Terms and Conditions

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
FINANCIAL ASSISTANCE AGREEMENT GENERAL TERMS AND CONDITIONS

Section 1. Grant Authority

a. Contract Authority.

The Federal Motor Carrier Safety Administration's (FMCSA) authorizing legislation, The Fixing America 's Surface Transportation Act [FAST Act], Pub. L. No. 114-94, §5101 (2015) granted FMCSA contract authority. As codified in 49 U.S.C. §31104, the Secretary of Transportation 's approval of the grant funds made available imposes a contractual obligation upon the United States for payment of the Government 's share of costs in carrying out the grant objectives.

b. Lapse in Appropriations and/or Authorization.

Except in limited circumstances, the absence of FMCSA appropriations and/or authorization prevents the continuation of Federal supervision and support to the performance of a grant. In the absence of such supervision or support, the Recipient may only continue to proceed with its work if (1) the performance of such grant is not incurring obligations from the lapsed appropriations; (2) if continued grant management supervision or support is not critical to the Recipient's continued performance of the work; (3) and FMCSA has approved the continuation of such work. FMCSA will make such determinations in accordance with the Executive Office of the President, Office of Management and Budget, Memorandum "Planning for Agency Operations During a Lapse in Government Funding "(April 7, 2011), and any amendments or updated guidance thereto.

Section 2. Effective Date.

Recipient acknowledges that Federal funds are obligated on the effective date of the Grant Agreement. The effective date is the date that the Grant Agreement contains the authorized signatures of both parties to this agreement. Where the dates accompanying the signatures differ from party to party, the effective date of the Grant Agreement shall be the most recent of these dates.

Section 3. Electronic Signatures.

The Recipient understands that electronic signatures are binding. An electronic signature to the Grant Agreement commits the Recipient to these Provisions and Assurances, as well as all requirements denoted in Section 4.

Section 4. General Requirements.

a. Obligation of Recipient to Comply.

The Recipient understands that by signing the Grant Agreement, the Recipient is agreeing to carry out the approved project plan and the approved budget and to comply with all applicable Federal laws and requirements imposed by the FMCSA concerning special requirements of law, program requirements, and other administrative requirements. This includes, but is not limited to: (1) 49 U.S.C. chapters 311 and 313 (2016), as applicable and denoted in the Notice of Grant Agreement; (2) FAST Act, Pub. L. No. 114-94, §§ 5101 and 5104 (2015), as applicable and denoted in the Notice of Grant Agreement; (3) U.S. Department of Transportation (DOT) regulations; (4) the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. part 200); and
(5) the Federal Grant and Cooperative Agreement Act of 1977.

For all Federal awards, compliance with statutory and national policy requirements also includes the provisions of the Federal Funding and Accountability Transparency Act (FFATA), which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity, codified at 2 C.F.R. part 25 and 2 C.F.R. part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. §§ 2324 and 2409 and 41
U.S.C. § § 4304, 4310, and 4712.

b. Application of Federal, State, and Local Laws and Regulations.

i. Federal Laws.

The Recipient understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date the Agreement was executed may be modified from time to time. The Recipient agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Federal requirements, the Recipient agrees to include in all Subrecipient agreements and third-party contracts financed with FMCSA assistance, specific notice that Federal requirements may change and the changed requirements will apply to the Project as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

ii. State or Territorial Law and Local Law.

Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this Agreement shall require the Recipient to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law;

however, if any of the provisions of this Agreement violate any applicable State or territorial law, or if compliance with the provisions of this Agreement would require the Recipient to violate any applicable State or territorial law, the Recipient agrees to notify the FMCSA immediately in writing in order that FMCSA and the Recipient may make appropriate arrangements to proceed with the Project as soon as possible.

c. Subrecipients.

State Recipients shall follow State law and procedures when awarding and administering subawards to local and Indian tribal governments including 2 C.F.R. § 200.317. All other non-federal entities, including Subrecipients of a State, will follow 2 C.F.R. § 200.318, General procurement standards, through § 200.326, Contract provision, as well as the Standards for Financial and Program Management, at §§ 200.300 through 200.309.
Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

d. Subawards.

Subaward means 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. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

e. Pass-Through Entity.

Pass-through entity means a non-Federal entity that provides a subaward to a Subrecipient to carry out part of a Federal program. All Pass-Through Entities must comply fully with 2 C.F.R. §§ 200.330, 200.331, 200.332, and 200.505.

f. Prohibition Against Transferring An Award.

The Recipient is prohibited from transferring or subrogating their rights and responsibilities of the grant program and funds associated with that grant to another entity. Subrogation is when a non-federal entity substitutes another entity, not awarded the subject grant by FMCSA, to a lawful claim, demand, or right, so that that entity succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or fund access. The act of subawarding to a Subrecipient is not considered as the subrogation of the Recipient's award.

Section 5. Internal Controls. The Recipient must:

a. Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO);

b. Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards;

c. Evaluate and monitor the non-Federal entity's compliance with statute, regulations and the terms and conditions of Federal awards;

d. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; and

e. Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

Section 6. Ethics.

a. Written Code of Ethics.

The Recipient agrees to maintain a written code or standards of ethical conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts supported by Federal funds. The code or standards shall provide that the Recipient's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors or anything of monetary value from present or potential contractors, Subrecipients, or regulated entities. The Recipient may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by the Recipient's officers, employees, board members, or agents, or by contractors or Subrecipients or their agents.

b. Personal Conflict of Interest.

The Recipient's code or standards must provide that no employee, officer, board member, or agent of the Recipient may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be

involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

i. The employee, officer, board member, or agent;
ii. Any member of his or her immediate family;
iii. His or her partner; or
iv. An organization that employs, is considering to employ, or is about to employ, any of the above.

c. Organizational Conflicts of Interest.

The Recipient's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third-party contract or subaward, may, without some restrictions on future activities, result in an unfaircompetitiveadvantagetothecontractoror Subrecipient or impair the contractor's or Subrecipient's objectivity in performing the contract work.

Section 7. Hatch Act.

The Recipient agrees to comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which limit the political activities of state or local employees whose principal employment is in connection with programs financed in whole or in part by loans or grants made by the United States or a Federal agency. The Hatch Act specifically exempts employees of educational institutions, and the Hatch is not applicable to private, nonprofit organizations unless the statutes through which the nonprofit organizations derive their federal funding contain a provision stating that the recipient organizations are deemed to be state or local government agencies for purposes of the Hatch Act. On December 19, 2012, Congress passed the Hatch Act Modernization Act of 2012 (the Act). The Act became effective on January 27, 2013. Now, only state, D.C., or local government employees whose salaries are paid for entirely by federal funds are prohibited from running for partisan office. All other state, D.C., and local employees, even if they are otherwise covered by Hatch Act restrictions are free under the Hatch Act to run for partisan office.

