

# **CORONAVIRUS ECONOMIC RELIEF FOR TRANSPORTATION SERVICES GRANT AGREEMENT**

## **INTRODUCTION**

The Department of the Treasury (Treasury) is authorized to provide grants to eligible transportation service providers under section 421 of Division N, Title IV, Subtitle B of the Consolidated Appropriations Act, 2021, Coronavirus Economic Relief for Transportation Services (CERTS) Act.

This agreement (the Grant Agreement) establishes terms and conditions for the CERTS grant awarded to the Grantee identified below. The Grantee agrees to comply with this Grant Agreement and applicable federal laws and regulations as a condition of receiving a CERTS grant. This Grant Agreement shall be construed in a manner consistent with any public guidelines, including in the form of frequently asked questions, Treasury may from time to time issue regarding the implementation of the CERTS Act. In the event of any conflict or inconsistency between this Grant Agreement and any other guidelines, the Grant Agreement prevails.

## **GRANT AMOUNT AND GRANT PAYMENTS**

Treasury will determine the amount of the Grantee's grant award in accordance with the CERTS Act and the CERTS program guidelines.

The amount of the initial payment under this grant award is listed as the "Initial Payment Amount" in the section "Grantee Information." Treasury will notify the Grantee of the amount of any second payment under this grant award, which will depend on the extent to which there are additional CERTS program funds remaining after Treasury completes its review of all CERTS grant applications. The amount of such second payment, which would be smaller than the Initial Payment Amount, will be determined by Treasury. Treasury has no obligation under this Grant Agreement or otherwise to provide a second payment to the Grantee.

The Grantee's acceptance of this Grant Agreement includes acceptance of any second payment. The grant award subject to the terms and conditions of this Grant Agreement is the amount of Funds from both the initial payment and any second payment Treasury makes to the Grantee.

## **GRANTEE INFORMATION**

**Grantee Name:** *[official company name to be inserted here]*

**CERTS Number:** *[CERTS application number to be inserted here]*

**Business TIN:** *[EIN/SSN to be inserted here]*

**Initial Payment Amount:** *[\$[initial payment amount to be inserted here]*

**Type of Transportation Service Provider:** *[Motorcoach, School Bus, Passenger Vessel, or Pilotage to be inserted here]*

**2019 Calendar Year Revenues:** \$[2019 calendar year revenues to be inserted here]

**2020 Calendar Year Revenues:** \$[2020 calendar year revenues to be inserted here]

## **DEFINITIONS**

As used in this Grant Agreement, the following terms shall have the following respective meanings, unless the context clearly requires otherwise.

*Affiliate* means any Person that directly or indirectly controls the Grantee, such as a parent corporation, and any Person that directly or indirectly is under common control with the Grantee, such as an affiliated corporation, but does not include any Covered Subsidiary or Independent Subsidiary of the Grantee. For purposes of this definition, “control” of a Person shall mean having the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by ownership of voting equity, by contract, or otherwise.

*Covered Period* means the period beginning on the effective date of this Grant Agreement and ending on the date on which all Funds are expended or returned to Treasury. If the Grantee expends all of the Funds received as an initial payment from Treasury prior to receipt of a second payment from Treasury, the Covered Period shall extend until the date the Funds received from the second payment are expended or the date Treasury informs the Grantee that no second payment will be available, as applicable.

*Covered Subsidiary* means (i) a Person that is directly or indirectly controlled by the Grantee and whose items of income or deduction, if any, are reflected in the tax returns of the Grantee (including any entity that is disregarded from the Grantee for Federal income tax purposes) or (ii) an Independent Subsidiary to which the Grantee has transferred Funds pursuant to paragraphs 2 or 3. For purposes of this definition, “control” of a Person shall mean having the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by ownership of voting equity, by contract, or otherwise.

*COVID-19* means the Coronavirus Disease 2019.

*Employee* means a salaried, hourly, full-time, part-time, seasonal, nonseasonal, temporary, or leased employee whose principal place of work is in the United States (including its territories and possessions).

*Executive Employee* means an Employee with senior managerial responsibility for the business of the Grantee or a Covered Subsidiary, as applicable, such as president or equivalent, any vice president or equivalent in charge of a principal business unit, division, or function (such as operations or finance), and other senior officers exercising policy making or control over the Employees and operations of the Grantee or a Covered Subsidiary.

*Funds* means the funds disbursed by Treasury to the Grantee as a grant under this Grant Agreement.

