

# South Dakota Board of Regents

## Institutions of Higher Education



**FEDERAL DEMONSTRATION PARTNERSHIP**  
Redefining the Government & University Research Partnership

Request for Exemption on the following:

- Sub-Recipient Agreement Template
- Pre-Award Risk Assessment
- Contractor or Sub-Recipient Relationship Determination



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## FEDERAL DEMONSTRATION PARTNERSHIP

Redefining the Government & University Research Partnership

*" The Federal Demonstration Project is one of a very small number of effective programs to improve government processes. It has produced the defining models for 'e-government,' and saved countless hours of time for us bureaucrats as well as for principal investigators. Each consecutive phase has brought a new set of initiatives and accomplishments that merit much wider recognition."*

**- John Marburger, Former Director OSTP (Office of Science and Technology Policy- Whitehouse.gov)**

### **Mission**

The Federal Demonstration Partnership (FDP) is an association of federal agencies, academic research institutions with administrative, faculty and technical representation, and research policy organizations that work to streamline the administration of federally sponsored research. FDP members of all sectors cooperate in identifying, testing, and implementing new, more effective ways of managing the more than \$15 Billion in federal research grants. The goal of improving the productivity of research without compromising its stewardship has benefits for the entire nation.

The FDP uniquely offers a forum for individuals from universities and nonprofits to work collaboratively with federal agency officials to improve the national research enterprise. At its regular meetings, faculty and administrators talk face-to-face with decision-makers from agencies that sponsor and regulate research. They hold spirited, frank discussions, identify problems, and develop action plans for change. Then – again working jointly – they test the new ways of doing things in the real world before putting them into effect.

### **Definition:**

**Principal Investigator - PI** - is the holder of an independent grant administered by a university and the lead researcher for the grant project, usually in the sciences, such as a laboratory study or a clinical trial.

Website: [http://sites.nationalacademies.org/PGA/fdp/PGA\\_054588](http://sites.nationalacademies.org/PGA/fdp/PGA_054588)

# Cost Reimbursement Research Subaward Agreement

Pass-Through Entity (PTE):		Subrecipient:	
PTE Principal Investigator (PI):		Subrecipient Principal Investigator (PI):	
PTE Federal Award No:	FAIN:	Federal Awarding Agency:	
Federal Award Issue Date:	Total Amount of Federal Award to PTE \$ _____	CFDA No:	CFDA Title:

Project Title: \_\_\_\_\_

<b>Subaward Period of Performance:</b> Start: _____ End: _____		<b>Amount Funded This Action:</b> \$ _____		<b>Subaward No.</b>
Estimated Project Period (if incrementally funded): Start: _____ End: _____		Incrementally Estimated Total: \$ _____	Is this Award R & D <input type="checkbox"/> Yes or <input type="checkbox"/> No	

Check all that apply     Subject to FFATA (Attachment 3B)     Cost Sharing (Attachment 5)

### Terms and Conditions

- 1) Pass-Through Entity hereby awards a cost reimbursable subaward, as described above, to Subrecipient. The statement of work and budget for this subaward are as shown in Attachment 5. In its performance of subaward work, Subrecipient shall be an independent entity and not an employee or agent of Pass-Through Entity. Subrecipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards- 2 CFR Part 200 (Uniform Administrative Requirements), if applicable.
- 2) Pass-Through Entity shall reimburse Subrecipient not more often than monthly for allowable costs. All invoices shall be submitted to Pass-Through Entity 's Principal Investigator listed in Attachment 3A, using Subrecipient's standard invoice, but at a minimum shall include current and cumulative costs including a system-generated list of each expense transaction, (also for cost sharing if applicable), subaward number, and certification, as required in 2 CFR 200.415 (a). Invoices that do not reference Pass-Through Entity's Subaward number shall be returned to Subrecipient. Additionally, if a subaward agreement is generated with funds from this agreement, the second tier subrecipient is required to adhere to all of the same terms and conditions in this agreement including PTE receiving copies of the second tier subrecipient's standard invoicing details. Questions concerning invoice receipt or payments should be directed to the appropriate party's Financial Contact, as shown in Attachment 3A.
- 3) A final statement of cumulative costs incurred, including cost sharing, marked "**FINAL**" and must be submitted to Pass-Through Entity's Principal Investigator, as shown in Attachments 3A, NOT LATER THAN \_\_\_\_\_ days after subaward end date. The final statement of costs shall constitute Subrecipient's final financial report.
- 4) All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Subrecipient. Pass-Through Entity reserves the right to reject an invoice, in accordance with 2 CFR 200.305. Invoice requirements are included in Attachment 4.
- 5) Matters concerning the technical performance of this subaward should be directed to the appropriate party's Principal Investigator as shown in Attachment 3A. Technical reports are required as shown in Attachment 4.
- 6) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any changes requiring prior approval, should be directed to the appropriate party's Administrative Contact, as shown in Attachment 3A. Any such changes made to this subaward agreement require the written approval of each party's Authorized Official, as shown in Attachment 3A.
- 7) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.
- 8) Either party may terminate this subaward with thirty days written notice to the appropriate party's Authorized Official, as shown in Attachment 3A. Pass-Through Entity shall pay Subrecipient for termination costs as allowable under Uniform Guidance, 2 CFR 200, or 45 CFR Part 75 Appendix IX as applicable.
- 9) No-cost extensions require the written approval of the Pass-Through Entity. Any requests for a no-cost extension shall be directed to the Administrative Contract, as shown in Attachment 3A, not less than 30 days prior to the desired effective date of the requested change.
- 10) By signing this Research Subaward Agreement Subrecipient certifies that it will perform the work under this agreement in accordance with the terms and conditions as identified in Attachment 2, the terms of the Prime Award, and makes the certifications and assurances in Attachment 1.

By an Authorized Official of Pass-Through Entity:		By an Authorized Official of Subrecipient:	
Name: _____	Date _____	Name: _____	Date _____
Title: _____		Title: _____	

## Attachment 1

### Research Subaward Agreement Certifications and Assurances

By signing the Subaward Agreement, the Authorized Official of Subrecipient certifies, to the best of his/her knowledge and belief, that:

#### Certification Regarding Lobbying (2 CFR 200.450)

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," to the Pass-through Entity.

3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Debarment, Suspension, and Other Responsibility Matters (2 CFR 200.213 and 2 CFR 180)

Subrecipient certifies by signing this Subaward Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

#### Audit and Access to Records

Subrecipient certifies by signing this Subaward Agreement that it complies with the Uniform Guidance, will provide notice of the completion of required audits and any adverse findings which impact this subaward as required by parts 200.501- 200.521, and will provide access to records as required by parts 200.333- 200.337, and 200.201 as applicable.

#### Use of Name

Neither party shall use the other party's name, trademarks or other logos in any publicity, advertising, news release, publication or public presentation, without the prior written approval of an authorized representative of that party. The parties agree that each party may respond to legitimate business inquiries with factual information regarding the existence and purpose of the relationship that is the subject of this Agreement, disclose such information to satisfy any reporting obligations, or as required by applicable law or regulation without written permission from the other party. In any such statement, the relationship of the parties shall be accurately and appropriately described.

**Attachment 2**  
**Research Subaward Agreement**  
**Copy of Prime Award Terms and Conditions**

General Terms and Conditions:

Requirements included in the attached Prime Award Notice except for the following:

- a. If applicable, the right to initiate an automatic one-time extension of the end date is replaced by the need to obtain prior written approval from the Pass-through Entity.
- b. Any payment mechanisms and financial reporting requirements described in the applicable Agency Terms and Conditions and Agency-Specific Requirements are replaced with Terms and Conditions (1) through (4) of this Subaward Agreement.
- c. Any prior approvals are to be sought from the Pass-through Entity and not the Federal Awarding Agency.

Special terms and conditions:

1. Copyrights

Subrecipient  grants / shall grant (check one) to Pass-Through Entity an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any copyrights or copyrighted material (including any computer software and its documentation and/or databases) first developed and delivered under this Subaward Agreement solely for the purpose of and only to the extent required to meet Pass-Through Entity's obligations to the Federal Government under its Prime Award.

2. Data Rights

Subrecipient grants to Pass-Through Entity the right to use data created in the performance of this Subaward Agreement solely for the purpose of and only to the extent required to meet Pass-Through Entity's obligations to the Federal Government under its Prime Award.

3. Automatic Carry Forward:  Yes  No

(If No, Carry Forward requests must be sent to Pass-Through Entity's Authorized Official contact, as shown in Attachment 3).