Section 8. Limitation on Use of Federal Funds for Lobbying for Grants in Excess of $100,000.

By signing this agreement, the Recipient declares that it is in compliance with 31 U.S.C. § 1352, which prohibits the use of federally appropriated funds to influence a Federal employee, officer, or Member of Congress in connection with the making or modification of any Federal grant, loan, contract, or cooperative agreement. Unless the payment of funds is otherwise reported to FMCSA, signing this agreement constitutes a declaration that no funds, including funds not federally appropriated, were used or agreed to be used to influence this grant.

Recipients of subawards in excess of $100,000 must make the same declarations to the Recipient. With respect to the payment of funds not federally appropriated by the Recipient and

Subrecipients, the Recipient must report to the FMCSA the name and address of each person paid or performing services for which payment is made, the amount paid, and the activity for which the person was paid.

Section 9. Contracting (Federal Standards).

The Recipient and Subrecipients agree to comply with the Procurement Standards requirements set forth at 2 C.F.R. §§ 200.317 through 200.326 inclusive, whichever may be applicable, and with applicable supplementary U.S. DOT or FMCSA directives or regulations. If determined necessary for proper Project administration, FMCSA reserves the right to review the Recipient's technical specifications and requirements.

Section 10. Notification Requirement.

With respect to any procurement for goods and services (including construction services) having an aggregate value of $500,000 or more, the Recipient agrees to:

a. Specify in any announcement of the awarding of the contract for such goods or services the amount of Federal funds that will be used to finance the acquisition; and

b. Express the said amount as a percentage of the total costs of the planned acquisition.

Section 11. Debarment and Suspension.

The Recipient agrees to obtain certifications on debarment and suspension from its third-party contractors and Subrecipients and otherwise comply with U.S. DOT regulations, Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants), 49 C.F.R. part 32. This action of certification shall take place for each federal year, regardless of prior certification completed for a Subrecipient or contractor.

Section 12. Notification of Third-Party Contract or Subaward Disputes or Breaches.

The Recipient agrees to notify FMCSA of any current or prospective major dispute, breach, or litigation pertaining to any third-party contract or subaward. If the Recipient seeks to name FMCSA as a party to litigation for any reason, the Recipient agrees first to inform FMCSA before doing so. This provision applies to any type of litigation whatsoever, in any forum.

Section 13. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.

FMCSA encourages the Recipient to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other DOT agencies in 49 C.F.R. part 26) in carrying out the Project.

Section 14. Records Retention.

a. Requirement to Retain Records.

During the course of the Project and for three years after the final Federal financial report is submitted (form SF-425), the Recipient agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as FMCSA may require. Reporting and record-keeping requirements are set forth in 2 C.F.R. § 200.333.

b. Access to Recipient and Subrecipient Records.

The Recipient, and related subrecipients, will give FMCSA, the Secretary of Transportation, the Comptroller General of the United States, or any of their duly authorized representatives, and, if appropriate the State, through any authorized representative, access to and the right to examine all records, books, papers or documents related to the award and will establish a proper accounting system in accordance with generally accepted accounting standards. Access requirements to records are set forth in 2 C.F.R. § 200.336.

Section 15. Audit and Inspection.

a. Inspector General Act of 1978.

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3 § 1 et seq., an audit of the award may be conducted at any time.

b. Single Audit Act Amendments of 1996.

The Recipient agrees to undergo the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 C.F.R. § 200.501.

c. Other Audit Requirements.

A Recipient that is: (a) a State, local government or Indian tribal government, an institution of higher education or nonprofit organization agrees to comply with the audit requirements of 2 C.F.R. § 200.501, and any revision or supplement thereto; (c) a private for-profit organization agrees to comply with the audit requirements of 2 C.F.R. § 200.501(h).

It is imperative that Recipients submit required Single Audits within the time limits specified in the Circular. The Recipient agrees to submit the data collection form and copies of the reporting package required under the Single Audit Act Amendments of 1996 and 2 C.F.R. § 200.501 to:

The Federal Audit Clearinghouse Bureau of the Census 1201
East 10 Street,
Jefferson, IN 47132.

The Recipient agrees to obtain any other audits required by FMCSA. Project closeout will not alter the Recipient's audit responsibilities. Audit costs for Project administration and management are allowable under this Project to the extent authorized by 2 C.F.R. § 200.501.

The Recipient agrees to permit FMCSA, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its Subrecipients pertaining to the Project. The Recipient agrees to require each Subrecipient to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subaward, and to audit the books, records, and accounts involving that subaward as it affects the Project.

Section 16. Responsibility for Reporting Fraudulent Activity, Waste, and Abuse.

The Recipient understands that the Federal government shall pursue administrative, civil, or criminal action under a variety of statutes relating to fraud and making false statement or claims.

The Recipient is required to contact the DOT, the Office of Inspector General (OIG), if the Recipient becomes aware of the existence (or apparent existence) of fraudulent activity, waste, or abuse.

The OIG has authority within the DOT to conduct criminal investigations. The DOT OIG maintains a post office box and a toll-free hotline for receiving information from individuals concerning fraud, waste, or abuse under DOT grants and cooperative agreements. The hotline is available 24 hours a day, 7 days a week at https://www.oig.dot.gov/Hotline. The identity of the caller is kept confidential, and callers are not required to give their names.

Examples of fraud, waste, and abuse that should be reported include, but are not limited to, embezzlement, misuse, or misappropriation of grant funds or property, and false statements, whether by organizations or individuals. Other examples include, but not limited to, theft of grant funds for personal use; using funds for non-grant-related purposes; theft of federally owned property or property acquired or leased under a grant; charging inflated building rental fees for a building owned by the Recipient; submitting false financial reports; and submitting false financial data in bids submitted to the Recipient (for eventual payment under the grant).

Section 17. Budget and Finance.

The Recipient agrees to carry out Agreement activities and seek reimbursement in accordance with the Approved Project Budget after securing FMCSA written approval. The funding of items identified in the budget constitutes FMCSA 's authorization for the Recipient to incur these costs, if they are allowable, allocable, necessary, and reasonable. Furthermore, funds cannot be spent that violate any FMCSA policy or grants manual. Costs not specifically budgeted in this Agreement may be allowable if prior approval is not required and costs are

incurred consistently with the applicable cost principles.

Prior Approval means written permission provided by an FMCSA authorized official in advance of an act that would result in either (1) the obligation or expenditure of funds or (2) the performance or modification of an activity under the grant-supported project where such approval is required. Prior approval must be obtained in writing from the designated Grants Management Officer or FMCSA authorized official for the grant involved. Documentation of the approved budget on the Notice of Grant Award constitutes prior approval. Prior approval applies for the performance of activities and expenditure of funds as described in the grant application, unless otherwise restricted by the terms and conditions of the Agreement.