*Grantee* means the company, which may include a sole proprietorship, identified as “Grantee Name” in the section “Grantee Information.”

*Independent Subsidiary* means a Person that is directly or indirectly controlled by the Grantee that files its own Federal tax returns or whose items of income or deduction, if any, are reflected in the Federal tax returns of a Person other than the Grantee. For purposes of this definition, “control” of a Person shall mean having the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by ownership of voting equity, by contract, or otherwise.

*Involuntary Termination or Furlough* means terminating employment or requiring a temporary suspension or unpaid leave for any reason, including a shut-down or slow-down of business; provided, however, that an Involuntary Termination or Furlough does not include (i) the termination of seasonal Employees at the conclusion of the season or (ii) a Permitted Termination or Furlough.

*Other COVID-19 Federal Financial Assistance Received* means the amount of other Federal grants, loans, and direct assistance funded in response to COVID-19, or the amount claimed under Federal tax credits established in response to COVID-19, up to the date of the Grantee’s application for a CERTS grant, including but not limited to the following:

- Paycheck Protection Program (PPP);
- Economic Injury Disaster Loan (EIDL) program;
- Employee Retention Credit due to COVID-19;
- Funding appropriated to the Federal Transit Administration (FTA), including funding from a supplemental COVID-19 appropriation for the Section 5311(f) Intercity Bus Program, the Section 5307 Urbanized Area Formula Grant, or another FTA program;
- Assistance as a subrecipient grantee from funding appropriated to the U.S. Department of Education in response to COVID-19, including from a supplemental COVID-19 appropriation for the Education Stabilization Fund, which includes but is not limited to the Elementary and Secondary School Relief Fund; and
- In the case of a sole proprietor, Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance, Federal Pandemic Unemployment Compensation, or Mixed Earners Unemployment Compensation.

*Payroll Costs* means:

- a. any payment to an Employee of compensation in the form of—
  - i. salary, wage, commission, or similar compensation;
  - ii. payment of a cash tip or an equivalent;
  - iii. payment for vacation, parental, family, medical, or sick leave;
  - iv. payment required for the provision of group health care or other group insurance benefits such as workers’ compensation, including insurance premiums;
  - v. payment of a retirement benefit;

- vi. payment of a State or local tax assessed on Employees with respect to compensation; or
- vii. paid administrative leave; and
- b. any payment of compensation to, or income of, a sole proprietor or independent contractor that is—
  - i. a wage, commission, income, net earnings from self-employment, or similar compensation; and
  - ii. in an amount equal to not more than \$100,000 during one calendar year, as prorated to reflect the date during a calendar year on which all Funds have been expended;
- c. but excludes:
  - i. any compensation of an individual Employee in excess of an annualized salary rate of \$100,000, i.e., any compensation in excess of \$8,333 per month, \$3,846 per biweekly period, \$1,923 per week, etc.;
  - ii. any tax imposed or withheld under chapter 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Act Tax), or 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code of 1986;
  - iii. any compensation of an Employee whose principal place of residence is outside the United States;
  - iv. any qualified sick leave wages and any qualified family leave wages for which a credit is allowed under sections 7001 and 7003, respectively, of the Families First Coronavirus Response Act (26 U.S.C. § 3111 note, Public Law 116-127); and
  - v. any bonus, raise in excess of inflation, or other form of additional Employee compensation.

*Permitted Termination or Furlough* means (1) a voluntary furlough, voluntary leave of absence, voluntary resignation, or voluntary retirement, (2) termination of employment resulting from death or disability, or (3) the termination of employment for cause or establishing a temporary employment suspension or unpaid leave of absence for disciplinary reasons, in either case, as reasonably determined by an employer acting in good faith.

*Person* means any natural person, corporation, limited liability company, partnership, joint venture, trust, business association, or other entity.

*Recall* means notifying an Employee who was Involuntarily Terminated or Furloughed that the Employee may return to employment within a reasonably specified period, consistent with any existing applicable collective bargaining agreements entered into before December 27, 2020.

*Returning Employee* means an Employee who was subject to an Involuntary Termination or Furlough between March 27, 2020 and the effective date of the Grant Agreement and who has elected to return to employment pursuant to a Recall.

*Revenue* means gross sales and receipts from business operations (less any cash or credit refunds made to customers or other allowances made on gross receipts or sales), consistent with IRS instructions for lines 1c of IRS Forms 1120, 1120-S, and 1065, and for line 3 of Schedule C (IRS

Form 1040). Gross sales and receipts do NOT include rents, royalties, interest, dividends, capital gains or other passive income not from business operations.