4. Subrecipient agrees that any non-exempt human and/or animal subjects research protocol conducted under this Agreement shall be reviewed and approved by its Institutional Review Board (IRB) and/or its Institutional Animal Care and Use Committee (IACUC), as applicable and that it will maintain current and duly approved research protocols for all periods of the Agreement involving human and/or animal subjects research. Subrecipient certifies that its IRB and/or IACUC are in full compliance with applicable state and federal laws and regulations. The Subrecipient certifies that any submitted IRB / IACUC approval represents a valid, approved protocol that is entirely consistent with the Project associated with this subaward. In no event shall Subrecipient invoice or be reimbursed for any human or animal subjects related expenses incurred in a period where any applicable IRB / IACUC approval is not properly in place. Upon Request, subrecipient shall provide IRB/IACUC verification.

**Attachment 3A**  
Research Subaward Agreement  
Pass-Through Entity (PTE) Contacts

Subaward Number:

---

**Pass-Through Entity (PTE)**

PTE Name:

Address:

City: State: Zip Code+4: Zip Code [Look-up](#)

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**PTE Administrative Contact**

Name:

Address:

City: State: Zip Code:

Telephone: Email:

COI Contact email (if different to above):

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**PTE Principal Investigator**

Name:

Address:

City: State: Zip Code:

Telephone: Email:

---

**PTE Financial Contact**

Name:

Address:

City: State: Zip Code:

Telephone: Email:

Email invoices? Yes No Invoice email (if different):

Invoice Address (if different):

---

**PTE Authorized Official**

Name:

Address:

City: State: Zip Code:

Telephone: Email:

Central email:

**Attachment 3B**  
Research Subaward Agreement  
Subrecipient Contacts

Subaward Number:

**Subrecipient Place of Performance for [FFATA](#) reporting**

Name:  
Address:  
City: State: Zip Code+4: Zip Code [Look-up](#)  
EIN No.: DUNS: Parent DUNS:  
Institution Type: Congressional District:  
Is Subrecipient currently registered in [SAM.gov](#)? Yes No  
Is Subrecipient exempt from reporting executive compensation? Yes No If no, complete 3B, page 2

**Subrecipient Administrative Contact**

Name:  
Address:  
City: State: Zip Code:  
Telephone: Email:

**Subrecipient Principal Investigator**

Name:  
Address:  
City: State: Zip Code:  
Telephone: Email:

**Subrecipient Financial Contact**

Name:  
Address:  
City: State: Zip Code:  
Telephone: Email:  
Central email: Is this the remittance address? Yes No  
Remittance Address (if different):

**Subrecipient Authorized Official**

Name:  
Address:  
City: State: Zip Code:  
Telephone: Email:  
Central email:



**Attachment 3B Page 2**  
**Research Subaward Agreement**  
**Highest Compensated Officers**

Subaward Number:

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**Subrecipient:**

Institution Name:

PI Name:

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**Highest Compensated Officers**

The names and total compensation of the five most highly compensated officers of the entity(ies) must be listed if the entity in the preceding fiscal year received 80 percent or more of its annual gross revenues in Federal awards; and \$25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. See FFATA § 2(b)(1) Internal Revenue Code of 1986.

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Officer 1 Name:

Officer 1 Compensation:

Officer 2 Name:

Officer 2 Compensation:

Officer 3 Name:

Officer 3 Compensation:

Officer 4 Name:

Officer 4 Compensation:

Officer 5 Name:

Officer 5 Compensation:

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**Attachment 4**  
**Research Subaward Agreement**  
**Reporting Requirements**

Subaward Number:

Subrecipient agrees to the following:

A Final technical/progress report will be submitted to the PTE's identified in Attachment 3 within \_\_\_\_\_ days after the end of the period of performance.

Monthly technical/progress reports will be submitted to the PTE's identified in Attachment 3, within \_\_\_\_\_ days of the end of the month.

Quarterly technical/progress reports will be submitted within thirty (30) days after the end of each project quarter to the PTE's \_\_\_\_\_ identified in Attachment 3.

Technical/progress reports on the project as may be required by PTE's in order that PTE may be able to satisfy its reporting obligations to the Federal Awarding Agency.

Annual technical /progress reports will be submitted within \_\_\_\_\_ days prior to the end of each project period to the PTE's \_\_\_\_\_ identified in Attachment 3. Such report shall also include a detailed budget for the next budget period, updated other support for key personnel, certification of appropriate education in the conduct of human subject research of any new key personnel, and annual IRB or IACUC approval, if applicable.

In accordance with 37 CFR 401.14, Subrecipient agrees to notify PTE's \_\_\_\_\_ identified in Attachment 3A within \_\_\_\_\_ days after Subrecipient's inventor discloses invention(s) in writing to Subrecipient's personnel responsible for patent matters. The Subrecipient will submit a final invention report using Awarding Agency specific forms to the PTE's \_\_\_\_\_ identified in Attachment 3A within 60 days of the end of the period of performance so that it may be included with the PTE's final invention report to the Awarding Agency. A negative report \_\_\_\_\_ is \_\_\_\_\_ is not required.

A Certification of Completion, in accordance with 2 CFR 200.201(b)(3), will be submitted within \_\_\_\_\_ days after the end of the project period to the PTE's Attachment 3 \_\_\_\_\_ identified in Attachment 3A (for Fixed Price subawards only.)

Property Inventory Report; frequency, type, and submission instructions listed here and only to be used when required by PTE Federal Award:

Other Special Reporting Requirements:

<p><b>Attachment 5</b>  <b>Cost Reimbursement Research Subaward Agreement</b>  <b>Statement of Work, Cost Sharing, Indirects &amp; Budget</b></p>
---

Subaward Number:

**Statement of Work**

Below or Attached pages

If award is FFATA eligible and SOW exceeds 4000 characters, include a *Subrecipient Federal Award Project Description*

<b>Indirect Information</b>	Indirect Cost Rate (IDC) Applied	%	<b>Cost Sharing</b>	Yes	No
TDC      MTDC      OTHER	de minimus rate of 10%		If Yes, include Amount: \$		

**Budget Information**      Below      Attached,      pages

Direct Costs \$

Indirect Costs \$

Total Costs \$

*All amounts are in United States Dollars*

**Attachment 6**  
**State of South Dakota Grant Recipient or Subrecipient Attestation**

By completing this form, you, the recipient or subrecipient, attest to meeting the following requirements per SDCL 1-56-10:

- (1) A conflict of interest policy is enforced within the recipient's or subrecipient's organization;
- (2) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or subrecipient's website;
- (3) An effective internal control system is employed by the recipient's or subrecipient's organization; and
- (4) If applicable, the recipient or subrecipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or subrecipient's website.

**If you, the recipient or subrecipient, have concerns regarding the requirements listed above, please contact your state agency representative before signing this form.**

Printed Name of Person Completing Form: \_\_\_\_\_

Printed Title of Person Completing Form: \_\_\_\_\_

Signature of Person Completing Form: \_\_\_\_\_ Date: \_\_\_\_\_

# Risk Assessment Questionnaire

Subrecipient Institution		
Subject to Single Audit?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Relevant Findings?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Internal Project Identifier		
Prime Sponsor		
DUNS		
FAC EIN		
See other tab for <a href="#">guidance and frequently asked questions</a>		

## Threshold Questions (Not Scored)

If yes to 1, 2, or 3, consider alternatives to initiating agreement:

1. Is the Subrecipient Institution presently debarred or suspended?
2. Is the Subrecipient Institution's PI presently debarred or suspended?
3. Does the Subrecipient show "delinquent federal debt" in SAM?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

If no to 4, 5, 6, or 7, consider alternatives to initiating agreement:

4. If required by the sponsor, does the Subrecipient have a compliant conflict of interest policy?
5. Does the Subrecipient have an acceptable accounting system?
6. Does the Subrecipient have an acceptable procurement system?
7. If required, has the Subrecipient completed audit under A-133 or Uniform Guidance for the most recent fiscal year?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

## Other Considerations (Not Scored)

8. Has there been a PTE-issued management decision on audit findings that may affect this award?
9. Does the Subrecipient have a negotiated indirect cost rate (or experience setting up such a rate)?
10. Does the project include work covered by ITAR or EAR (at Subrecipient, or Subrecipient accessing at PTE?)
11. Is there a potential or identified conflict of interest?
12. Is cost-share required or included?
13. Is participant support included in the Subrecipient's budget?
14. Does the Subrecipient have adequate experience receiving same or similar federal awards?
15. Have other risks been identified? *If yes, explain in Notes below.*

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Notes:


## Institution Questions (Scored)

Score

16. Is the Subrecipient institution foreign or domestic?  
<click to select>
17. What is the Subrecipient Organization type?  
<click to select>
18. Does the Subrecipient have a Negotiated IDC Rate Agreement?  
<click to select>
19. Were the results of the most recent Single audit (or similar) satisfactory?  
<click to select>
20. Is the Subrecipient Institution mature?  
<click to select>
21. Does the Subrecipient Institution have experience with determining conflicts of interest (evidence of an acceptable COI Policy)?  
<click to select>

## Project Questions (Scored)

22. What is the Prime Sponsor type?  
<click to select>
23. What is the Prime Award type?  
<click to select>
24. Amount of Outgoing Funds?  
<click to select>
25. What is the percentage of the Prime Award being subcontracted (specific to this Subrecipient—not total)?  
<click to select>
26. Does the work include Human Subjects, Animal Subjects, or Embryonic stem cells?  
<click to select>
27. What are the Subrecipient's Scope of Work/Deliverables?  
<click to select>
28. Where is the Place of Performance?  
<click to select>

Assessment Performed:

Initials	Date

Assessment Incomplete

Assessed Risk	Score
Institution	0
Project	0
Total	0

Question	Answer	Score
16	U.S. based institution	0
	Foreign location with stable government and financial systems	3
	Foreign location with unstable government or financial systems	6
	Restricted foreign location	9
17	University	0
	Other non-profit	4
	Industry	6
	Subject to Single Audit	0
18	Yes	0
	No	3
19	Yes, audit is clean (no findings) or no relevant findings	0
	Single audit has findings but no significant deficiencies or material weaknesses	1
	Single audit has qualified or adverse opinions	4
	No Single audit, but completed mini-audit (or similar audit) with no problem(s)	2
	No Single audit, but has alternative recurring annual audit with no findings	1
	No Single audit, but passed an audit or major review by a federal agency	2
	No Single audit, and mini-audit (or similar audit) identified problem(s)	6
	No audit	6
20	Subrecipient experience 10+ years	0
	Subrecipient experience 5-9 years	2
	Subrecipient experience 1-4 years	4
	Subrecipient is start-up (less than 1 year)	6
	Yes	0
21	Yes	0
	No	6
22	Foundation or Routine Granting Agency	0
	State, Corporate, or more stringent Federal Sponsor	4
	Federal Contracting Agency	4
	Corporate Sponsor flowing down Federal Prime	6
	Government Owned/Contractor Operated	6
	Foreign sponsor or other very stringent sponsor (from any funding source)	8
23	Grant	0
	Grant with conditions	2
	Contract or Subcontract	6
24	Outgoing Funds > \$650,000	3
	Outgoing Funds \$150,000 – \$649,999	2
	Outgoing Funds \$25,000 - \$149,999	1
	Outgoing Funds \$1 - \$24,999	0
25	0-24%	0
	25-49%	3
	50% +	9
26	No	0
	Human or Animal Subjects approved by Subrecipient IRB or IACUC	1
	Embryonic stem cells	4
	Sponsor must approve	6
	Subrecipient using Prime Recipient's IRB or IACUC	9
27	Subrecipient will only submit progress reports	0
	Subrecipient is responsible for tangible products	1
	PTE's PI's work is dependent upon Subrecipient's work	3
	PTE's work is dependent upon Sub's & continuation funding is tied to performance	6
28	All work will be performed at the Subrecipient's Institution	0
	Some work will be performed at the PTE's Institution	4
	All work will be performed at the PTE's Institution	6

## **Risk Assessment Questionnaire – Guidance Document**

The purpose of this document is to provide an overview of using the Risk Assessment Questionnaire (RAQ) and the intent behind some of the questions. Please note using this questionnaire is not mandatory. It is not designed to be prescriptive in how your institution will determine or manage risk, nor does it represent every possible scenario. The RAQ focuses on federal and federal flow-through funds but could be used to assess risk of subrecipients regardless of funding source. It is a tool to assist a pass-through entity (PTE) with determining the risk of a subrecipient, and should not be recycled as a questionnaire to send to a subrecipient to complete. Use of the RAQ does not guarantee a clean audit.

The working group encourages the use of the FDP Subaward ListServ (FDPSUBAWARD-L@LSW.NAS.EDU) as a resource for feedback from other research administrators on more atypical scenarios.

The RAQ is organized into four separate sections: Threshold Questions, Other Considerations, Institutional Questions, and Project Specific Questions.

The Institutional Questions and the Project Questions are scored independently. This is intentional as there could be an instance where the risk of issuing an agreement to a subrecipient is determined to be very low, but the project is determined to be very high risk or vice versa. The working group determined that showing the score for institutional questions versus project questions would assist the PTE in evaluating these factors. The total score is also provided.

Institutions are free to craft policy and procedures around specific answers as well. For instance, an institution with a large volume of subawards to foreign entities may require an extra review step for only those subawards. Or a high score in response to questions 24 (dollar amount) and 25 (percentage passed-through) may prompt specific terms and conditions related to invoicing requirements.

### **Entities Subject to Single Audit**

Many institutions and organizations that are part of the Federal research enterprise are subject to the single audit and act as both direct recipients and subrecipients of Federal funding. Because these entities are subject to the single audit, the FDP community deemed it important to focus reviews of these entities primarily on project specific factors. The RAQ offers an option to indicate in the header that an entity is "Subject to Single Audit." Designating this option creates auto-populated responses to Threshold Questions 5, 6, & 7; Other Considerations 9 & 14; and Institutional Questions 16-18, 20, & 21. In the RAQ header, the PTE may also respond "No" to whether the subrecipient has "Relevant Findings", which creates an auto-populated response to Institutional Question 19. These auto-populated responses should help streamline completion of the RAQ for entities subject to the single audit. Even for those questions with auto-populated responses, the PTE should review each response and determine its appropriateness. If an auto-populated response should be altered for a specific subrecipient/subaward, the PTE is empowered to do so.

### **Entities Not Subject to Single Audit**

If a subrecipient entity is not subject to Single Audit, then the PTE is strongly encouraged to collect other financial information to assess a subrecipient entity's capacity to manage Federal funds appropriately. For example, the subrecipient may provide audited financial statements, with an independent auditor's letter; DCAA audit; unaudited financial statements; and/or information about their financial systems, policies, and procedures. The recommendation is to collect information sufficient to complete Threshold questions 5 & 6; Other Considerations 9 & 14; and Institutional Questions.

### **Threshold Questions**

These questions are intended to quickly identify the highest risk candidates: debarred or suspended, lack of COI policy, and the existence or not of an established accounting system, and acceptable procurement system. “Yes” answers should prompt your institution to carefully evaluate its ability to issue and successfully manage a project with that subrecipient. The working group felt that each of these questions was important enough to consider on its own merit.

### **Other Considerations**

The questions included in this section are intended to assess risk that may or may not result in additional language in the subaward, depending upon your institutional policies. This section can also be used as a historical record of what considerations were made when issuing an agreement.

### **Institutional Questions (Scored)**

These questions focus on institutional characteristics and are independently scored. For institutions that receive \$750,000 or more in federal funds, this institutional score should be static during the year, but may change after their single audit has been completed. For institutions under the \$750,000 threshold, this number may change during the year. Some of these questions are similar to those in other sections. For example, the question related to COI in this section is trying to evaluate the institution’s experience with COI, not just if they have a compliant policy (where compliant policy may depend on the sponsor/specific project).

### **Project Questions (Scored)**

These questions focus on the characteristics of the project and are independently scored. Again, some are similar to prior questions. For example, Question #28 related to place of performance in this section is trying to evaluate the risk of a project being awarded to a domestic institution, but where the research may be performed in a foreign country, or where the work is being performed outside of their institution.

Question #22 is intended to provide guidance regarding the type of sponsor and the challenges of adhering to sponsor guidelines. An example of a more stringent sponsor would be one that may require nonstandard reporting (technical and/or financial), frequency and/or required detail. An example of a very stringent sponsor would be one that has nonstandard reporting requirements (technical and/or financial), frequency and/or required detail, extreme prior approval requirements for any award changes and/or any deliverable requirements that may necessitate manual preparation of information.