In accordance with 2 C.F.R. § 200.407 and § 200.308, the Recipient must obtain prior , written approval from FMCSA before making any revisions to the approved project budget and/or project plan: (1) extending the project period of the grant beyond the project period end date specified in the most recent revision of the Agreement; (2) that would require any transfer of funds between Standard Form (SF) 424A (direct-cost budget categories) cumulatively greater than ten percent of the total approved project budget; or (3) that require the addition of expenditures for items or services not approved in the original project plan. Examples include: increased cost of equipment purchased; subawarding, transferring or contracting out of any work under a Federal award not included in the original approved budget; or a first-time request to recover indirect costs.

The Recipient agrees to submit a request for prior approval no less than 30 days prior to the expiration of the Agreement. The FMCSA will not process requests for prior approval received less than 30 days from the Agreement expiration date. Within 30 calendar days from the date of the Recipient's request for prior approval, FMCSA will review the request and notify the Recipient whether the request has been approved. If the revision is still under consideration at the end of 30 calendar days, FMCSA will inform the Recipient in writing of the date when the Recipient may expect the decision.

The Recipient may, without prior approval from FMCSA, make any reasonable and necessary modification to the project budget if such deviations do not cumulatively exceed, or expect to exceed, ten percent of the total approved project amount and provided that such deviations only involve the transfer of funds between expenditure items, cost objectives or categories authorized by FMCSA in the currently approved budget. The Recipient agrees to notify FMCSA of this change.

The Recipient agrees to establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system, in a manner consistent with 2 C.F.R. § 200.302. Consistent with the provisions of 2 C.F.R.§ 200.305, the Recipient agrees to record in the Project Account, and deposit in a financial institution all Project payments received by it from FMCSA pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received because the Project (Project Funds). The Recipient is encouraged to use financial institutions owned at least 50 percent by minority group members.

All costs charged to the Project, including any approved services contributed by the Recipient

or others, shall be supported by properly executed payroll documents, time and attendance records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. All match expenditures shall be supported by appropriate records. The Recipient also agrees to maintain accurate records of all Program Income derived from Project implementation. The Recipient agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other financial documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

Section 18. Payments.

a. Request by the Recipient for Payment.

The Recipient's request for payment of the Federal share of approved costs shall be made to FMCSA and will be acted upon by FMCSA as set forth in this section. Each payment made to the Recipient must be in compliance with Department of the Treasury regulations, "Rules and Procedures for Funds Transfers, 31 C.F.R. part 205. To receive a Federal assistance payment, the Recipient must:

i. Have demonstrated or certified that it has made a binding commitment of non-Federal funds, if applicable, adequate when combined with Federal payments, to cover all costs to be incurred under the Project to date. A Recipient required by Federal statute or this Agreement to provide contributory matching funds or a cost share agrees:

   A. To refrain from requesting or obtaining Federal funds in excess of the amount justified by the contributory matching funds or cost share that has been provided; and

   B. To refrain from taking any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized under this Agreement. The requirement for contributory matching funds or cost share may be temporarily waived only to the extent expressly provided in writing by FMCSA.

ii. Have submitted to FMCSA all financial and progress reports required to date under this Agreement;

iii. Have identified the source(s) of financial assistance provided under this Project, if applicable, from which the payment is to be derived; and

iv. Have expended any earned Program Income before requesting any federal funds for reimbursement.

b. Delphi eInvoicing System for DOT Financial Assistance Awardees.

Subject to the requirements in 2 C.F.R. § 200.305, payments will be made after receipt of required FMC SA reporting forms and supporting documentation. Each payment request must be made electronically via the Delphi elnvoicing System.

The following are the procedures for accessing and utilizing the Delphi elnvoicing System.

i. **Grant Recipient Requirements.**

A. Recipient must have internet access to register and submit payment requests through the Delphi elnvoicing system.

B. Recipient must submit payment requests electronically and FMCSA must process payment requests electronically.

ii. **System User Requirements.**

A. Recipients should contact FMCSA to request access to the system. The FMCSA will provide the Recipient's name and email address to the DOT Financial Management Office. The DOT will then notify the Recipient to register for the system through an electronic invitation. The Recipient must complete online training prior to DOT giving system access.

B. The DOT will send the Recipient an email with an electronic form to verify the Recipient 's identity. The Recipient must complete the form, and present it to a Notary Public for verification. The Recipient will return the notarized form to:

DOT Enterprise Services Center
FAA Accounts Payable, AMZ-1 00
PO Box 25710
Oklahoma City, OK 73125.

C. The DOT will validate the form and email a user ID and password to the Recipient. The Recipient should contact the FMCSA grants management office with changes to their system information.

D. Note: Additional information, including access forms and training materials, can be found on the DOT elnvoicing website:
https://www.transportation.gov/cfo/delphi-einvoicing-system

E. Waivers.

DOT Financial Management officials may, in highly limited circumstances and on a case by case basis, waive the requirement to register and use the electronic grant payment system. Waiver request forms can be obtained on the DOT elnvoicing website https://www.transportation.gov/cfo/delphi-einvoicing-system or by contacting FMCSA.

Recipients must explain why they are unable to use or access the internet to register and enter payment requests.

c. Reimbursement Payment by FMCSA. If the reimbursement method is used, the Recipient agrees to:

i. Complete and submit Standard Form 3881, "Payment Information Form - ACH Payment Vendor Payment System," to FAA-ESC; and

ii. Complete and submit, on at least a quarterly basis, Standard Form 270, "Request for Advance or Reimbursement," to FMCSA.

iii. Possess and maintain a current DUNs number and entity registration with the System for Award Management (www.sam.gov).

Upon receipt of a payment request and adequate accompanying information (invoices in accordance with applicable cost principles), FMCSA will authorize payment by direct deposit provided the Recipient: (i) is in compliance with its obligations under this Agreement, (ii) has satisfied FMCSA that it needs the requested Federal funds during the requisition period, and (iii) is making adequate and timely progress toward Project completion. If all these circumstances are present, FMCSA may reimburse approved costs incurred by the Recipient up to the maxi mum amount of FMCSA's share of the total Project funding. FMCSA will employ a payment term of 20 days. The clock will start running for payment on receipt of the invoice by FMCSA's financial processor.

d. Other Payment Information.

The Recipient agrees to adhere to and impose on its Subrecipients all applicable foregoing "Payment by FMCSA" requirements of this Agreement. If the Recipient fails to adhere to the foregoing "Payment by FMCSA" requirements of this Agreement, FMCSA may revoke the portion of the Recipient's funds that has not been expended.

e. Effect of Program Income, Refunds, and Audit Recoveries on Payment.