## **TERMS AND CONDITIONS**

### Eligible Use of Funds

1. *Operating Expenses.* The Grantee may (i) use the Funds for the following operating expenses and (ii) transfer the Funds to any Covered Subsidiary that has significant operations, and a majority of its employees based, in the United States, which may use the Funds for the following operating expenses:
  - payment of Payroll Costs incurred during the Covered Period;
  - the acquisition during the Covered Period of services, personal protective equipment, and other measures needed to protect workers and customers from COVID-19;
  - operations and maintenance during the Covered Period of existing capital equipment and facilities, such as rent, leases, insurance, and interest on regularly scheduled debt service;
  - principal on a debt obligation incurred during the COVID-19 pandemic for the direct purpose of maintaining the payment of Payroll Costs during the COVID-19 pandemic; and
  - compensation paid during the Covered Period of returning Employees for lost pay and benefits during the COVID-19 pandemic to the extent such pay and benefits would have been covered under the definition of “Payroll Costs” above, subject to certain offsets and limitations specified in paragraph 11.
2. *Employees of Affiliates and Independent Subsidiaries.* The Grantee may use the Funds to pay or reimburse an Affiliate or an Independent Subsidiary for the Payroll Costs related to Employees of the Affiliate or Independent Subsidiary performing necessary operating functions for the Grantee, and the Grantee may treat such costs as Payroll Costs of the Grantee provided that:
  - In the case of an Affiliate, the Grantee certifies, in a form to be provided by Treasury, that the Affiliate has agreed to comply with the provisions of paragraphs 6 through 11 with respect to such Employees, to provide the Grantee with the information necessary to complete the quarterly reports specified in paragraph 12 and to maintain records as required by paragraph 23, and to provide the Grantee with such other information as necessary for the Grantee to comply with the terms of this Grant Agreement;
  - In the case of an Independent Subsidiary, the Independent Subsidiary shall be subject to all the requirements in this Grant Agreement applicable to Covered Subsidiaries; and
  - The Grantee shall identify and include such Affiliate and Independent Subsidiary and their Employees in the quarterly reports specified in paragraph 12.
3. *Other Transactions with Affiliates and Independent Subsidiaries.* The Grantee may use Funds to pay or reimburse an Affiliate or an Independent Subsidiary for other services or

goods provided to the Grantee that constitute an eligible use of funds pursuant to paragraph 1, provided such services or goods are provided under ordinary course terms and provided that the Independent Subsidiary shall be subject to all the requirements in this Grant Agreement applicable to Covered Subsidiaries.

4. *Return of Funds.* The Grantee shall return to Treasury any Funds received under this Grant Agreement that are not expended by the Grantee within 1 year after the date on which the Grantee first receives Funds from Treasury under this Grant Agreement.

#### Ineligible Use of Funds

5. *Non-Operating Expenses.* The Grantee shall not use Funds for any expenses not listed in paragraph 1-3. For the avoidance of doubt, the following is a non-exclusive list of types of expenses that may not be covered using the Funds:
  - any payment or prepayment of principal on a debt obligation, except for any principal on a debt obligation incurred during the COVID-19 pandemic for the direct purpose of maintaining the payment of Payroll Costs during the COVID-19 pandemic;
  - capital expenditures;
  - payment of any taxes (for the current or any other tax year) other than to the extent included within Payroll Costs;
  - any dividends or other capital distributions with respect to any ownership interests, other than a payment of compensation to a sole proprietor to the extent included within section (b) of the definition of Payroll Costs; or
  - any salary, wage, benefits, or other compensation that is not included within the definition of “Payroll Costs”, including:
    - any compensation of an individual employee in excess of an annualized salary rate of \$100,000, (e.g., any compensation in excess of \$8,333 per month, \$3,846 per bi-weekly period, \$1,923 per week);
    - any tax imposed or withheld under chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Act Tax), or 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code of 1986;
    - any compensation of an employee whose principal place of residence is outside the United States;
    - any qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (26 U.S.C. § 3111 note, Public Law 116–127);
    - any qualified family leave wages for which a credit is allowed under section 7003 of that Act (26 U.S.C. § 3111 note, Public Law 116–127); or
    - any bonus, raise in excess of inflation, or other form of additional employee compensation.
  - any expense for which funding or financing has been awarded, sub-awarded, or otherwise provided through another Federal program.