### **Scoring Methodologies**

Institutions should devise a methodology for using the scores to assess risk that works with their institutional culture. The working group recognizes that institutions have different types of projects and types of subrecipients, and believes that institutions should be free to adjust the scores, the actions taken to mitigate risk, and the questionnaire overall. What one institution considers low risk, another may consider high risk. Please note that these scores are not intended to be best practice cutoffs (minimums) nor absolute maximums. To assist institutions in getting started on the risk assessment process, two examples of possible scoring methodologies are presented

#### **Simple Scoring Methodology**

Some institutions may review their subaward scores and decide upon fixed thresholds for determining risk pools. For instance, a medium risk subaward might be one with an institutional score of at least 8 or 9, or a project score of at least 12 or 13. A total score in the upper 20s might constitute a high risk subaward. Some institutions may have only two risk pools (low and high), and some may have more than three.

#### **Complex Scoring Methodology**

One institution has implemented a scoring methodology based on a formula. Their methodology is described below as an example of a complex methodology.



Medium risk is set by the institutional and project thresholds. The thresholds are calculated as the mean plus the average deviation from the mean of the institution's scores from the previous twelve months. The Excel formula for this calculation is  $AVERAGE(range)+AVEDEV(range)$ .

High risk is set by the total score threshold. The threshold is calculated as the mean plus twice the average deviation from the mean of the institution's scores from the previous twelve months. The Excel formula for this calculation is  $AVERAGE(range)+(AVEDEV(range)*2)$ .

Thresholds are then reset every six months. The first thresholds set by this institution were 8 (institutional score) and 13 (project score) for medium risk, and 28 (total score) for high risk.

## **Risk Assessment Questionnaire – Frequently Asked Questions**

### **GENERAL**

#### **1) What is the goal of completing the Risk Assessment Questionnaire (RAQ)?**

2 CFR 200.331(b) requires that institutions, at a minimum, "evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring. . ."

The RAQ as a tool provides a good starting place for institutions to craft a risk assessment process and to document assessment of risk. It supports responsible stewardship of awarded funds and other institutional needs as well as compliance with the Uniform Guidance and other sponsor requirements.

One objective of scoring the RAQ is to better understand a subrecipient's policies and practices; another is to prompt consideration of subrecipient monitoring of the subrecipient. Negative answers may not constitute a basis for rejection, but will assist your institution in effectively monitoring subrecipients to ensure success of activities.

#### **2) Who should complete the RAQ?**

Who completes the RAQ depends on several factors. Some institutions will delegate risk assessments entirely to their contracting officers or subawards team. Other institutions delegate risk assessments to their Controller's Offices, in close collaboration with pre-award offices. The FDP does not prescribe who should complete it, but rather, leaves it to institutions to decide how best to implement it internally.

#### **3) Should the RAQ be sent to subrecipient institutions to complete?**

No. The RAQ is a tool for pass-through entities to determine the risk of subrecipients. It should not be recycled and sent to subrecipients for completion as a commitment form. A separate FDP working group is working on standardizing subrecipient commitment forms to reduce administrative burden. Information about the progress of that working group will be communicated at a later date.

#### **4) When should the questionnaire be completed?**

Some institutions will want to complete the questionnaire at the time the prime award proposal is made. At other institutions, the volume of proposal submissions may preclude this. In general, less established and more obviously high risk subrecipients should be evaluated earlier in the process, to allow time to assess and mitigate any risks.

#### **5) Which sponsors should this questionnaire apply to?**

The RAQ is intended for all federal funding. It is applicable to other types of funding if the institution chooses to use

#### **6) Are there specific questions for state or industry-funded subawards?**

No, but some institutions have chosen to develop additional questions to refine their scoring of non-federal awards.

**7) What mechanisms are being used to track and collect answers?**

In addition to subrecipient name, ID number, score, and risk category, one institution is tracking the following data on each subaward in an Excel workbook:

- a. Subrecipient entity type (College/University, Non-profit, University Affiliate, Foreign, Large Company, Small Company)
- b. Funding source (Federal, State, Local, Private)
- c. Prime sponsor
- d. Principal Investigator
- e. Research Unit

The first three data elements are used to draw general conclusions about the sources of subrecipient risk. The last two data elements are used to calculate the average subrecipient risk level of the institution's PIs and research units. PIs and research units with high risk subawards will be given additional training in subrecipient monitoring and risk mitigation.

**8) How does the RAQ respond to the four examples of subrecipient risk factors listed in 2 CFR 200.331(6)(b)?**

The four risks are:

- a. The subrecipient's prior experience with the same or similar subawards;
- b. The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
- c. Whether the subrecipient has new personnel or new or substantially changed systems; and
- d. The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

The first factor is addressed by question 14. The second factor is addressed by questions 7 and 8. The third factor is addressed in part by questions 5 and 6. The fourth question is addressed by question 19.

In general, question 15 can be used to address other risks not specifically listed elsewhere in the questionnaire. The risks cited as examples in the Uniform Guidance may be measured, but tend to be difficult to quantify. New personnel and substantially changed systems, for instance, may constitute a short-term risk, but may also produce a long-term reduction in risk when those new personnel and systems function better than those they replaced.

Institutions may decide that certain answers given to scored or non-scored questions may prompt an additional set of questions outside of the RAQ, or a broader assessment of risk by means other than a questionnaire.

**9) Why are certain risk factors addressed in both the scored and non-scored questions? For instance, questions 4 and 21 both address conflict of interest, and questions 7 and 19 both address audits.**

The questions differ in the degree of risk being measured. A 'no' to question 4 is a stronger statement than a 'no' to question 21. Question 4 refers to a prime sponsor requirement for a conflict of interest policy, and question 21 does not. The risk implied by this question is therefore greater. Similarly, a 'no' to question 7 is a stronger statement than a 'no' to question 19. Question 7 indicates that an audit is required but has not been performed, and that the subrecipient is non-compliant. Question 19 does not specify that the audit is required.

### Checklist to Determine Subrecipient or Contractor Classification

**OBJECTIVE:** Generally, the determination of the relationship with an entity is verified through the institutional review of the proposal narrative, budget justification, and other related proposal documents, as well as through discussions with key personnel prior to proposal submission. When the relationship remains unclear, this form may provide assistance in making an accurate determination.

**DEFINITIONS FROM UNIFORM GUIDANCE (2 CFR, PART 200):**

**Subrecipient:**

*§200.93 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*

**Contractor:**

*§200.23 Contractor means an entity that receives a contract as defined in §200.22 Contract.*

*§200.22 Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.*

**INSTRUCTIONS:** Complete sections one and two of the checklist by marking all characteristics that apply to the outside entity. The section with the greatest number of marked characteristics indicates the likely type of relationship the entity will have with the University. On occasion there may be exceptions to the type of relationship indicated by the completed checklist. In these situations, the substance of the relationship should be given greater consideration than the form of agreement between the University and the outside entity. Section 3 should be used to provide documentation on the use of judgment in determining the proper relationship classification.

**NAME OF OUTSIDE ENTITY:** \_\_\_\_\_

**SECTION 1 - SUBRECIPIENT**

*Description:* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- 1. Determines who is eligible to receive what Federal assistance;
- 2. Has its performance measured in relation to whether objectives of a Federal program were met;
- 3. Has responsibility for programmatic decision making;
- 4. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

*Entities that include these characteristics are responsible for adherence to applicable Federal program requirements specified in the Federal award.*

**SECTION 2 - CONTRACTOR**

*Description:* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- 1. Provides the goods and services within normal business operations;
- 2. Provides similar goods or services to many different purchasers;
- 3. Normally operates in a competitive environment;
- 4. Provides goods or services that are ancillary to the operation of the Federal program.

*Entities that include these characteristics are not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.*

**FINAL DETERMINATION:**

**SUBRECIPIENT**       **CONTRACTOR**

**OPTIONAL - SECTION 3 - USE OF JUDGMENT** (use only when the determination cannot clearly be made using the above criteria)

*Description:* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

*Explanation of Use of Judgment Determination:*

**Prepared By:** \_\_\_\_\_

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

## FDP vs State Form Comparison

*BOR IHE has compared the state's sub-recipient forms against the FDP forms and has notated as described below:*

- \* Indicates that line item is addressed in the FDP documents
- X Indicates that line item is not addressed in the comparable document specifically, however the BOR IHE addresses these areas in their sub-recipient processes.

Key sections noted in FDP agreement that are not present in the State's agreement template which are necessary to the BOR IHE issuing subawards.

- Invoicing/Payments
- Animal/Human Subjects Approvals
- Reporting Requirements
- Budget
- Carry Forward
- Prime Award Reference

**DELETE ALL INSTRUCTIONS IN ITALICS BEFORE SIGNING AGREEMENT**

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF \_\_\_\_\_  
DIVISION OF \_\_\_\_\_**

\* All titles are addressed in the face page **Sub-Recipient Agreement  
Between**

State of South Dakota  
Department of  
DIVISION OF  
  
Pierre SD 57501

\_\_\_\_\_  
Referred to as Sub-Recipient

\_\_\_\_\_  
Referred to as State

The State and Sub-Recipient hereby enter into this agreement (the “Agreement” hereinafter) for a grant award of Federal financial assistance to Sub-Recipient.