In accordance with 2 C.F.R. § 200.305(b)(5) State, local government, nonprofit organizations and Indian tribunal Recipients and Subrecipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on

such funds before requesting additional cash reimbursements.

f. Reimbursable Costs.

The Recipient's expenditures will be reimbursed only if they meet all requirements set forth below:

i. Conform with the Project description and the approved Project Budget and all other terms of this Agreement;

ii. Be necessary to accomplish the Project;

iii. Be reasonable for the goods or services purchased;

iv. Be actual net costs to the Recipient (i.e., the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred);

v. Be incurred (and be for work performed) after the Federal Funding Period start date of this Agreement, unless specific prior authorization from FMCSA to the contrary is received in writing (pre-award costs);

vi. Unless permitted otherwise by Federal statute or regulation, conform with Federal guidelines or regulations and Federal cost principles as set forth below:

A. For Recipients that are governmental organizations, institutions of higher education, private non-profit organizations, the cost principles of 2 C.F.R. § 200, subpart E; and

B. For Recipients that are for-profit organizations, the standards of the Federal Acquisition Regulations, 48 C.F.R. part 31.2, "Contracts with Commercial Organizations" apply.

vii. Be satisfactorily documented; and

viii. Be treated uniformly and consistently as non-Federal funds under accounting principles and procedures approved and prescribed by FMCSA for the Recipient, and those approved or prescribed by the Recipient for its Subrecipients and contractors.

g. Indirect Costs.

If indirect costs are included in the approved budget, the Recipient may not request these costs for reimbursement absent a current approved indirect cost rate agreement submitted to the FMCSA Division Office, and included as part of the official grant record.

Indirect costs will not be reimbursed without documentation of an approved indirect cost rate from the Recipient's cognizant agency; however, a Recipient or Subrecipient that has never had a negotiated indirect cost rate may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely, without documentation. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time

As described in 2 C.F.R. § 200.403, factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double-charged or inconsistently charged as both. Except as provided above, if a Recipient intends to request reimbursement of indirect costs, the Recipient must submit the proper documentation before vouchers are submitted for reimbursement. The Recipient must indicate in its budget that it will be seeking indirect costs, and a placeholder indirect cost rate will suffice until an approved rate can be determined.

The Recipient must obtain prior approval through formal amendment in order to recover indirect costs at an approved rate higher than the place holder indirect cost rate if the cumulative amount of such transfer exceeds or is expected to exceed 10 percent of the total approved budget.

The Recipient may not request additional grant funds to recover indirect costs that it cannot recover by shifting funding from direct costs to indirect costs. After this Grant Agreement has been signed, any request for changes to the indirect cost rate will require an amendment and must be approved by formal amendment if the change to the indirect cost rate is a new rate or would cause the cumulative amount of a budget transfer to exceed 10 percent of the total approved budget.

The cognizant agency for indirect costs may allow for a one-time extension of the current indirect cost rate of up to four years without further negotiation of a federally approved indirect cost rate. If the cognizant agency permits any one-time extension, the Recipient is locked in with that indirect cost rate until the end of the approved extension.

h. **Pre-Award Costs. A Recipient may be reimbursed for obligations incurred before the effective date of the award if**:

   i. The Recipient receives prior written approval from the FMCSA before the effective date of the grant agreement;

   ii. The costs are necessary to conduct the project; and

   iii. The costs would be allowable under the grant, if awarded.

If a specific expenditure would otherwise require prior approval before making the expenditure (i.e. pursuant to 2 C.F.R. § 200.407), then the Recipient must obtain FMCSA written approval before incurring the cost.

Recipient understands that the incurrence of pre-award costs in anticipation of an award is taken at the Recipient's risk and imposes no obligation on FMCSA to make the award or to increase the amount of the approved budget if (1) there is no award subsequently made;(2) an award is made for less than anticipated and is inadequate to cover the pre-award costs incurred; or (3) there are inadequate appropriations.

i. Disallowed Costs.

In determining the amount of Federal assistance FMCSA will provide, FMCSA will exclude:

i. Any Project costs incurred by the Recipient before the effective date of this Agreement, or amendment or modification thereof, whichever is later, unless otherwise permitted by Federal Law or regulation, or unless an authorized representative of FMCSA states in writing to the contrary;

ii. Any costs incurred by the Recipient that are not included in the latest approved Project Budget; and

iii. Any costs attributable to goods or services received under a contract or other arrangement that is required to be, but has not been, concurred with or approved in writing by FMCSA.

The Recipient agrees that reimbursement of any cost under the "Payment by FMCSA," part of this Agreement does not constitute a final FMCSA decision about the allowability of that cost and does not constitute a waiver of any violation by the Recipient of the terms of this Agreement. The Recipient understands that FMCSA will not make a final determination about the allowability of any cost until an audit of the Project has been completed. If FMCSA determines that the Recipient is not entitled to receive any part of the Federal funds requested, FMCSA will notify the Recipient stating the reasons thereof. Project closeout will not alter the Recipient's obligation to return any funds due to FMCSA as a result of later refunds, corrections, or other transactions. Nor will Project closeout alter FMCSA's right to disallow costs and recover funds based on a later audit or other review. Unless prohibited by law,

FMCSA may offset any Federal assistance funds to be made available under this Project as needed to satisfy any outstanding monetary claims that the Federal Government may have against the Recipient. Exceptions pertaining to disallowed costs will be assessed based on their applicability, as set forth in the applicable Federal cost principals or other written Federal guidance.

Section 19. Program Income.

Recipient agrees to comply with the regulations relating to program income, located at 2 C.F.R. §§ 200.305(b)(5) and 200.307 for State, local government, Indian tribunal recipients, and non-profit organizations, and their Subrecipients.

Program income means gross income earned by the Recipient, Subrecipient, or contractor under a grant that is directly generated by a grant-supported activity or earned because of the award during the award period. "During the grant period " is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

Program income includes, but is not limited to, user charges or user fees, income from fees for services performed, the use or rental of real or personal property acquired under federally- funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them. Per 2 C.F.R. § 200.307 (c), Governmental revenues, taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.

Recipients agree to use the Program income in accordance with 2 C.F.R. §§ 200.305(b)(5) 200.307 for State, local government, nonprofit organizations and Indian tribunal recipients and subrecipients.

Section 20. Reports.

a. **Performance Progress Reports.**

The Recipient will submit, at a minimum, quarterly performance progress reports and a final performance progress report at the completion of the award (within 90 days after) to the agency point of contact listed in the award document. Recipient must submit all performance progress report forms required by FMCSA. These reports will cover the period: January 1 -March 31, April 1-June 30, July 1- September 30, and October 1-December 31. The Recipient shall furnish one (1) copy of a quarterly performance progress report to the district office and respective Grant Manager, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported. Each quarterly report shall set forth concise statements concerning activities relevant to the Project, and shall include, but not be limited to, the following:

i. An account of significant progress (findings, events, trends, etc.) made during the reporting period;

ii. A description of any technical and/or cost problem(s) encountered or anticipated

that will affect completion of the grant within the time and fiscal constraints as set forth in this Agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FMCSA, or a statement that no problems were encountered;

iii. An outline of work and activities planned for the next reporting period; and

iv. A status update/resolution for all outstanding findings from program reviews and/or audits.

b. Quarterly Financial Status Reports.