### Priority Use of Funds for Payroll

6. *Payroll Certification.* The Grantee and its Covered Subsidiaries in the aggregate shall use not less than 60 percent of the Funds on Payroll Costs, unless the Grantee certifies to Treasury that, after making any adjustments required for retirement or voluntary employee separation:
- *Rehire of Nonseasonal Employees.* The Grantee and its Covered Subsidiaries have rehired, or offered to rehire, each nonseasonal employee on the payroll on January 1, 2020, that was laid off, furloughed, or terminated after March 27, 2020, at no less than 100 percent of the employee's previous salary; and
  - *Nonseasonal Employees with Reduced Salaries.* The Grantee and its Covered Subsidiaries have re-established, at no less than 100 percent of the previous salary, the salary of each employee that was first laid off, furloughed, or terminated after March 27, 2020, and subsequently rehired at a reduced salary before the date on which the Grantee first receives Funds from Treasury under this Grant Agreement; and
  - *2019 Level of Seasonal Employees.* The Grantee and its Covered Subsidiaries are staffed at a level of full-time equivalent, seasonal employees, on a monthly basis, that is equal to or greater than the level at which the Grantee and its Covered Subsidiaries were staffed with full-time equivalent, seasonal employees on a monthly basis during calendar year 2019; and
  - *Priority Rehire of Seasonal Employees.* The Grantee and its Covered Subsidiaries have offered priority in rehiring to each seasonal employee that was laid off, furloughed, terminated, or not offered rehire in calendar year 2020, as the Grantee achieves staffing that is equal to greater than the level of fulltime equivalent, seasonal employees, on a monthly basis during calendar year 2019; and
  - *Seasonal Employees with Reduced Salaries.* The Grantee and its Covered Subsidiaries have offered no less than 100 percent of previous salary to each seasonal employee (a) that is rehired after being laid off, furloughed, terminated, or not offered rehire in calendar year 2020, or (b) that was subject to a reduction in salary before the date on which the Grantee first receives Funds from Treasury under this Grant Agreement; and
  - *Full Payment of Payroll.* The Grantee and its Covered Subsidiaries will fully pay, through the Covered Period, all Payroll Costs associated with the seasonal and nonseasonal employees described in this paragraph 6.

### Retaining and Paying Employees

7. *Recalls.* The Grantee and its Covered Subsidiaries shall, after the date that is 30 days after the Grantee first receives Funds from Treasury under this Grant Agreement, recall or rehire any Employees laid off, furloughed, or terminated after March 27, 2020, to the extent the Grantee deems warranted by increased service levels.
8. *Anticipated Expenditures.* The Grantee shall examine its anticipated expenditure of Funds at least every 90 days after the Grantee first receives Funds from Treasury under this Grant Agreement for the purpose of (a) maintaining expenditures on Payroll Costs for all Employees as of December 27, 2020, after making adjustments required for retirement or voluntary separation and (b) recalling or rehiring any Employees laid off, furloughed, or terminated after March 27, 2020, to the extent the Grantee deems warranted by increased service levels.
9. *No Involuntary Terminations or Furloughs.* During the Covered Period, neither the Grantee nor its Covered Subsidiaries shall impose any Involuntary Termination or Furlough.
10. *No Employee Pay/Benefits Reductions.* During the Covered Period, neither the Grantee nor its Covered Subsidiaries shall impose any reduction in the rate of pay of salary and wages, or in benefits (defined as benefits of the types listed in (a)(iii)-(vii) in the definition of Payroll Costs), for Employees that are not Executive Employees.

### Compensation of Returning Employees

11. *Offset of Compensation for Returning Employees.* If the Grantee or its Covered Subsidiaries use Funds to compensate returning Employees for lost pay and benefits during the COVID-19 pandemic, then the Grantee or its Covered Subsidiary, as applicable, shall offset the compensation provided to the returning Employees for lost pay and benefits by (1) any amounts Grantee or its Covered Subsidiary paid the Employee furlough pay, severance pay, or separation pay as a result of the layoff, furlough, or termination of the Employee or any failure to hire the Employee for seasonal employment during calendar year 2020, and (2) and any amounts the Employee received from unemployment insurance.