A. **REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS** *Each of the paragraphs in Section A must be included. Paragraphs 6 and 9 require agencies to insert specific agency or grant requirements.*

\* 1. **FEDERAL AWARD IDENTIFICATION**

*Covered in the face page*

Information for the Federal Award Identification, as described in 2 CFR 200.331(a) may be inserted below or may be included in an attached Exhibit A and, if attached, is incorporated herein. In the event of a change in the award or funding source, the information inserted below or included in Exhibit A may change. Sub-Recipient’s consent shall not be required for the change in award or funding source and the change shall not be subject to the requirements for an amendment to this Agreement. In the event of a change, the State will provide updated information at least annually.

*The reference to “Exhibit A” in the above paragraph should be changed if the information is included somewhere other than a document titled “Exhibit A”. See the instructions to Exhibit A.*

- a. Sub-recipient’s name (which must match the name associated with its DUNS number):
- b. Sub-Recipient’s DUNS number and unique entity identifier:
- c. Federal Award Identification Number (FAIN):
- d. Federal Award Date:
- e. Sub-award Period of Performance:
- f. Amount of federal funds obligated to the Sub-Recipient by this agreement:
- g. Total amount of federal funds obligated to the Sub-Recipient:
- h. Total amount of the federal award committed to the Sub-Recipient:
- i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows:

- j. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
- k. CFDA No(s) and Name(s):
- l. Is the grant award for research and development (R&D)? YES \_\_\_ NO \_\_\_
- m. Indirect Cost Rate for federal award:

\* 2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

Covered in the face page

This agreement shall be effective on June 1, 2016 and will end on May 31, 2017, unless sooner terminated pursuant to the terms hereof.

\* 3. SCOPE OF WORK AND PERFORMANCE PROVISIONS (add an addendum if needed; if an addendum is used it is incorporated herein):

Covered in the face page

- A. The Sub-Recipient will undertake and complete the work or performance described as :
- B. If the State will undertake or complete any work or performance under this Agreement it is described as follows:

\* 4. BASIS FOR SUBAWARD AMOUNTS:

Covered in the face page

This grant is made for the purpose of . *Insert the name of the grant/program or a brief description of its purpose.*

Amount provided by State/Grantor is	\$
Amount matched by Sub-Recipient	\$
Total Grant Amount	\$

X 5. RISK ASSESSMENTS, MONITORING AND REMEDIES

Risk assessments will be ongoing throughout the project period. Sub-Recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

\*6. RETENTION AND INSPECTION OF RECORDS: *Revise the number of years for the retention period or other retention/inspection requirements as necessary per federal award requirements*

Covered in Attachment 1

The Sub-Recipient agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three -year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. State Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the State, shall be retained in Sub-Recipient's secondary and backup systems and shall remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement shall be returned to the State within thirty days after written notification to the Sub-Recipient.

\*7. AUDIT REQUIREMENTS:

Covered in Attachment 1

If Sub-Recipient expends \$750,000 or more in federal awards during the Sub-Recipient's fiscal year, the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit  
A-133 Coordinator  
427 South Chapelle  
% 500 East Capitol  
Pierre, SD 57501-5070

If the Sub-Recipient expends less than \$750,000 during any Sub-Recipient fiscal year, the State may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits shall be completed and filed with the Department of Legislative Audit by the end of the \_\_\_\_ month following end of the fiscal year being audited.

*THE NUMBER OF MONTHS CAN BE ANYTHING 9 MONTHS OR LESS AS APPROPRIATE IN THE GIVEN SITUATION-DELETE THIS INSTRUCTION*

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely resolved.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the State. The State and/or federal agency has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

\* 8. SUB-RECIPIENT ATTESTATION

Covered in Attachment 6

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

- (A) A conflict of interest policy is enforced within the recipient's or sub-recipient's organization;
- (B) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website;
- (C) An effective internal control system is employed by the recipient's or sub-recipient's organization; and
- (D) If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

In the event of a significant change in the conflict of interest policy, sub-recipient agrees to provide immediate notice of such change to the State, and provide a copy of the new conflict of interest policy. Sub-recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

\* 9. CLOSEOUT

Covered in the face page & Attachment 7



*[TO ALL AGENCIES: 2 C.F.R 200.331(a)(6) requires the grant agreement to contain “Appropriate terms and conditions concerning closeout of the sub-award.” The following language is only an example and the Agency should determine the required closeout language applicable to the specific grant. As appropriate use the following language, modify the following paragraphs to reflect appropriate closeout requirements or attach the appropriate closeout language as an Attachment hereto and incorporate such Attachment herein. This instruction should be deleted from the grant form before use.]*

- a. For purposes of this Agreement, “Date of Completion” shall mean the date when the Agreement expires pursuant to its terms or is terminated in accordance with paragraph \_\_\_\_\_.
- b. The Sub-Recipient shall submit a final financial report to the State. Within the limits of the Agreement amount, the State may make upward or downward cost adjustments on the basis of the information contained in the report. Agreement obligations will remain in force until all final reports are reviewed and approved by the State.
- c. The Sub-Recipient, along with the final financial report, will refund to the State any unexpended funds or unobligated (unencumbered) cash advances.
- d. All outstanding obligations (encumbered funds) which have not been paid out as of the Date of Completion must be liquidated prior to the submission of the final report.
- e. Whether or not audits were conducted during the Agreement term, a final financial and compliance audit may be initiated up to three years after the date the State approves the final financial report.
- f. If either the final financial report or the final audit discloses an overpayment to the Sub-Recipient, the State may, at its option, either require the Sub-Recipient to repay the overpayment to the State or deduct the amount of overpayment from monies due the Sub-Recipient under this Agreement or under any other agreement between the Sub-Recipient and the State.
- g. The Sub-Recipient shall provide, along with the final financial report, a written accounting of property acquired with Agreement funds or received from the State.

**B. STANDARD CLAUSES** *Each of the following clauses should be included but may be modified as needed.*

\* 10. ASSURANCE REQUIREMENTS:

*Covered in Attachment 1*

The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

\* 11. COST PRINCIPLES:

*Covered in face page*

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

\* 12. TERMINATION:

*Covered in face page*

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

\* 13. FUNDING:

Covered in attached prime

This contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

\* 14. ASSIGNMENT AND AMENDMENT:

Covered in attached prime

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

X 15. CONTROLLING LAW:

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

\* 16. SUPERCESSION:

Covered in face page

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

X 17. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

\* 18. NOTICE:

Covered in face page

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Sub-Recipient, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

\* 19. SUBCONTRACTORS/SUB-SUB-RECIPIENTS:

Covered in face page & Attachment 6

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent from the State. The State reserves the right to complete a risk assessment on any proposed sub-contractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and sub-recipients to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Sub-Recipient will cause its subcontractors, sub-recipients, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors and sub-recipients. The Sub-Recipient is required to assist in this process as needed.

\* 20. STATE'S RIGHT TO REJECT

Covered in face page

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

\* 21. CONFLICT OF INTEREST:

Covered in Attachment 6

Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.

\* 22. TERMS:

Covered in face page & Attachment 4

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

\* 23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Covered in Attachment 1

Sub-Recipient certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

\* C. AGENCY OR GRANT SPECIFIC CLAUSES *(Add, delete or modify clauses as necessary or appropriate to accomplish specific Agency or Grant requirements.)*

Covered in Attached prime

X 24. This agreement is the result of request for proposal process, RFP # \_\_\_\_\_

\* 25. Does this agreement involve Protected Health Information (PHI)? YES ( ) NO ( X )

If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the agreement (refer to attachment) .

Covered in Attached prime

\* 26. PROPERTY MANAGEMENT STANDARDS:

The Sub-Recipient agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a Federal grant.

X 27. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding the State's rules, regulations and policies to the Sub-Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

X 28. LICENSING AND STANDARD COMPLIANCE:

The Sub-Recipient agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Sub-Recipient will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Sub-Recipient's failure to ensure the safety of all individuals served is assumed entirely by the Sub-Recipient.