The Recipient shall furnish one (1) copy of a quarterly financial status report to the division, and one (1) copy to the respective Grant Manager, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported. The Recipient shall use SF-425, Federal Financial Report, to report the status of funds for all non-construction projects or programs. If the Recipient's accounting records are not normally kept on an accrual basis, the Recipient shall not be required to convert its accounting system, but shall develop such accrual information through an analysis of the documentation on hand. The Recipient shall certify to the expenditure of its proposed cost share for the period being reported, in the "Remarks" block.

Section 21. Non-Discrimination.

The Recipient will comply with all Federal authorities relating to nondiscrimination. 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), which prohibits discrimination on the basis of race, color, or national origin, as implemented by 49 C.F.R . § 21.1 et seq. and 49 C.F.R. § 303;
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324, et seq.), which prohibits discrimination on the basis of sex;
- Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. § 1681 et seq.), which prohibits discrimination on the basis of sex in education programs or activities, as implemented by 49 C.F.R. § 25.1 et seq.;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, which prohibits discrimination on the basis of disability and 49 C.F.R. part 27;
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189), as implemented by Department of Justice regulations at 28 C.F.R. parts 35 and 36, and Department of Transportation

regulations at 49 C.F.R. parts 37 and 38;

- The Civil Rights Restoration Act of 1987, (102 Stat. 28.), "which restore[d) the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.";
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prohibits 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;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting Department of Transportation guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP);
- Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000e et seq., 78 Stat. 252), which prohibits discrimination in employment on basis of race, color, national origin, religion, or disability, as implemented by 29 C.F.R. § 1601.1, et seq.
- The Recipient also agrees to comply with the FMCSA Standard Title VI/Non-Discrimination Assurances (DOT Order No. 1050.2A).

Section 22. Executive Order on Equal Opportunity Related to Contracts.

The Recipient will comply with all Federal statutes and Executive Orders relating to Equal Employment Opportunity.

The Recipient agrees to incorporate in all contracts having a value of over $10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 C.F.R. part 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.

The Recipient agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contracts and/or issuing purchase orders for material, supplies, or equipment over $10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.

Section 23. Employment Policies.

The Recipient further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, disability or age; and that it has an affirmative action plan (AAP) consistent with the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. § 1607, and the Affirmative Action Guidelines, 29 C.F.R. § 1608. The applicant/Recipient shall provide the AAP to FMCSA for inspection or copy upon request.

Section 24. Property.

a. General.

In general, title to equipment and supplies acquired by a Recipient with DOT funds vests in the Recipient upon acquisition, subject to the property management requirements of 2 C.F.R. §§ 200.302(b)(4); 200.307(d); 200.310; 200.313; 200.316; and 200.344(4).

A Recipient that is a State, local, or Indian tribal governments, institutions of higher education, and non-profits agrees to comply with the property management standards detailed in 2 C.F.R. §§ 200.312 and 200.313, including any amendments thereto, and with other applicable Federal regulations and directives. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FMCSA.

b. Use of Project Property.

i. The State Recipient agrees to use Project property for the purpose for which it was acquired under the period of performance of the Grant. State Recipients acknowledge that the FMCSA may ensure that the purpose of the grant is being satisfied. State Recipients acknowledge that FMCSA may request a copy of the State statute and procedures in determining whether a State is in compliance with its own State procedures, and to assist the FMCSA in determining the allocability, reasonableness, and allowability of costs.

ii. The Non-State Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period, beginning on the effective date, and used to support public transportation activities) for the duration of the useful life of that property, as required by FMCSA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Non-State Recipient further agrees to notify FMCSA immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

c. Maintenance.

The State Recipient agrees to maintain Project property in accordance with State law and procedures.

The Non-State Recipient agrees to maintain Project property in good operating order, in compliance with any applicable Federal regulations or directives that may be issued.

d. Records.

The State Recipient agrees to maintain property records in accordance with State law and procedures. The Non-State Recipient agrees to keep satisfactory property records pertaining to the use of Project property, and submit to FMCSA upon request such information as may be required with this agreement.

e. Incidental Use.

Any incidental use of Project property will not exceed that permitted under applicable Federal laws, regulations, and directives.

f. Encumbrance of Project Property.

i. The State Recipient agrees to maintain satisfactory continuing control of Project property in accordance with State law and procedures. The State Recipient understands that an encumbrance of project property may not interfere with the purpose for which the equipment was purchased.

ii. The Non-State Recipient agrees to maintain satisfactory continuing control of Project property as follows:

A. Written Transactions.

The Non-State Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third-party contract, subaward, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.

B. Oral Transactions.

The Non-State Recipient agrees that it will not obligate itself in any manner to any third-party with respect to Project property.

C. Other Actions.

The Non-State Recipient agrees that it will not take any action adversely affecting the Federal interest in or impair the Recipient's continuing control of the use of Project property.

D. The Non-State Recipient agrees that no use under this section will interference with the purpose for which the equipment was purchased.

g. Transfer of Project Property.

i. The State Recipient agrees to transfer Project property in accordance with State law and procedures.

ii. The Non-State Recipient understands and agrees as follows:

A. Transfers.

The Non-State Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a public body to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the FMCSA Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) and (2). Any leasing or rental of equipment purchased by federal funds or state match/cost sharing, during the period of performance will considered program income and will be managed, expended, and reported per 2 C.F.R. § 200.307.

B. Federal Government Direction.

The Non-State Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to transfer, title to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement.

h. Leasing Project Property to Another Party.

If the Non-State Recipient leases any Project property to another party, the Non- State Recipient agrees to retain ownership of the leased Project property, and assure that the lessee will use the Project property appropriately, either through a written lease between the Non-State Recipient and lessee, or another similar document.

Upon request by FMCSA, the Non-State Recipient agrees to provide a copy of any relevant documents. Any leasing or rental of equipment purchased by federal funds or state match/cost sharing, during the period of performance will be considered program income and will be managed, expended, and reported per 2 C.F.R. § 200.307.

i. Disposition of Project Property.

i. The State Recipient may use its own disposition procedures, provided that those procedures comply with the laws of that State.

ii. The Non-State Recipient agrees to dispose of Project property as follows:

A. With prior FMCSA approval, the Non-State Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. §5334(h)(4). The Non-State Recipient also agrees that FMCSA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

B. Project Property with Expired Useful Life. When the useful life of Project property has expired, the Non-State Recipient agrees to comply with FMCSA's disposition requirements.

C. Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

D. Notification Requirement. The Non-State Recipient agrees to notify FMCSA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

E. Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Non-State Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined by the ratio of the Federal assistance awarded for the property to the actual cost of the property. The Non-State Recipient agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

1. **Equipment and Supplies.** The Non-State Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FMCSA. Information on straight line depreciation may be found in the Internal Revenue Code. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage.

2. **Real Property**. The Non-State Recipient agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the Federal Government, as provided by 49 C.F.R. part 24, or by straight line depreciation, whichever is greater.

3. **Exceptional Circumstances.** The Non-State Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of Project property. In unusual circumstances, the Non-State Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Non-State Recipient with respect to the preservation of Project property withdrawn from appropriate use.

j. Financial Obligations to the Federal Government.

The Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the Project property prematurely withdrawn from use; or

Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

k. Insurance Proceeds.

If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

i. Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

ii. Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

l. Transportation of Hazardous Materials.

The Recipient agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. part 173, in connection with the transportation of any hazardous materials.

m. Misused or Damaged Project Property.

If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees to restore the Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

n. Responsibilities after Project Closeout.

The Recipient agrees that Project closeout by FMCSA will not change the Recipient's Project property management responsibilities as stated in these Grant Provisions and Assurances, and as may be set forth in subsequent Federal laws, regulations, and directives, except to the extent the Federal Government determines otherwise in writing.

Section 25. Davis-Bacon Act Requirements.

The Recipient agrees to comply, as applicable, with the provisions of the Davis Bacon Act (40 U.S.C. § 3145 and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 et seq.) regarding labor standards for federally-assisted construction sub-agreements.

Section 26. Environmental Requirements.

The Recipient agrees to comply, as applicable, with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

Section 27. Government Rights (Unlimited).

FMCSA shall have unlimited rights for the benefit of the Government in all other work developed in the performance of this Agreement, including the right to use same on any other Government work without additional cost to FMCSA. The rights to any inventions made by a Recipient under an FMCSA financial assistance award are determined by the Bayh-Dole Act, Pub. L. 96-517, as amended, and codified in 35 U.S.C. § 200, et seq., except as otherwise provided by law.

a. Patent Rights.

If any invention, improvement, or discovery of the Recipient or any of its third-party contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FMCSA immediately and provide a detailed report. The rights and responsibilities of the Recipient, third-party contractors and FMCSA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

If the Recipient secures a patent with respect to any invention, improvement, or discovery of the Recipient or any of its third-party contractors conceived or first actually reduced to practice in the course of or under this Project, the Recipient agrees to grant to FMCSA a royalty-free, non- exclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

The Recipient agrees to include the requirements of the "Patent Rights" section of this Agreement in its third-party contracts for planning, research, development, or demonstration under the Project.

b. Data Rights.

The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration **(See also, section 45 – Publications and Identification of Federal Assistance)**.

The following restrictions apply to all subject data first produced in the performance of this Agreement:

i. Except for its own internal use, the Recipient may neither publish or reproduce such data in whole or in part, or in any manner or form, nor may

the Recipient authorize others to do so, without the written consent of FMCSA, until such time as FMCSA may have either released or approved the release of such data to the public.

ii. As authorized by 2 C.F.R. § 200.315(b), FMCSA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

A. Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third-party contract, irrespective of whether or not a copyright has been obtained; and

B. Any rights of copyright to which a Recipient, Subrecipient, or a third-party contractor purchases ownership with Federal assistance.

iii. When FMCSA provides assistance to a Recipient for a Project involving planning, research, or development of a system, program, document, enforcement concept, or any other activity provided for in the terms of this grant, it is generally FMCSA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FMCSA determines otherwise, the Recipient understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Agreement, FMCSA may make available to any FMCSA Recipient, Subrecipient, third-party contractor, or third-party subcontractor, either FMCSA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement. In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and shall be delivered as FMCSA may direct.

iv. Unless prohibited by State law, the Recipient agrees to indemnify, save and hold harmless FMCSA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Recipient shall not be required to indemnify FMCSA for any such liability arising out of the wrongful acts of employees or agents of FMCSA.

v. Nothing contained in this section on rights in data, shall imply a license to FMCSA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FMCSA under any patent.

vi. The requirements of this section of this Agreement do not apply to material furnished to the Recipient by FMCSA and incorporated in the work carried out

under this Agreement, provided that such incorporated material is identified by the Recipient at the time of delivery of such work.

vii. Unless FMCSA determines otherwise, the Recipient agrees to include the requirements of this section of this Agreement in its third-party contracts for planning, research, development, or demonstration under the Project.

c. Acknowledgment or Support and Disclaimer.

i. An acknowledgment of FMCSA support and a disclaimer must appear in any Recipient publication, whether copyrighted or not, based on or developed under the Agreement, in the following terms:

"This material is based upon work supported by the Federal Motor Carrier Safety Administration under a grant/cooperative agreement/subaward, dated (fill-in appropriate identification of grant/cooperative agreement);"

ii. All Recipient publications must also contain the following:

"Any opinions, findings, and conclusions or recommendations expressed this publication are those of the author(s) and do not necessarily reflect the view of the Federal Motor Carrier Safety Administration and/or the U.S. Department of Transportation."

iii. The Recipient agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to FMCSA identifying the Project and indicating that FMCSA is participating in the development of the Project.

Section 28. Drug Free Workplace.

By signing this agreement, the Recipient certifies that it is in compliance with the Drug-Free Workplace Act (41 U.S.C. §§ 701 et seq.) and implementing regulations (49 C.F.R. part 32), which require, in part, that Recipients prohibit drug use in the workplace, notify the FMCSA of employee convictions for violations of criminal drug laws occurring in the workplace, and take appropriate personnel action against a convicted employee or require the employee to participate in a drug abuse assistance program.

Section 29. Background Screening.

FMCSA reserves the right to perform individual background screening on key individuals of organizational units associated with the application at the effective date and at another interval thereafter for the life of the award. If in performance of a grant award requires Recipient organization personnel to have unsupervised physical access to a federally controlled facility for

more than 180 days or access to a Federal information system, such personnel must undergo the personal identity verification credential process under Homeland Security Presidential Directive 12.

Section 30. Site Visits.

FMCSA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by FMCSA on the premises of the Recipient, Subrecipient, or contractor under this Agreement, the Recipient shall provide and shall require its Subrecipients or contractors to provide, all reasonable facilities and assistance for the safety and convenience of FMCSA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Recipient, Subrecipient, or subcontractor.

Section 31. Liability.