### Reporting and Auditing

12. *Quarterly Reports.* Not later than 45 days after each calendar quarter occurring during the Covered Period, the Grantee shall:
  - certify to Treasury, in a format to be specified by Treasury, that it is in compliance with the terms and conditions of this Grant Agreement;
  - provide a report, in a format to be specified by Treasury, providing certifications related to the use of Funds, specifying the amount of Funds expended during the quarter by each category of eligible use, summarizing any changes in the Grantee's and Covered



Subsidiaries' number of employees during the quarter and explaining the reasons for any such changes, and disclosing other financial results; and

- provide copies of the Grantee's quarterly IRS Forms 941 (or equivalent documentation) as may be requested by Treasury.

Treasury may require the Grantee to submit such reports to Treasury in less than 45 days after a calendar quarter if Treasury determines a shorter deadline is practicable and necessary for the administration of the CERTS program.

13. *Ability to Comply.* If the Grantee, or any Executive Employee of the Grantee, becomes aware of facts, events, or circumstances that may materially affect the Grantee's compliance with the terms and conditions of this Grant Agreement, the Grantee shall promptly provide Treasury with a written description of the events or circumstances and any action taken, or contemplated, to address the issue.
14. *Bankruptcy.* The Grantee shall promptly notify Treasury upon the filing of a petition under the United States Bankruptcy Code, whether voluntary or involuntary, with respect to the Grantee or any Covered Subsidiary.
15. *Waste, Fraud, Abuse.* The Grantee shall immediately notify Treasury and the Treasury Inspector General of any indication of fraud, waste, abuse, or potentially criminal activity pertaining to the Funds.
16. *Oversight Reports.* The Grantee shall promptly provide to Treasury and the Treasury Inspector General a copy of any report the Grantee receives from a governmental oversight body relating to this Grant Agreement.
17. *Compliance Information.* The Grantee shall promptly provide Treasury with any information, including supporting documents, that Treasury requests relating to the Grantee's compliance with this Agreement. The Grantee shall provide prompt notification to Treasury of any criminal or civil case brought by a federal or state agency against the Grantee, an Affiliate, a Covered Subsidiary, or any owner or Executive Employee of the Grantee, an Affiliate, or a Covered Subsidiary.
18. *Access to Records.* The Grantee will provide Treasury, the Treasury Inspector General, and such other entities as authorized by Treasury timely and unrestricted access to all documents, papers, or other records, including electronic records, related to the Grant, to enable Treasury and the Treasury Inspector General to make audits, examinations, and otherwise evaluate the Grantee's compliance with the terms of this Grant Agreement. This right also includes timely and reasonable access to the Grantee's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained. In addition, the Grantee will provide timely reports as reasonably required by Treasury, the Treasury Inspector General, and such other entities as authorized by Treasury to comply with applicable laws and regulations and to assess the effectiveness of the CERTS program.

19. *2020 Tax Returns.* If the Grantee was unable, for any reason, to provide its 2020 Federal tax return as part of its grant application, the Treasury may require the Grantee to provide a copy of such tax return.

#### Internal Controls and Recordkeeping

20. *Debtor Status.* If the Grantee or a Covered Subsidiary is a debtor as defined under 11 U.S.C. § 101(13), the Funds, any claim or account receivable arising under this Grant Agreement, and any segregated account holding funds received under this Grant Agreement shall not constitute or become property of the estate under 11 U.S.C. § 541.
21. *Accuracy and Traceability.* The Grantee and its Covered Subsidiaries shall account for Funds in a manner sufficient to:
- Permit the preparation of accurate, current, and complete quarterly reports as required under this Grant Agreement; and
  - Permit the tracing of Funds to a level of expenditures adequate to establish that the Funds have been used as required under this Grant Agreement.
22. *Internal Controls.* The Grantee shall and shall cause its Covered Subsidiaries to establish and maintain effective internal controls over the Funds; comply with all requirements related to the Grant established under applicable Federal laws and regulations; monitor compliance with Federal laws, regulations, and the terms and conditions of this Grant Agreement; and take prompt corrective actions in accordance with audit recommendations. The Grantee shall promptly remedy and notify Treasury of any identified instances of noncompliance with this Grant Agreement.
23. *Records Retention.* The Grantee shall and shall cause its Covered Subsidiaries to retain all records pertinent to the receipt of the Funds and compliance with the terms and conditions of this Grant Agreement (including by suspending any automatic deletion functions for electronic records, including e-mails) during the Covered Period and for a period of three years thereafter. Such records shall include all information necessary to substantiate factual representations made in the supporting documents submitted by the Grantee related to the grant, including ledgers and sub-ledgers, and compliance by the Grantee and its Covered Subsidiaries with this Grant Agreement. While electronic storage of records (backed up as appropriate) is preferable, the Grantee may store records in hardcopy (paper) format. The term “records” includes all relevant financial accounting, and related records and all supporting documentation for the information reported on the Grantee’s quarterly reports.
24. *Extended Records Retention.* If any litigation, administrative proceeding, claim, investigation, or audit relating to the grant is started before the expiration of the three-year period record retention period, the Grantee shall retain all records described in paragraph 23 until all such litigation, proceedings, claims, investigations, or audit findings have been completely resolved and final judgment entered or other final action taken.