\* 29. WORK PRODUCT:

Covered in attachment 2

Sub-Recipient hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, state proprietary information, state data, end user data, Personal Health Information as defined in 45 CFR 160.103, and all information contained therein provided to the State by the Sub-Recipient in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Sub-Recipient without the written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Sub-Recipient agrees to return all information received from the State to State's custody upon the end of the term of this contract, unless otherwise agreed in a writing signed by both parties.

X 30. IT STANDARDS:

Any software or hardware provided under this agreement will comply with state standards which can be found at <http://bit.sd.gov/standards/>.

\* 31. HOLD HARMLESS:

The Sub-Recipient agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Sub-Recipient to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

Covered in face page

X 32. INSURANCE:

Before beginning work under this Agreement, the Sub-Recipient shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Sub-Recipient, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Sub-Recipient agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Sub-Recipient shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

The Sub-Recipient shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

The Sub-Recipient shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

The Sub-Recipient shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

The Sub-Recipient agrees to procure and maintain professional liability insurance with limit not less than \$1,000,000.

X 33. CONFIDENTIALITY OF INFORMATION: Covered in prime, could be add if needed

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Sub-Recipient by the State. Sub-Recipient acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Sub-Recipient shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Sub-Recipient is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Sub-Recipient shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Sub-Recipient; (ii) was known to Sub-Recipient without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Sub-Recipient without the benefit or influence of the State's information; (v) becomes known to Sub-Recipient without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Sub-Recipient understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State of the information disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party's rights under this agreement. Sub-Recipient acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including but not limited to posting this Agreement on the State's website. If work assignment performed in the course of this Agreement required security requirements or clearance, the Sub-Recipient will be required to undergo investigation.

Sub-recipient acknowledges that the State shares general information, including performance information, about Sub-recipient among and between other State agencies upon request of such agencies for the purpose of making determinations of the risk involved with potential, subsequent grant awards and for other purposes. Sub-recipient expressly consents and agrees to such uses by the State.

\* 34. *When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").*

Addressed in Prime (if applicable)

\* 35. *Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).*

Addressed in Prime (if applicable)

\* 36. *If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.*

Addressed in Prime

\* D. AUTHORIZED SIGNATURES:

Covered in face page and attachment 3

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

\_\_\_\_\_  
Sub-Recipient Signature \_\_\_\_\_  
Date

\_\_\_\_\_  
State - INSERT TITLE \_\_\_\_\_  
Date

\_\_\_\_\_  
State - INSERT TITLE \_\_\_\_\_  
Date

\_\_\_\_\_  
State- Cabinet Secretary \_\_\_\_\_  
Date

**State Agency Coding:**

CFDA#	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____
	_____	_____	_____	_____

State Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

State Fiscal Contact Person Contract Accountant  
Phone 605 773-\_\_\_\_\_

Sub-Recipient Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

Sub-Recipient Fiscal Email Address \_\_\_\_\_

Sub-Recipient Fiscal Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

Sub-Recipient Fiscal Email Address \_\_\_\_\_

## **REGARDING EXHIBIT A**

*The attached sample Exhibit A includes the same information as in Paragraph A.1. of the Agreement – the information to meet the requirements set forth in 2 CFR 200.331(a). All state agencies must include the information in Paragraph A.1. or in an attachment/supplement to the Agreement; however, it is not necessary to do both. In the event that the information is included in a document that is referred to other than as “Exhibit A”, the references to “Exhibit A” in the beginning paragraph of Paragraph A.1 of the Agreement should be modified. Additionally, the Agency may use various programs to generate the exhibit/document such as Word or Excel. Regardless of the method of inclusion, **THE REQUIREMENTS SET FORTH ARE MANDATORY and must not be modified***

## **Exhibit A**

### **FEDERAL AWARD IDENTIFICATION**

Sub-recipient's name (which must match the name associated with its unique entity identifier):

- a. Sub-recipient's name (which must match the name associated with its DUNS number):
- b. Sub-Recipient's DUNS number and unique entity identifier:
- c. Federal Award Identification Number (FAIN):
- d. Federal Award Date:
- e. Sub-award Period of Performance:
- f. Amount of federal funds obligated to the Sub-Recipient by this agreement:
- g. Total amount of federal funds obligated to the Sub-Recipient:
- h. Total amount of the federal award committed to the Sub-Recipient:
- i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows:
- j. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
- k. CFDA No(s) and Name(s):
- l. Is the grant award for research and development (R&D)? YES \_\_\_ NO \_\_\_
- m. Indirect Cost Rate for federal award:



\* FDP also includes a summary section

## Pre-Award Risk Assessment

Subrecipient Name:	
Grant Award Number(s) or CFDA Number:	
Program Name(s):	
Risk Assessment Completed Date:	
Grant Period(s):	
Total Score:	0
Risk Assessment:	Low Risk

<b>1. Eligible to Conduct Business with the State (answering yes to any of these questions results in ineligibility to receive funds)</b>					Yes/No
*	Is the entity on the federal debarment list (www.sam.gov)?				
x	Is the entity on the Bureau of Administration's debarment list (boa.sd.gov)?				
x	Is the entity not in good standing with the SD Secretary of State (sos.sd.gov)?				
<b>2. Amount</b>		<u>Small</u>	<u>Medium</u>	<u>Large</u>	
<b>Agency set the Criteria for determining size of grant:</b>		\$0 - \$X	\$X-\$X	>\$X	
Amount of the award ( If award amount is unknown, an estimated award amount should be used. )					
<b>3. Funding of Entity</b>		<u>Small</u>	<u>Medium</u>	<u>Large</u>	
<b>Agency set percentage criteria:</b>		>X%	X%-X%	>X%	
What percentage of funding would this grant be for the entity in comparison to the entity's total funding?					
<b>4. Accounting System</b>		<u>Automated</u>	<u>Manual</u>	<u>Combo</u>	
Type of accounting system used by the entity					
<b>5. Program Complexity</b>		<u>Not Complex</u>	<u>Slightly Complex</u>	<u>Moderately Complex</u>	<u>Highly Complex</u>
Rate the complexity of the program					
<p>Programs with complex compliance requirements have a higher risk of non-compliance. In your determination of complexity consider</p> <ul style="list-style-type: none"> <li>▶ Numerous programmatic requirements and/or must strictly adhere to regulations</li> <li>▶ Matching funds or Maintenance of Effort are required</li> <li>▶ Add agency specific criteria here</li> </ul>		<ul style="list-style-type: none"> <li>▶ Various types of program reports are required</li> <li>▶ The entity further subcontracts out the program</li> <li>▶ Add agency specific criteria here</li> </ul>			
<b>6.I. Entity Risk (Questions Must Be Answered for All Grants) 6.I All are addressed in FDP except for:</b>					Yes/No
*	a. Is the entity receiving an award for the first time from the State?				
x	b. Will the entity be receiving funds prior to expenses being claimed?				
	c. Does a conflict of interest exist between the applicant and Department issuing the grant?				
	d. Does the program leader have more than 3 years of experience in managing the scope of services required under this program?				
	e. Do the entity's financial and programmatic staff who will oversee this grant have more than one year prior federal grant award experience?				
	f. Has the entity been in business for less than 3 years?				
	g. Does the entity anticipate subcontracting or subgranting the grant onto other entities?				
	h. If applicable, is there any indication that the subrecipient may have difficulty meeting the required match?				

\* 6.II The questions in this section are covered in a Single Audit and/or Financial Audit, BOR IHE thoroughly reviews all subrecipients audits annually

6.II. Entity Risk (Questions Must Be Answered for <b>Medium and Large Grants</b> )	Yes/No
a. Does the entity have prior experience with similar programs?	
b. Does the entity maintain policies which include procedures for assuring compliance with the terms of the award?	
c. Does the entity have an accounting system that will allow them to completely and accurately track the receipt and disbursements of funds related to the award?	
d. If applicable, does the entity have a system in place which can track employee time spent on multiple programs?	
e. If applicable, does the entity have a procurement system or procedures in place that meet the minimum federal requirements for procurement?	
f. If applicable, does the entity have a property management system that meets the minimum federal requirements for equipment management?	
g. If applicable, does the entity have an adequate system or procedures in place for tracking and evaluation of in-kind match?	
h. Has the entity been audited in the past 3 years? (select N/A if has been in business for less than this amount of time)(Per 2 CFR 200.501, this is required for all entities who receive over \$750,000 in federal funds annually.)	
i. If the entity received over \$750,000 in federal funds from all sources total last year, was a single audit conducted on the entity per 2 CFR 200.501.	
j. Did the entity have one or more audit findings in their last single audit regarding program non-compliance and/or significant internal control deficiency?	
k. Are there currently any unresolved audit issues?	
l. Does the entity intend to claim use of personal property as an expense?	
m. Other issues that may indicate risk of non-compliance? (List issues in the box below. If more than one, list point value next to each one, add points together and put total into the green point-value box.)	
<p><i>Examples of other issues:</i> (1) having new or substantially changed systems or software packages, i.e. accounting, payroll, reporting, technology, administration; (2) turnover in personnel, i.e. business, award management, program; (3) external risks including: economic conditions, political conditions, regulatory changes &amp; unreliable information; (4) loss of license or accreditation to operate program; (5) new activities, products, or services; (6) organizational restructuring; (7) where indirect costs are included, does the organization have adequate systems to segregate indirect from direct costs.</p>	

X FDP does not include these questions in their risk assessment scoring, however these questions are considered in BOR risk assessment procedures.

7. Prior Grant Award Experience (must be completed for <b>All sizes of grants</b> ) (Not for a <b>new entity.</b> )	Yes/No
a. Were performance and financial reports submitted timely for prior grant awards? (i.e. within the agency specified timeframe )	
b. Were financial reports accurate for prior grant awards?	
c. Did the entity stay on budget in prior years?	
d. Did the entity adhere to all terms and conditions of prior grant awards?	
e. Was reasonable progress made towards performance goals for prior grant awards?	
f. Did the entity and its staff members respond to State requests timely during prior grant awards?	
g. Did the entity's key staff members attend required trainings and meetings during prior grant awards?	
h. Do the results of monitoring procedures at the entity in prior years indicate any areas of concern or higher risk?	
<p><b>Low = 0 - 85    Moderate = 86 - 170    High = 170 and higher</b></p>	<p><b>TOTAL RISK POINTS:                    0</b></p>

**Additional notes and ongoing risk assessment concerns for entity:**

I declare and affirm that all the information listed above is to the best of my knowledge and belief and is in all things true and accurate.

Name: \_\_\_\_\_

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

**\* Common Attributes of Grantees with Low, Moderate and High Risk:**

**Low Risk: Most of the following attributes should be present to be considered low risk**

- ▶ Small grant amount
- ▶ Entity has complied with the terms and conditions of prior grant awards
- ▶ No known financial management problems or financial instability
- ▶ High quality programmatic performance
- ▶ No, or very insignificant, audit or other monitoring findings
- ▶ Timely and accurate financial and performance reports
- ▶ Program likely does not have complex compliance requirements
- ▶ Entity has received some form of monitoring (e.g., single audit, on-site review, etc.)

**Moderate Risk**

- ▶ New business
- ▶ Small entity handles a complex grant with multiple requirements
- ▶ A disclosed conflict of interest exists

**High Risk**

- ▶ History of unsatisfactory performance or failure to adhere to prior grant terms and conditions
- ▶ Financial management problems and/or instability; inadequate financial management system
- ▶ Program has highly complex compliance requirements
- ▶ Significant findings or questioned costs from prior audit
- ▶ Large award amount

Draft

## Contractor or Subrecipient Relationship Determination Checklist

*(To satisfy requirement of section 200.330 in OMB 2 CFR Chapter I, Chapter II, Part 200 et al Uniform Guidance)*

\* In addition to grant specific requirements, all State agencies who receive Federal grants are required to comply with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

This document is intended to be used as a tool to help State agencies comply with 2 CFR 200.330 in making case by case subrecipient or contractor determinations for ALL State agency agreements or contracts involved in the disbursement of Federal program funds.

The checklist will also be applied to non-federally funded agreements to be able to determine recipient or contractor relationship. For the purposes of this document, recipient as it relates to non-federal funds, will be an entity who directly receives an award from a state agency to carry out an activity under a state program or non-federal/private program. A subrecipient determination on a non-federal funded agreement would make the entity a recipient.

<p>* <b>Recipient:</b> A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. (2 CFR 200.86)</p> <p>For the purpose of this checklist the State agency is the Recipient.</p>	<p><b>Subrecipient:</b> A non-Federal entity that receives a subaward from a pass-through entity to carry out all or a portion of a Federal award. This relationship creates a Federal assistance relationship with the subrecipient. (2 CFR 200.93)</p>	<p><b>Contract:</b> A legal instrument by which a non-Federal entity purchases property of services needed to carry out the project of program under a Federal Award. (2 CFR 200.22)</p>
	<p><b>Pass-through entity:</b> A non-Federal entity that provides a subaward to a subrecipient to carry our part of the Federal program. For the purposes of this checklist the State agency is the pass-through entity</p>	<p><b>Contractor:</b> An entity that receives a contract (2 CFR 200.22)</p>
		<p><b>Entity:</b> For the purposes of this checklist, Entity includes any business, government, organization, individual, etc. in which a State agency has a contract or agreement with.</p>

**DIRECTIONS:** Please complete the following checklist. Each section contains characteristics of subrecipients and contractors. Mark the box under "Yes" or "No" next to the question under each characteristic in the sections below. Mark the "Subrecipient" or "Contractor" box to the best of your determination in the blue box at the bottom of each section. **One subrecipient check does not necessarily make the entity a subrecipient nor does one contractor check make it a contractor.**  
*If you need assistance in determining the relationship, please contact your internal control officer.*

* State Agency _____	Program Name _____	CFDA # _____										
Name of Entity receiving funds _____	Contract / Agreement Number _____											
Funding Source(s) _____	RFP number (if applicable) _____											
<p>X Will the agreement be funded by Federal funds?</p> <p>Is the agreement with another State agency?</p> <p>Is the agreement a "renewal" of expired agreement?</p> <p>Is the agreement with an Individual Beneficiary?</p>	<table border="1" style="margin: auto;"> <thead> <tr> <th style="width: 50px;">Yes</th> <th style="width: 50px;">No</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table>	Yes	No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>If No, federal guidance does not apply however checklist assists agency in agreement relationship.</p> <p>If Yes, stop here. Other State agencies aren't considered subrecipients of the State.</p> <p>If Yes, stop here. File original checklist determination with current agreement.</p> <p>Description: A beneficiary is an individual that stands to benefit from the performance of the grant activities. Beneficiaries are the interest for whom the grant project is undertaken. For example, a beneficiary may be an entitlement recipient, an attendee at a grant-funded conference, or an individual daycare provider receiving a child care quality grant. Typically, there is little to no expectation for performance from beneficiaries. If Yes, stop here and use agency specific agreement template.</p>
Yes	No											
<input type="checkbox"/>	<input type="checkbox"/>											
<input type="checkbox"/>	<input type="checkbox"/>											
<input type="checkbox"/>	<input type="checkbox"/>											
<input type="checkbox"/>	<input type="checkbox"/>											

Characteristics	Explanations		
<p style="text-align: center;"><b>Decision Making Authority</b></p>			
<p>* <b>200.330 a.1</b> Determines who is eligible to receive what Federal assistance.</p>			
<p><b>a.</b> Does the entity determine who is eligible to participate in the Federal program?</p>	<p style="color: red; font-weight: bold;">The FDP does not include explanations for each question but rather leaves the interpretation to each entity.</p>		
<p>* <b>200.330 a.3</b> Has responsibility for programmatic decision-making.</p>			
<p>* <b>200.330 b.4</b> Provides Goods or Services that are ancillary to the operation of the Federal program.</p>			
<p><b>b.</b> Does the entity provide goods or services for the State agency's own use?</p>			
<p><b>b.</b> Does the entity provide services designated by the State agency to serve its participants without regard to specific Federal programmatic requirements?</p>	<p>If the entity determines whether a participant meets a Federal program's eligibility requirements for assistance, they are most likely a subrecipient.</p> <p>A contractor may provide services to clients in a program after eligibility has been determined by the State agency.</p> <p>If the entity has authority to make decisions regarding the delivery of service, operations, or types of assistance provided within the terms of the agreement, they are typically a subrecipient.</p> <p>If the entity provides goods or services directly to the State agency or to program participants at the direction of the State agency and does not make programmatic decisions or adhere to program requirements, they are typically a contractor.</p>		
<p>A "Yes" answer to item <b>a.</b> questions is an indicator of a subrecipient relationship</p> <p>A "Yes" answer to item <b>b.</b> questions is an indicator of a contractor relationship</p>	<table border="1" style="margin: auto;"> <tr> <td style="width: 50px;">Subrecipient</td> <td style="width: 50px;">Contractor</td> </tr> </table>	Subrecipient	Contractor
Subrecipient	Contractor		

Nature of Award	Explanations
<p>* <b>200.330 a.2</b> Has its performance measured in relation to whether objectives of a Federal program were met.</p>	
<p><b>a.</b> Is the scope of work (or part, if applicable), and terms and conditions of the agreement the same for the entity as they are for the State agency receiving the Federal funds?</p>	<p>If the entity is providing a service for the State agency to meet the goal of the grant, it is typically a contractor; if the entity is providing a service that carries out a goal within the scope of the grant, it is typically a subrecipient. When a grant contains multiple goals, it is possible for the State agency to complete part, and for a subrecipient to perform another part.</p> <p>If the scope of the agreement incorporates Federal program terms and guidance, it is typically a subrecipient. A subrecipient may also provide programmatic or progress reports to ensure compliance with Federal program requirements.</p> <p>If the funding is given to the entity with a purpose of completing the goal of the grant, the State agency is required to ensure the entity adheres to Federal grant program guidance.</p>
<p><b>a.</b> Is the entity carrying out completion of the mission of the grant (or part, if applicable) as Stated in the Federal award?</p>	
<p>* <b>200.330 a.4</b> Is responsible for adherence to applicable Federal Program requirements specified in the Federal award.</p>	
<p><b>a.</b> Is the entity responsible for performing any Federal grant requirements?</p>	
<p><b>a.</b> Does the funding to the entity depend on its ability to best meet the objectives of the award?</p>	
<p>* <b>200.330 b.5</b> Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.</p>	

## Contractor or Subrecipient Relationship Determination Checklist

*(To satisfy requirement of section 200.330 in OMB 2 CFR Chapter I, Chapter II, Part 200 et al Uniform Guidance)*

<p><b>b.</b> Does the State agency develop the scope of work and terms and conditions of the agreement to meet the State agency's needs?</p>	Yes	No			
	<input type="checkbox"/>	<input type="checkbox"/>			
<p>A "Yes" answer to item <b>a.</b> questions is an indicator of a subrecipient relationship                  A "Yes" answer to item <b>b.</b> questions is an indicator of a contractor relationship</p>				Subrecipient	Contractor

If the scope of the agreement incorporates the State agency's terms and not Federal program guidance, and if the State agency's oversight is governed only by the agreement terms and conditions, it is typically a contractor.

### Criteria for Selection

<p><b>* 200.330 a.5</b> In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.</p> <p><b>a.</b> Does the entity demonstrate a public need for funding to carry out a project or provide a service?</p> <p style="text-align: right;">Yes    No</p> <p style="text-align: center;"><input type="checkbox"/>    <input type="checkbox"/></p> <p><b>a.</b> Will the entity be contributing match or other non-Federal funding in support of the award?</p> <p style="text-align: right;">Yes    No</p> <p style="text-align: center;"><input type="checkbox"/>    <input type="checkbox"/></p> <p><b>a.</b> Will the entity be reimbursed for only actual costs incurred?</p> <p style="text-align: right;">Yes    No</p> <p style="text-align: center;"><input type="checkbox"/>    <input type="checkbox"/></p> <p><b>* 200.330 b.3</b> Normally operates in a competitive environment.</p> <p><b>b.</b> Were State procurement policies applied in the selection of the entity?</p> <p style="text-align: right;">Yes    No</p> <p style="text-align: center;"><input type="checkbox"/>    <input type="checkbox"/></p> <p><b>b.</b> Was the entity's proposed price a factor in the selection process?</p> <p style="text-align: right;">Yes    No</p> <p style="text-align: center;"><input type="checkbox"/>    <input type="checkbox"/></p> <p><b>b.</b> Will the entity derive a profit from the agreement?</p> <p style="text-align: right;">Yes    No</p> <p style="text-align: center;"><input type="checkbox"/>    <input type="checkbox"/></p> <p><b>NOTE:</b> A "Yes" to this question is not an absolute indicator of a contractor because a subrecipient is not prohibited from making a profit.</p> <p>A "Yes" answer to item <b>a.</b> questions is an indicator of a subrecipient relationship                  A "Yes" answer to item <b>b.</b> questions is an indicator of a contractor relationship</p>					
				Subrecipient	Contractor

If the entity is chosen because it is already providing a service within the guidelines of the grant program and want to partner with the State agency to expand the delivery or assist in meeting the goal of your grant, it may be a subrecipient. Although a subrecipient is not prohibited from making a profit, typically, a subrecipient does not make a profit and may provide its own non-Federal funding as match or cost sharing. A subrecipient is normally chosen through an application process or an announcement of funding, as opposed to the procurement process described below. Payment to a subrecipient is generally based on actual expenses unless awarded on a fixed amount sub award (2CFR 200.332). It is typical of subrecipients to submit budgets, financial reports, or copies of invoices to the State agency to document activity.

If the entity was chosen because they have the best widgets for the price, it typically has a contractor relationship. Usually, a procurement method is followed, such as a competitive bid or RFP process. In this type of agreement, the entity usually makes a profit by delivering this good or service to the State agency.

### Entity's Business Environment

<p><b>* 200.330 b.1</b> Provides the goods and services within normal business operations.</p> <p><b>b.</b> Is the entity's normal business to provide the goods or services being purchased in the agreement?</p> <p style="text-align: right;">Yes    No</p> <p style="text-align: center;"><input type="checkbox"/>    <input type="checkbox"/></p> <p><b>* 200.330 b.2</b> Provides similar goods or services to many different purchasers.</p> <p><b>b.</b> Does the entity provide the same goods or services to other organizations?</p> <p style="text-align: right;">Yes    No</p> <p style="text-align: center;"><input type="checkbox"/>    <input type="checkbox"/></p> <p>A "No" answer to <b>EITHER</b> question is an indicator of a subrecipient relationship                  A "Yes" answer to <b>BOTH</b> questions is an indicator of a contractor relationship</p>					
				Subrecipient	Contractor

A contractor normally provides goods and services to the public in a competitive environment and those goods and services are normally available to others for purchase.

A subrecipient normally operates in a less competitive environment and the goods or services provided are normally "unique" in nature and available on a limited basis.

### Federal Program (Grant) Specific or Federal Awarding Agency Specific Guidance/Requirements (as it relates to subrecipients)

<p><del>(Insert CFR) (Type grant specific requirements here - if any. Else check the "N/A" box)</del></p> <p style="text-align: center;"><del>N/A    Yes    No</del></p> <p><del>(Type grant specific requirement question here - if any)</del></p> <p><del>(Insert CFR) (Type Federal agency specific requirements here if any. Else check the "N/A" box)</del></p> <p style="text-align: center;"><del>N/A    Yes    No</del></p> <p><del>(Type Federal agency specific requirement question here - if any)</del></p>					
				Subrecipient	Contractor

The FDP form addresses a broad range of sponsor needs, so typically these sections are not needed.

If the Federal grant award has any grant specific criteria relating to subrecipients or contractor determination, please enter to the left.

If the Federal awarding agency has any specific criteria relating to subrecipients or contractor determination, please enter to the left.

### Other Indicating Factors (as it relates to subrecipients or contractor determinations)

<p>(Type unique indicator question here - if any)</p> <p style="text-align: center;">N/A    Yes    No</p> <p>(Type unique indicator question here - if any)</p>					
				Subrecipient	Contractor

Insert any unique indicating factors not covered above to the left and make determination.

### Final Determination

<p><b>Note:</b> One check in a subrecipient box does not necessarily mean the entity is a subrecipient nor does one check in a contractor box make it a contractor. A judgement should be based on a review of all indicator criteria above.</p> <p>JUSTIFICATION:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>					
				Subrecipient	Contractor

Review all the indicators and make an overall determination of the relationship. **Check the appropriate box in this section.**

Many agreements or contracts will contain both contractor and subrecipient indicators. Please justify and document your final determination to the left.

If agreement is funded by **federal funds** and determined a subrecipient, then use the **subrecipient agreement template**.  
 If agreement is funded by **state general or other funds** and determined a subrecipient, then use the **recipient agreement template**.

**\* Determined by** \_\_\_\_\_ (date) \_\_\_\_\_  
(enter name of person initially making decision)

**Review / Approval** \_\_\_\_\_ (date) \_\_\_\_\_  
(enter name of person approving)

**Comments** \_\_\_\_\_

*Each heading has a hyperlink to the specific section referenced.*  
*Based on the relationship determined above, Subrecipient or Contractor, see additional guidance for the requirements governing the agreement.*  
[Section 200.331 - "Requirements for pass-through entities", for subrecipient agreements](#)  
[Section 200.317 through 200.326 - "Procurement Standards", for contractor agreements](#)