The Recipient acknowledges it is responsible for any act or omission of Recipient or Subrecipient, its officers, contractors, employees, or members, participants, agents, representatives, as appropriate, arising out of or in any way connected to activities authorized pursuant to this Agreement.

The Recipient acknowledges that FMCSA is not responsible for any act or omission of Recipient or Subrecipient, its officers, contractors, employees, or members, participants, agents, representatives, as appropriate, arising out of or in any way connected to activities authorized pursuant to this Agreement. This provision shall survive the expiration or termination of this Agreement.

Section 32. Right of FMCSA to Terminate Agreement.

a. General Right to Suspend or Terminate Assistance Agreement.

Upon written notice, the Recipient agrees that FMCSA may suspend or terminate all or part of the financial assistance provided herein if the Recipient has violated the terms of the Grant Agreement or these Provisions and Assurances, or if FMCSA determines that the purposes of the statute under which the Project is authorized would not be adequately served by continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of this Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for FMCSA to terminate this Agreement. The Recipient agrees to give the Federal Motor Carrier Safety Administration at least 90 days' notice of its intention to terminate this agreement.

b. Financial Obligations of the Government.

In general, termination of any financial assistance under this Agreement will not

invalidate obligations properly incurred by the Recipient and concurred by FMCSA before the termination date; to the extent those correctly accrued obligations cannot be cancelled.

However, if FMCSA determines that the Recipient has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of this Agreement, meet required match/cost sharing or maintenance of effort (MOE) levels, FMCSA reserves the right to require the Recipient to refund the entire amount of FMCSA funds provided under this Agreement or any lesser amount as may be determined by FMCSA.

c. De-obligation of Funds.

FMCSA reserves the right to unilaterally de-obligate any remaining grant or cooperative agreement funds due to the time elapsed since the effective date, lack of payment vouchers from the Recipient, lack of plans to expend funds based on this grant, failure to provide quarterly progress reports, or other such determination made by FMCSA. If FMCSA takes action to deobligate funds, a grant amendment/modification must be in place.

Section 33. Project Completion, Settlement, and Closeout.

a. Project Completion.

Within 120 days of the Project completion date or termination by FMCSA, the Recipient agrees to submit a final SF-425, Federal Financial Report, a certification or summary of Project expenses, and third-party au it reports, as applicable.

b. Remittance of Excess Payments.

If FMCSA has made payments to the Recipient in excess of the total amount of FMCSA Federal funding due to cover accumulated expenses, the Recipient agrees to promptly remit that excess and interest as may be required by the "Payment by FMCSA" section of this Attachment.

c. Closeout.

Closeout, as defined in 2 C.F.R. § 200.1, occurs when all required Project work and all administrative procedures described in 2 C.F.R. § 200.344, as applicable, have been completed, and when FMCSA notifies the Recipient and forwards the final Federal assistance payment, or when FMCSA acknowledges the Recipient's remittance of the proper refund amount. Project closeout shall not invalidate any continuing obligations imposed by allowable, allocable, and reasonable costs on the Recipient by this Agreement that supports the project plan(s) or by the FMCSA's final notification or acknowledgment, if it occurs within the period of performance.

Section 34. Severability.

If any provision of this Agreement is held invalid, all remaining provisions of this Agreement shall continue in full force and effect to the extent not inconsistent with such holding.

Section 35. Entire Agreement and Amendments.

This Agreement constitutes the entire agreement between the parties. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement.

Any modification not specifically permitted by this agreement requires an Amendment. These modifications may be made only in writing, signed by each party's authorized representative, and specifically referred to as an Amendment to this Agreement. Electronic signatures are binding. However, retroactive modifications to the project plan(s) or any aspects of the budget will not be approved.

Section 36. Use of Information Obtained.

Information obtained under this agreement may only be used by the Recipient to accomplish the project plan under this agreement.

Any information obtained or exchanged between FMCSA and the grant Recipient, to carry out each party 's responsibility under this agreement and project plan, shall not be released by the Recipient to any third-party without the written permission of FMCSA.

Recipient shall ensure that all its employees authorized to access FMCSA data and information systems sign and submit information technology user agreements provided by FMCSA.

Section 37. Miscellaneous Provisions.

a. **Prohibition on Human Trafficking.**

   The Recipient agrees to comply, as applicable, with the provisions of Section 7104(g) of the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7104 as amended.

b. **Wild and Scenic Rivers Act of 1968.**

   The Recipient agrees to comply, as applicable, with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

c. **Fly America Act.**

   The Recipient shall comply with the provisions of the Fly America Act, 49 U.S.C. § 401 18.

d. Criminal and Prohibited Activities.

The Recipient will adhere to the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, which provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money.
Recipient will also adhere to the False Statements Act, 18 U.S.C. §§ 287 and 1001 which provides that whoever makes or presents any false, fictitious or fraudulent statements, representation, or claims against the United States shall be subject to imprisonment of not more than 5 years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
Recipient shall also adhere to the False Claims Act, 31
U.S.C. § 3729, which provides that suits u nder this act can be brought by the Government or a person on behalf of the Government, for false claims under the Federal assistance programs. Recipient shall also adhere to the Copeland "Anti- Kickback" Act, 18 U.S.C. § 874 and 40 U.S.C. § 3145, which prohibits a person or organization engaged in a federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

Section 38. Laptop Encryption.

All laptops used by Recipients, Subrecipients, and contractors in carrying out the Recipient 's project plan, which contain FMCSA-related data, including sensitive information and Personally Identifiable Information (PII), must be encrypted to the same standards utilized by FMCSA. The FMCSA encryptions standards prescribe whole disk encryption (FOE), which requires software or hardware to encrypt all data on a disk, including the partition tables, whole physical disk, master boot record, and available files. FMCSA requires that each Recipient who utilizes FMCSA sensitive information or PII complete installation of FOE on all laptop computers as soon as practicable, but no later than thirty (30) days from the execution of this agreement and prior to using the laptop to access FMCSA data systems or store FMCSA related data.

Section 39. Adaptability to Climate Changes.

If the grant is to be used to place equipment or temporary facilities, modify structures, or to alter existing infrastructure, the recipient is required to assess the ability for the equipment, modifications, or alterations to withstand current and future climatic conditions, including potential changes in climatic conditions. The recipient shall use the best-available peer reviewed studies and science to determine the potential climatic conditions the equipment, modifications or alterations may experience over the life-cycle of the equipment, modification or alteration funded by the grant. The recipient can rely on existing Federal Highway Administration suggestions or guidelines for placing infrastructure, or on other federally-issued guidance on assessing potential impacts of climate change.

Section 40. Commercial Vehicle Information Systems and Networks (CVISN) provisions.

The following provisions apply where applicable.

a. Compliance with the National ITS Architecture.

The recipient will ensure that Innovative Technology Deployment (ITD) activities, such as hardware procurement, software and system development, infrastructure modifications, etc., are consistent with the National ITS and commercial motor vehicle information and systems architectures and available standards and promote interoperability and efficiency to the extent practicable and required by law.

b. Interoperability.

For implementing ITD capabilities, the recipient will complete interoperability tests and ensure architectural conformance throughout the life of the project. Perform pairwise and end-to-end tests to demonstrate conformance with the standards and interoperability, verify that interfaces between selected products/systems meet the applicable standards, verify dataflow and data usage among the products/systems.

c. Independent Evaluation.

The FMCSA may conduct an independent evaluation of the effectiveness of the project in achieving Federal and State program goals. The independent evaluation will be conducted using existing Federal resources. Participants of projects that are selected for independent evaluations shall cooperate with the independent evaluators and participate in evaluation planning and progress review meetings to ensure a mutually acceptable, successful implementation of the independent evaluation. The FMCSA may contract with one or more independent evaluation contractor(s) to evaluate the projects.

d. Dedicated Short-Range Communications.

If applicable, the State shall also require that its contractors only install Dedicated Short Range Communications (DSRC) equipment that is interoperable and compatible at layers 1 and 2 of the Open Systems Interconnect Reference Model with equipment in operation on the North American Preclearance and Safety System and the Heavy Vehicle Electronic License Plate Inc.'s PrePass™ System deployments as well as the International Border Crossing Operational Tests, based upon on ASTM Draft 6, dated February 23, 1996.

Section 41. Federal Funding Accountability and Transparency Act.

The Federal Funding Accountability and Transparency Act (FFATA) of 2006 (Public Law 109-282) requires for each Federal award of $25,000 or more that OMB create a searchable, no cost, publicly accessible website(http://usaspending.gov/) that includes basic

information about the recipient and the project being funded. The Government Funding Transparency Act of 2008 (Public Law 110-252) amended FFATA, requiring recipients to report certain information about themselves and their first tier Subrecipient awards obligated as of October 1, 2010. Prime grant recipients/awardees of new non-Recovery Act federally funded grants and cooperative agreements of $25,000 or more awarded on or after October 1, 2010 are subject to FFATA reporting, sub-award reporting requirements and executive compensation reporting requirements as outlined in the Office of Management and Budgets guidance issued August 27, 2010. The prime awardee is required to file a FFATA sub-award report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to $25,000.

Section 42. Executive Order 13513.

Executive Order 13513 (E.O. 13513) requires each Federal agency to encourage contractors, subcontractors, and grant and cooperative agreement recipients and subrecipients to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or Government Owned Vehicles, or while driving Personally Owned Vehicles when on official Government business or when performing any work for or on behalf of the Government. To further the requirement of encouraging such policies, the FMCSA encourages recipients to consider new rules and programs, reevaluate existing programs to prohibit text messaging while driving, and conduct education, awareness, and other outreach for employees about the risks associated with texting while driving. These initiatives should encourage voluntary compliance with the recipient agency's text messaging policy while off duty. For the purposes of these Grant Provisions and Assurances and pursuant to E.O. 13513, the following definitions apply:

> "Texting" or "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of SMS texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.
>
> "Driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Section 43. Prohibition on Expending FMCSA Grant Award Funds for Covered Telecommunications Equipment or Services

2 CFR 200.216, *Prohibition on certain telecommunication and video surveillance services or equipment,* prohibits Federal award recipients from using government funds to procure or obtain, or enter contracts to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services.

In accordance with 2 CFR 200.216 and 200.471, FMCSA recipients and subrecipients are prohibited from expending grant funds to:

1. Procure or obtain; or
2. Extend or renew a contract to procure or obtain; or

3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that 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).

   i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
   ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
   iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Section 44. Research Activities Involving Human Subjects

Any application that includes research activities involving human subjects, human tissue/cells, or data or recordings from or about human subjects, must satisfy the requirements of the Common Rule for the Protection of Human Subjects ("Common Rule"), codified for the Department of Transportation at 49 C.F.R. Part 11. Research activities involving human subjects that fall within one or more of the classes of vulnerable subjects found in 45 C.F.R. Part 46, Subparts B, C and D must satisfy the requirements of the applicable subpart(s). In addition, any such application that includes research activities on these subjects must be in compliance with all applicable statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies, all regulations, policies and guidance adopted by DHHS, the Food and Drug Administration (FDA), and other Federal agencies on these topics, and all Executive Orders and Presidential statements of policy on applicable topics. (Regulatory Resources: http://www.hhs.gov/ohrp/humansubjects/index.html which includes links to FDA regulations but may not include all applicable regulations and policies).

FMCSA uses the following Common Rule definitions for research and human subjects research:

Research: A systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

Human Subject: 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.

(1) Intervention includes both physical procedures by which information or biospecimens are gathered and manipulations of the subject or the subject's environment that are performed for research purposes.

(2) Interaction includes communication or interpersonal contact between investigator and subject.

(3) Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator associated with the information) in order for obtaining the information to constitute research involving human subjects.

(4) Identifiable biospecimen includes a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen. See 49 C.F.R. § 11.102 (Definitions).

(5) Identifiable private information is private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

Section 45. Publications and Identification of Federal Assistance

The Recipient reserves the right to publish the results of its research on the work. Before publishing or making a presentation, however, the Recipient agrees to submit copies of any manuscript proposed for publication to FMCSA at least thirty (30) days in advance of the presentation or publication date to identify any inadvertent disclosure of any FMCSA proprietary information. If the Recipient does not ask to defer publication within thirty (30) days after receipt of the manuscript so that patent applications may be filed or proprietary information may be removed, the Recipient may proceed with publication or presentation. In the event FMCSA asks to defer publication, the Recipient shall not publish or otherwise disclose to any third party any of the information contained in the manuscript until such time as a patent application has been filed or the expiration of sixty (60) days after the date of submission of the manuscript to FMCSA, whichever occurs first. To comply with scientific publication standards, FMCSA may be identified as the source of funding for the research.

Except for confidential, privileged, or proprietary information in the Report, FMCSA may publish the Report, and make it available for publication on the Internet or in any other venue. The Recipient agrees that: (i) It will display information on any product developed with federal assistance for which the U.S. Department of Transportation, Federal Motor Carrier Safety Administration provided federal assistance to support the development of the product that is tangible and is produced from, or is a result of, a Project, is a deliverable, and visible to the public, or is or will be made available to other research organizations, or public transportation providers, and consists of equipment, a prototype, hardware,

construction, reports, data, software, internet pages, or any similar item. (ii) The information required will be given using an appropriate sign, designation, or notice.

Section 46. Certification.

The Recipient certifies that the statements it made in the grant application are true and correct, and Recipient understands that any false statements made as part of these certifications can be prosecuted.