25. *Documents and Information.* The Grantee agrees that, from time to time, it will, at its own expense, promptly upon reasonable request by Treasury, execute and deliver, or cause to be executed and delivered, or use its commercially reasonable efforts to procure, all instruments, documents and information, all in form and substance reasonably satisfactory to Treasury, to enable Treasury to ensure compliance with, or effect the purposes of, this Grant Agreement, which may include, among other documents or information, certain accounting, financial, and related records of the Grantee. The Grantee agrees to provide Treasury with such documents or information promptly.

#### Noncompliance and Remedies

26. *Notice of Noncompliance.* If Treasury believes that an instance of noncompliance by the Grantee, a Covered Subsidiary, or an Affiliate with (a) this Grant Agreement, including but not limited to ineligible use of Funds, (b) section 421 of the Consolidated Appropriations Act, 2021, or (c) the Internal Revenue Code of 1986 as it applies to the receipt of Funds has occurred, Treasury may notify the Grantee in writing of its proposed determination of noncompliance, provide an explanation of the nature of the noncompliance, and specify a proposed remedy. Upon receipt of such notice, the Grantee shall, within seven days, accept Treasury's proposed remedy, propose an alternative remedy, or provide information and documentation contesting Treasury's proposed determination. Treasury shall consider any such submission by the Grantee and make a final written determination, which will state Treasury's findings regarding noncompliance and the remedy to be imposed.

27. *Determination of Noncompliance.* If Treasury makes a final determination under paragraph 26 that an instance of noncompliance has occurred, Treasury may, in its sole discretion, require the repayment of the amount of any previously disbursed Funds, with appropriate interest; require additional reporting or monitoring; initiate suspension or debarment proceedings as authorized under 2 CFR Part 180; terminate this Grant Agreement; or take any such other action as Treasury, in its sole discretion, deems appropriate.

28. *Protecting the Federal Government.* Treasury may make a final determination regarding noncompliance without regard to paragraphs 26-27 if Treasury determines, in its sole discretion, that such determination is necessary to protect a material interest of the Federal government. In such event, Treasury shall notify the Grantee of the remedy that Treasury, in its sole discretion, shall impose, after which the Grantee may contest Treasury's final determination or propose an alternative remedy in writing to Treasury. Following the receipt of such a submission from the Grantee, Treasury may, in its sole discretion, maintain or alter its final determination.

29. *No Review.* Any final determination of noncompliance and any final determination to take any remedial action described herein shall not be subject to further review. The Grantee waives any right to judicial review of any such determinations and further agrees not to assert in any court or administrative proceeding any claim arising from or relating to any such determination or remedial action.

30. *Referral to Treasury IG.* Instead of, or in addition to, the remedies listed above, Treasury may refer any noncompliance or any allegations of fraud, waste, or abuse to the Treasury Inspector General.
31. *Requested Termination.* Treasury, in its sole discretion, may grant any request by the Grantee for termination of this Grant Agreement, which such request shall be in writing and shall include the reasons for such termination, the proposed effective date of the termination, and the amount of any unused Funds the Grantee requests to return to Treasury. Treasury may, in its sole discretion, determine the extent to which the requirements under this Grant Agreement may cease to apply following any such termination.

#### Debts

32. *Definition of Debt.* Any Funds in excess of the amount which Treasury determines, at any time, the Grantee is authorized to receive or retain under the terms of this Grant Agreement constitutes a debt to the Federal government.
33. *Collection of Debts.* Any debts determined to be owed by the Grantee to the Federal government shall be paid promptly by the Grantee. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made. Interest, penalties, and administrative charges shall be charged on delinquent debts in accordance with 31 U.S.C. § 3717, 31 CFR 901.9, and paragraphs 34-35. Treasury will refer any debt that is more than 180 days delinquent to Treasury's Bureau of the Fiscal Service for debt collection services.
34. *Penalties on Debts.* Penalties on any debts shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by applicable law.
35. *Administrative Charges.* Administrative charges relating to the costs of processing and handling a delinquent debt shall be determined by Treasury.
36. *Source of Funds to Repay Debts.* The Grantee shall not use funds from other federally sponsored programs to pay a debt to the government arising under this Grant Agreement.

#### Compliance with Other Federal Law

37. *Protections for Whistleblowers.* In addition to other applicable whistleblower protections, in accordance with 41 U.S.C. § 4712, the Grantee shall not discharge, demote, or otherwise discriminate against an Employee as a reprisal for disclosing information to a person listed below that the Employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant:
- A Member of Congress or a representative of a committee of Congress;

- An Inspector General;
- The Government Accountability Office;
- A Treasury employee responsible for contract or grant oversight or management;
- An authorized official of the Department of Justice or other law enforcement agency;
- A court or grand jury; or
- A management official or other Employee of the Grantee who has the responsibility to investigate, discover, or address misconduct.

38. *Lobbying.* The Grantee shall comply with the provisions of 31 U.S.C. § 1352, as amended, and with the regulations at 31 CFR Part 21.

39. *Trafficking in Persons.* The requirement pertaining to trafficking in persons at 2 CFR 175.15(b) is incorporated herein and made applicable to the Grantee.

40. *Grantee Integrity and Performance.* If the total value of the Grantee's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period before termination of this Agreement, then the Grantee shall make such reports as required by 2 CFR part 200, Appendix XII.

41. *Increasing Seat Belt Use in the United States.* Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), the Grantee and its Covered Subsidiaries should adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles and should require contractors to do the same.

42. *Reducing Text Messaging While Driving.* Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), the Grantee and its Covered Subsidiaries should encourage their employees and contractors to adopt and enforce policies that ban text messaging while driving, and the Grantee and its Covered Subsidiaries should establish workplace safety policies to decrease accidents caused by distracted drivers.

#### Non-Discrimination

43. *Compliance.* The Grantee will comply with and the Grantee hereby assures that it will comply with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by Treasury's Title VI regulations at 31 CFR Part 22 and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), including Treasury's implementing regulations at 31 CFR Part 23; and the general age discrimination regulations at 45 CFR Part 90. The Grantee understands that denying a person access to its programs, services, and activities because of limited English proficiency is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and Treasury's implementing regulations.

44. *Contractors.* The Grantee acknowledges and agrees that it must require any contractors or subcontractors to comply with paragraph 43 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Grantee and the Grantee's contractors or subcontractors that is entered into during the Covered Period:

*The contractor or subcontractor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract.*

45. *Cooperation.* The Grantee shall cooperate in any enforcement or compliance review activities by Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Grantee shall comply with information requests, on-site compliance reviews and reporting requirements.
46. *Complaints.* The Grantee shall maintain a complaint log and inform Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all reviews or proceedings based on the complaint, pending or completed, including outcome.
47. *Non-compliance.* The Grantee must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Grantee and the administrative agency that made the finding. If the Grantee settles a case or matter alleging such discrimination, the Grantee must provide documentation of the settlement.
48. *Enforcement.* The Grantee understands that the federal government has the right to seek judicial enforcement of paragraphs 43–48, and nothing in this agreement alters or limits the federal enforcement measures that the federal government may take in order to address violations of these paragraphs or applicable federal law.
49. *Non-Discrimination Compliance by Covered Subsidiaries.* Any Covered Subsidiary receiving Funds from the Grantee shall be subject to the requirements of paragraphs 43–48 and the Grantee assures that such Covered Subsidiaries will comply with these requirements.

#### Other Terms

50. *Compliance of Covered Subsidiaries and Affiliates.* The Grantee shall cause its Covered Subsidiaries and Affiliates to comply with the requirements of this Grant Agreement applicable to Covered Subsidiaries and Affiliates and shall cause them to provide information

to the Grantee necessary for the Grantee to provide all required reports and other information to Treasury and other parties as specified by this agreement.

51. *No Assignment.* Notwithstanding any other provision of this Grant Agreement, the Grantee has no right to, and shall not, subaward, transfer, pledge, mortgage, encumber, or otherwise assign this Grant Agreement, or any interest therein, or any claim, account receivable, or, (other than to Affiliates and Covered Subsidiaries to the extent permitted by this Grant Agreement) any of the Funds or accounts holding Funds, to any party, bank, trust company, or other Person without the express written approval of Treasury.
52. *Amendment.* This Grant Agreement may not be amended or modified except pursuant to an agreement in writing entered into by the Grantee and Treasury, except that Treasury may unilaterally amend this Grant Agreement if required in order to comply with applicable laws or regulations.
53. *Waivers.* Subject to applicable laws and regulations, Treasury may, in its sole discretion, waive any term or condition under this Grant Agreement imposing a requirement on the Grantee.
54. *Successors.* This Grant Agreement shall bind and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns.
55. *No Third-Party Beneficiaries.* Nothing in this Grant Agreement, express or implied, is intended to or shall confer upon any person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Grant Agreement.
56. *Due Authorization.* The Grantee represents and warrants to Treasury that this Grant Agreement has been duly authorized by all requisite corporate and, if required, stockholder action, and will not result in the violation by the Grantee of any provision of applicable law or regulation, or of the articles of incorporation or other constitutive documents or bylaws of the Grantee, or breach or constitute an event of default under any material contract to which the Grantee is a party.
57. *Due Execution.* The Grantee represents and warrants to Treasury that this Grant Agreement has been duly executed and delivered by the Grantee and constitutes a legal, valid, and binding obligation of the Grantee enforceable against the Grantee in accordance with its terms.
58. *Execution in Counterparts.* This Grant Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute a single contract.
59. *Form of Signature.* The words “execution,” “signed,” “signature,” and words of like import in any assignment shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the

case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Notwithstanding anything herein to the contrary, delivery of an executed counterpart of a signature page of this Grant Agreement by electronic means, or confirmation of the execution of this Grant Agreement on behalf of a party by an email from an authorized signatory of such party, shall be effective as delivery of a manually executed counterpart of this Grant Agreement.

60. *Paragraph Headings.* The captions and paragraph headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Grant Agreement.
61. *Governing Law.* This Grant Agreement is governed by and shall be construed in accordance with Federal law. Insofar as there may be no applicable federal law, this Grant Agreement shall be construed in accordance with the laws of the State of New York, without regard to any rule of conflicts of law (other than section 5-1401 of the New York General Obligations Law) that would result in the application of the substantive law of any jurisdiction other than the State of New York.
62. *No Unlawful Action.* Nothing in this Grant Agreement shall require any unlawful action or inaction by either party.
63. *Entire Agreement.* This Grant Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes any previous agreements and understandings, oral or written, relating to the subject matter hereof. There may exist other agreements between the parties as to other matters, which are not affected by this Grant Agreement and are not included within this integration clause.
64. *No Waiver.* No failure by either party to insist upon the strict performance of any provision of this Grant Agreement or to exercise any right or remedy hereunder, and no performance by either party during the continuance of any such breach, shall constitute a waiver of any such breach of such provision.
65. *Effective Date.* This Grant Agreement shall be effective as of the date of its execution by both parties.



## **CERTIFICATIONS OF GRANTEE AUTHORIZED COMPANY OFFICIAL**

I, the authorized company official signing this Grant Agreement, hereby certify under penalty of perjury to Treasury that all of the following are true and correct:

1. I have the authority to make the following representations on behalf of myself and the Grantee. I understand that these representations will be relied upon as material in the decision by Treasury to provide a grant to the Grantee.
2. The information, documents, and certifications provided by the Grantee to Treasury as part of the Grant application process are true and correct and do not contain any materially false, fictitious, or fraudulent statement, nor any concealment or omission of any material fact.
3. The amounts reported in the Grant application of Other COVID-19 Federal Financial Assistance Received include such amounts that were received by the Grantee and its Covered Subsidiaries that are not Independent Subsidiaries.
4. The amounts of the Grantee's 2019 and 2020 calendar year Revenues in the Section "Grantee Information" are accurate.
5. The Grantee has the legal authority to apply for the Grant, and it has the institutional, managerial, and financial capability to comply with all obligations, terms, and conditions set forth in the Grant Agreement.
6. No federal appropriated funds, including the Funds, have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

## **SIGNATURES**

The Grantee and its undersigned authorized company official acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) made in connection with this Grant Agreement may result in administrative remedies, civil penalties, and/or criminal prosecution and penalties.

Grantee Authorized Company Official

Signature:

Name:

Title:

Date:

U.S. Department of the Treasury

Signature:

Name:      Jacob Leibenluft

Title:      Chief Recovery Officer

Date: