

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of May 9, 2014 ("Effective Date") and will end on March 31, 2017, by and between the State of Delaware, Department of Natural Resources and Environmental Control, Division of Energy and Climate, ("Delaware" or "DNREC"), and Catholic Charities, a Delaware corporation with offices at 2601 W 4<sup>th</sup> St., Wilmington, DE ("VENDOR").

WHEREAS, Delaware desires to obtain certain services to weatherize homes for low income Delawareans under the Delaware Weatherization Assistance Program ("WAP"); and

WHEREAS, VENDOR desires to provide such services to Delaware on the terms set forth herein; and

WHEREAS, Delaware and VENDOR represent and warrant that each party has full right, power and authority to enter into and perform the obligations and services required under this Agreement;

NOW THEREFORE, for and in consideration of the mutual agreements provided herein, Delaware and VENDOR agree as follows:

**1. Services.**

1.1 VENDOR shall perform for Delaware the obligations and services specified herein as well as those obligations and services set forth in the attached Appendices which are hereby incorporated within and made a part of this Agreement.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any subsequent amendments or modifications thereto); (b) Appendix A – Scope of Services; (c) Appendix B – Contract Budget; and (d) Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements for Subgrantee Contracts

. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof by reference.

1.3 Delaware may, at any time, by written order, make changes to the scope of services, as well as the other obligations and/or work to be performed pursuant to this Agreement. No services for which additional compensation may be charged by VENDOR shall be furnished without the prior, written authorization of Delaware.

**2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from <sup>Effective Date</sup> ~~March 1, 2014~~ through March 31, 2017. This contract may be extended for an additional two years period after the initial contract term or as negotiated by the Parties RIV

2.2 Delaware will pay VENDOR for the performance of services and work product as described in Appendix A, "Scope of Work". The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix B.

2.3 Delaware's obligation to pay VENDOR for the performance of services described in Appendix A, Scope of Work for the first year of the contract period will not exceed the fixed fee amount of \$3,100,000. This contract, specifically the unit target in Appendix A and the contract budget in Appendix B, will be amended each year on or about March 1 of 2015 and 2016, as new federal and state funding sources to support the WAP are received by DNREC or otherwise appropriated by Congress or the Delaware General Assembly. It is expressly understood that the services and work defined in the appendices to this Agreement must be completed by VENDOR and it shall be VENDOR's responsibility to ensure that hours and tasks are properly budgeted so that all services and work are completed for the agreed upon Budget set forth in Appendix B. Delaware's total liability for all charges for services and work that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in the purchase order(s) issued by Delaware to VENDOR for the specific services and work that have been completed by VENDOR.

2.4 VENDOR shall submit invoices to Delaware as described in Appendix B. The invoices shall provide sufficient detail to support the services and work completed as of the date of the invoice. Delaware agrees to pay the invoiced costs of services and work that has been completed to Delaware's satisfaction within thirty (30) days of receipt of the invoice. In the event it disputes a portion of an invoice for any reason, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of its receipt and to provide VENDOR a written statement setting forth the reason(s) it disputes the remaining portion of the invoice. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt of the invoice shall entitle VENDOR to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments will be sent to:

Diocese of Wilmington  
Finance Office  
1925 Delaware Avenue  
Wilmington, DE 19806.

2.5 Unless specifically provided otherwise in in this Agreement, including all Appendices and any supporting documentation, approved in writing by Delaware and VENDOR expenses incurred by VENDOR in the performing the services and work hereunder are to be paid by VENDOR. If any Appendix or other supporting documents approved by both parties specifically provides for reimbursement of specific VENDOR expenses by Delaware, VENDOR shall be reimbursed only for those reasonable expenses incurred by VENDOR in the performance of the services or work expressly identified by the parties as being subject to reimbursement.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise or other taxes, including any interest and/or penalties related thereto, that may result as a consequence of the performance of this Agreement.

2.7 Unless already reimbursed by VENDOR, Delaware shall withhold from any payment due to VENDOR an amount sufficient to cover all damages, costs and expenses caused by VENDOR's negligence in performing the services and work required of it pursuant to this Agreement.

2.8 Invoices shall be submitted to: Philip Cherry  
WAP Administrator  
Division of Energy and Climate  
1203 College Park Dr.  
Suite 101  
Dover, DE 19904

### **3. Responsibilities of VENDOR.**

3.1 VENDOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and work product furnished by VENDOR, its principals, officers, employees and agents under this Agreement. In addition, VENDOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and work product furnished on behalf of VENDOR by any subcontractors, including their principals, officers, employees and agents under this Agreement. In performing the specified services and work product, VENDOR shall follow practices that are consistent with generally accepted professional and technical standards and are acceptable to Delaware.

3.2 It shall be the duty of VENDOR to ensure that all services and work product of VENDOR are technically sound and in conformance with all pertinent federal, state and local statutes, codes, ordinances, and regulations. VENDOR agrees it will not provide services or produce work product that violates or infringes upon any copyright, trademark or other patent right(s).

3.3 The VENDOR is shall ensure the professional and technical accuracy and adequacy of its work and that of its contractors providing weatherization services. Delaware's review, approval, acceptance, or payment of any services or work product performed by VENDOR shall not be construed to operate as a waiver of any rights Delaware may have under this Agreement and/or applicable law, to pursue any cause of action relating to the quality and/or sufficiency of the services and work product performed by

VENDOR. VENDOR shall be and shall remain liable in accordance with the terms of this Agreement and applicable law for all damages due to negligent performance under this Agreement.

3.4 VENDOR shall appoint a Program Manager who will manage the performance of services and work product provided pursuant to this Agreement. All of the services and work product shall be performed directly under the management and supervision of the Program Manager. It is anticipated that the project team will include:

<u>Project Team</u>	<u>Title</u>	<u>% of Project Involvement</u>
WAP	Program Manager	100%
WAP	Technical Experts (4 FTE)	100%
WAP	Intake specialists (2.0 FTE)	100%
WAP	Admin Support (2 FTE)	100%
WAP	Accountant (1.0 FTE)	100%

Staffing level may change from that listed above with prior approval of the DNREC WAP Administrator and an adjustment to the contract Budget if applicable.

3.5 VENDOR shall select its own staff following the VENDORS normal hiring and screening processes. Should Delaware determine that the VENDOR's WAP Program Manager and/or staff are performing poorly under this contract, or have need for additional training, Delaware will make its concerns noted in writing to the VENDOR. VENDOR shall take appropriate corrective action to address the noted concern and shall promptly report back to Delaware the disposition of the matter.

3.6 VENDOR shall furnish to Delaware's designated representative copies of all correspondence in intends to provide to any regulatory agencies for review prior to issuing such correspondence.

3.7 VENDOR agrees that its principals, officers, employees and agents will cooperate with Delaware in the performance of services and work product under this Agreement and will be available for consultation with Delaware at such reasonable times as to not conflict with their other responsibilities.

3.8 VENDOR has or will retain such employees as it may need to perform the services and work product required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 VENDOR will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by state or federal law.

#### **4. Time Schedule.**

In the event that VENDOR fails to complete the project or any phase thereof within the time(s) specified in paragraphs 1 and 2 of Appendix A of this Agreement or any extension(s) granted by in writing by Delaware upon the timely written request of VENDOR, or fails to prosecute the work, or any severable phase thereof, with such diligence as will ensure its completion within the time specified in this Agreement as determined by Delaware, or any extensions thereof, the VENDOR shall present to Delaware a corrective action plan to address the cause of the failure as specified in Appendix A.

#### **5. Responsibilities of Delaware.**

5.1 Delaware agrees to perform those tasks and fulfill those responsibilities required of it under this Agreement.

5.2 Delaware agrees that its employees and representatives will cooperate with VENDOR in the performance of services and work product under this Agreement and that the employees will be available for consultation with VENDOR at such reasonable times with advance notice so as to not conflict with their other responsibilities.

5.3 The services and work product performed by VENDOR under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate employee, and shall so inform VENDOR by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives/employees may be reported in writing as needed to VENDOR. It is understood that Delaware's review comments do not relieve VENDOR from the responsibility for the professional and technical accuracy of all services and work product delivered under this Agreement.

5.5 Upon request, Delaware shall, without charge, furnish to or make available for examination or use by VENDOR, any data which Delaware has available, including as examples only and not by way of limitation the following types of data:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services and/or work product specified by this Agreement.

When no longer required, VENDOR shall return all original data provided by Delaware.

5.6 Upon request, Delaware shall assist VENDOR in obtaining data or other necessary documentation whenever such material is necessary to enable VENDOR to provide the services and work product specified by this Agreement.

## **6. Work Product**

6.1 All materials, information, documents, and reports, whether in draft form, complete, or incomplete, which are created, developed, prepared, edited, amended, adopted, accepted or acquired by VENDOR for Delaware that relate to the services and work product to be performed under this Agreement shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Delaware shall have the right to reproduce and reuse, as it sees fit, all documentation supplied by VENDOR pursuant to this Agreement.

6.2 Notwithstanding anything to the contrary contained in this Agreement or in any attachment hereto, any and all intellectual property or other proprietary data owned by VENDOR prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of VENDOR even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

## **7. Confidential Information.**

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

## **8. Warranty.**

8.1 VENDOR warrants that its services and work product will be provided and performed in a good and workmanlike manner. VENDOR agrees to provide additional services and/or work product in the event the quality of the original services and/or work is determined by Delaware to have been performed in a less than good and workmanlike manner. Any additional services and/or work that are required as a result of VENDOR's non-compliance with this warranty shall be performed at VENDOR's expense. In order to exercise this warranty, Delaware must bring any deficiencies in VENDOR's performance to its attention within a reasonable time after the services and/or work is fully completed.

8.2 Third-party products and services within the scope of this Agreement are warranted solely under

the terms and conditions of the licenses or other agreements by which such products and services are governed. With respect to all third-party products and services purchased by VENDOR for Delaware in connection with this Agreement, VENDOR shall pass through or assign to Delaware the rights VENDOR obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

**9. Indemnification; Limitation of Liability.**

9.1 VENDOR shall indemnify and hold harmless the State, its officials, employees and agents from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of: (1) the negligence or other wrongful conduct of VENDOR, its agents or employees; or (2) VENDOR's breach of any material provision of this Agreement. Delaware must notify VENDOR promptly in writing of any such claim of which it becomes aware, and, in such a circumstance, Delaware acknowledges that VENDOR shall have the sole control of the defense of any action on such claim as well as all negotiations related to the settlement or compromise of such claim.

9.2 If Delaware promptly notifies VENDOR in writing of a third party claim against Delaware that any deliverable provided by VENDOR infringes a copyright, patent, trademark or trade secret of any third party, VENDOR will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. VENDOR will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the deliverable; (2) Delaware's failure to use corrections or enhancements made available by VENDOR; (3) Delaware's use of the deliverable in combination with any product or information not owned or developed by VENDOR; (4) Delaware's distribution, marketing or use for the benefit of third parties of the deliverable or (5) information, direction, specification or materials provided by any third party. If any deliverable is, or in VENDOR's opinion is likely to be, held to be infringing, VENDOR shall at its expense and option either: (a) procure the right for Delaware to continue using it; (b) replace it with a non-infringing equivalent; or, (c) modify it to make it non-infringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and VENDOR's entire liability with respect to infringement.

9.3 Vendor shall have all subcontractors it uses to carry out its responsibilities under this Agreement agree to indemnify Delaware in the same manner as stated above.

**10. Employees.**

Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during its participation in the provision of services and work product under this Agreement for a period of twelve (12) months following the completion of all of the services and work product required by this Agreement. For purposes of this Section 10, "Personnel" includes any individual or company employed by a party as a partner, employee or independent contractor and with whom a party comes into direct contact during the course of the performance of this Agreement.

**11. Independent Contractor.**

11.1 It is understood that in the performance of the services and work product provided pursuant to this Agreement, VENDOR shall be, and is, an independent contractor, and is not an agent or employee of Delaware. As such, VENDOR shall furnish such services and work product in its own manner and method except as required by this Agreement. VENDOR shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 VENDOR acknowledges that VENDOR and any subcontractors, agents or employees employed by VENDOR shall not, under any circumstances, be considered employees of Delaware, nor shall they identify themselves as while performing any services or work pursuant to this Agreement. VENDOR further acknowledges its subcontractors, agents and employees shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers'

compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 In addition to complying with the requirements of this Section 11, VENDOR shall also be responsible for complying with all of the insurance requirements detailed in Appendix A of this Agreement.

11.4 VENDOR has no authority to bind or commit Delaware to any obligations arising pursuant to this Agreement unless expressly set forth herein. This Agreement is not intended to, nor shall it be deemed or construed to, create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose whatsoever.

**12. Suspension.**

12.1 Delaware may suspend performance by VENDOR under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to VENDOR no less than 30 days prior to the date on which Delaware wishes to suspend performance. Upon such suspension, Delaware shall pay VENDOR its compensation, based upon the work performed by VENDOR up to the date the suspension commences. VENDOR shall not perform further work under this Agreement once it receives written notice from Delaware to suspend performance, and shall not resume performance until it receives written notice to do so.

**13. Termination.**

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under the Agreement through no fault of the terminating party; but only after both of the following requirements are met:

- a. Not less than 30 calendar days before terminating the Agreement, the terminating party must provide written notice of intent to terminate; and
- b. The terminating party must provide the other party with an opportunity for consultation prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after VENDOR is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay VENDOR that portion of the compensation which has been earned as of the effective date of termination; however, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event VENDOR shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of VENDOR assigned to the performance of the Agreement, notwithstanding the provisions of Section 10 of this Agreement.

13.4 After termination for failure of VENDOR to fulfill contractual obligations, if it is determined that VENDOR has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and VENDOR provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

**13.6 Gratuities.**

13.6.1 Delaware may, by written notice to VENDOR, terminate this Agreement if, after notice and hearing, it is found by Delaware that gratuities (in the form of entertainment, gifts, or

otherwise) were offered or given by VENDOR or any agent or representative of VENDOR to any officer or employee of Delaware with a view toward securing this Agreement or any other contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement or any other contract.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, it shall be considered a breach of this Agreement by VENDOR and Delaware shall be entitled to pursue any remedy against VENDOR applicable to breach of the Agreement as provided herein.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive of, and are in addition to, any other rights and remedies provided by law or under this Agreement.

#### **14. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

#### **15. Assignment; Subcontracts.**

15.1 Any attempt by VENDOR to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void; however, such consent shall not be unreasonably withheld by Delaware.

15.2 Services or work product to be provided by VENDOR under this Agreement shall not be subcontracted by VENDOR without the prior written approval of Delaware.

15.3 Approval by Delaware of VENDOR's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not relieve VENDOR of its responsibility for the professional and technical accuracy and adequacy of the services or work provided. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 VENDOR shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of the services and work product provided under this Agreement by VENDOR, its subcontractor(s) or its sub-subcontractor(s).

15.5 Any compensation due VENDOR shall not be affected by Delaware's approval of VENDOR's request to subcontract.

#### **16. Force Majeure.**

Neither Delaware nor Vendor shall be held liable for non-performance under the terms and conditions of this Agreement as a result of, but not limited to, governmental restriction, strike, flood, fire or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this Agreement.

#### **17. Non-Appropriation of Funds.**

17.1 Validity and enforcement of this Agreement is subject to appropriations by the Delaware General Assembly and/or the federal government, or the receipt of sufficient funding from any other source(s) earmarked for WAP activities necessary in order to carry out the purposes of this Agreement. Should sufficient funds be unavailable, Delaware may immediately terminate this Agreement. Absent immediate termination by the State, this Agreement shall be terminated at the end of the fiscal year for which no appropriation remains or during which funds required to satisfy any obligation any obligation of the State

have been exhausted.

17.2 Notwithstanding any other provision of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to receive sufficient funds for the ensuing fiscal year necessary in order to meet its obligations under the Agreement.

**18. State of Delaware Business License.**

VENDOR and all subcontractors are required to be, and hereby represent, they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301, *et seq.*

**19. Complete Agreement.**

19.1 This Agreement and its Appendices shall constitute the entire agreement between Delaware and VENDOR with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law. The parties hereto consent and agree that the scope of such provision may be modified accordingly and that the whole of the provision shall not thereby fail and that it shall be curtailed only to the extent necessary to conform to the law.

19.3 VENDOR may not order any service or product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that subject matter only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**20. Miscellaneous Provisions.**

20.1 In performance of this Agreement, VENDOR shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. The costs of permits and other related costs required in the performance of this Agreement are the responsibility of the Vendor or its weatherization subcontractors, and are allowable, reimbursable expenses under this agreement.

20.2 Neither this Agreement nor any Appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 VENDOR covenants that it presently has no interest, and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services or work product required pursuant to this Agreement. VENDOR further covenants that, to its knowledge, no person performing services or work under this Agreement has any interest that is in direct or indirect conflict with the purposes of this Agreement. Further, VENDOR agrees that any person with such a conflict shall not be employed or contracted with to perform services or work under this Agreement.

20.5 VENDOR acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. VENDOR recognizes that if it refuses to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare VENDOR in breach of the Agreement, terminate the

Agreement, and designate VENDOR as non-responsive.

20.6 VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 VENDOR shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. and the Delaware WAP Manual. During the term of this Agreement, authorized representatives of Delaware may inspect or audit VENDOR's performance and records pertaining to this Agreement at the VENDOR's business office during normal business hours.

**21. Insurance.**

21.1 VENDOR shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and
- F. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

21.2. VENDOR shall provide forty-five (45) days written notice of cancellation or material change of any applicable insurance policies.

21.3. Before any work is performed pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows: State of Delaware

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this Agreement and any attempt to do so shall be void.

**22. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, VENDOR hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods, services and work product purchased or acquired by the State pursuant to this contract.

**23. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where expressly superseded by federal law. VENDOR consents to jurisdiction and venue in the State of Delaware.

**24. Notices.**

Any and all notices required to be provided by the provisions of this Agreement shall be in writing and shall

be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

Executive Director  
Catholic Charities  
2601 W. 4<sup>th</sup> Street  
Wilmington, DE 19805

WAP Administrator  
Division of Energy and Climate  
1203 College Park Dr.  
Suite 101  
Dover, DE 19904

**25. Effective Date.**

The effective date of this Agreement shall be the date it is signed by all parties.

**26. List of Appendices.**

- a. Appendix A, Scope of Services
- b. Appendix B, Contract Budget
- c. Appendix C, DOE Terms and Condition "Flow Down" Requirements for Subgrantee Contracts

**27. Counterparts.**

This Agreement may be executed in multiple counterparts each of which shall be deemed an original but which together shall constitute one and the same instrument. An electronic signature may also constitute an original signature in accordance with 6 Del. C. Ch. 12A.

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL

*Original on File*

Witness

Date:

5/9/14

Name:

Title:

Date:

*Original on File*

Cabinet Secretary  
5/9/14

VENDOR

Witness

Date:



5/8/14

Name:

Title:

Date:

*Original on File*

Executive Director, Catholic Charities Inc.  
5/8/14

**Appendix A**  
**Scope of Services**

**VENDOR:** Catholic Charities  
2601 W. 4<sup>th</sup> Street  
Wilmington, DE 19805

**SERVICE AREA:**

New Castle, Kent and Sussex Counties, Delaware

The VENDOR shall administer the Delaware Weatherization Assistance Program (WAP) in the State of Delaware in accordance with all applicable federal, state and local laws, rules, regulations, procedures and guidance manuals and under the guidance and supervision of the Weatherization Assistance Program within the Division of Energy and Climate of the Delaware Department of Natural Resources and Environmental Control ("DNREC" or "DEPARTMENT").

VENDOR shall administer the Delaware Weatherization Assistance Program in compliance with this Agreement and all other applicable Federal, State, and local laws, rules, regulations, administrative procedures, guidance manuals and definitions, and any amendments thereto. Specifically, and in addition to any other applicable requirements, VENDOR shall comply with 42 U.S.C. § 6861 et seq.; and 10 C.F.R. Parts 440 and 600, the approved U.S. Department of Energy Weatherization Assistance Program State Plan for the State of Delaware, the Delaware Weatherization Field Guide, the Delaware Weatherization Policy Manual (WAP Manual), and all other applicable state weatherization Program Updates or directives.

VENDOR shall further administer the weatherization program in compliance with the requirements as specified in State of Delaware Office of Management and Budget ("OMB") Circular A-110, the "Common Rule,"; OMB Circular A-122, "Cost Principles for Non-Profit Organizations"; and OMB Circular A-133, entitled "Audits of States, Local Governments, and Non-Profit Organizations".

**The Scope of Services and requirements under this Agreement are as follows:**

1. VENDOR shall have as a target the weatherization of 400 homes statewide for Program Year 2014.  
VENDOR shall make every effort to complete half (50%) of the contracted number of weatherized units within New Castle County and half within Kent and Sussex Counties, regardless of clients position on the priority list.
2. VENDOR shall have the following interim goals for weatherizing homes during the Program Year;
  - a. 50 completed weatherized units (passed Final inspection) by 9/30/14
  - b. 150 completed weatherized units (passed Final inspection) by 12/31/14Failure to achieve these goals will require the VENDOR to report to Delaware the cause of the failure and develop a work plan in concert with Delaware to achieve them in the future
3. VENDOR shall provide WAP services to eligible dwelling units in accordance with the WAP Manual and acknowledges and agrees that the funds provided through this Agreement shall be used solely for the purposes of weatherizing homes as defined herein.
4. Any unit weatherized through the Delaware Weatherization Assistance Program on or after September 30, 1994, shall not be eligible for weatherization services pursuant to this Agreement and VENDOR shall not re-weatherize any such unit using any funds related to this Agreement unless specifically authorized in writing to do so by DNREC.
5. The WAP program in Delaware operates on a reimbursement basis, whereby VENDOR engages staff

**Appendix A**  
**Scope of Services**

- or subcontractors to provide WAP services to eligible clients and then seeks payment or reimbursement from DNREC for all eligible program expenses in accordance with the WAP Manual.
6. VENDOR shall not pay any subcontractor, nor shall VENDOR submit claims for reimbursement of any costs incurred by VENDOR for any work performed, until such time as VENDOR has performed the Final Inspection and has determined in writing that any such work has been performed in a satisfactory manner. DNREC may waive this requirement in its sole discretion. This requirement does not apply to the payment of charges for HVAC servicing or replacement where delays in paying HVAC contractors may delay overall progress of the program.
  7. VENDOR may request, and DNREC may grant, a funding advance to initiate program operations and pay staff salaries, operational expenses or subcontractor costs in accordance with the WAP Manual and this Agreement.
  8. VENDOR shall follow generally accepted accounting procedures and practices which sufficiently and properly reflect all costs incurred by VENDOR pursuant to this Agreement and shall keep accurate and up-to-date accounting records.
  9. VENDOR shall submit a written report to DNREC on a monthly basis, within 20 business days of the end of each month, setting forth its WAP expenditures by budget categories for the preceding month. Said report shall also include year-to-date expenditure totals and explain any past deviations from the budget included with this Agreement.
  10. VENDOR and its subcontractors shall not impose any fees or accept any money from the recipients of any services provided through this Agreement except as explicitly authorized in writing by DNREC prior to imposing any such fee or accepting any funds.
  11. Any program income earned by VENDOR from activities conducted with funds obtained through this Agreement must be maintained and expended by VENDOR in accordance with the Delaware WAP Manual and all relevant federal and state laws, rules and regulations regarding program income.
  12. VENDOR acknowledges and agrees that DNREC will withhold or recover payments made to VENDOR for disallowed costs relating to weatherization measures installed that are not allowed by law including any that are not provided pursuant to a work order that complies with the Delaware Weatherization Priority List and the Delaware Field Guide or are not specifically authorized by the Delaware WAP Manual.
  13. VENDOR shall not use funds provided through this Agreement for the purchase or improvement of land, or for the purchase, construction, or permanent improvements (other than low-income residential weatherization or other energy-related home repairs) of any building or other facility.
  14. VENDOR shall comply with the budget set forth in this Agreement and shall limit expenditures within each of the defined budget categories.
  15. VENDOR shall maintain an overall average cost per dwelling in "Program Operations" expenditures not to exceed six thousand, five hundred dollars (\$6,500.00), over the period of the Agreement for all units completed, i.e., having a passed final inspection, prior to the close of each program year on March 31.
  16. Following the expiration or termination of this Agreement, or at such other times as required by federal or state law or rules, or if requested by DNREC, VENDOR shall secure an audit of funds provided by DNREC pursuant to this Agreement. Such audit shall be conducted by an independent public or certified public accountant and performed in accordance with all directives provided by DNREC as well as applicable provisions of the OMB Circular A-133, entitled "Audits of States, Local Governments, and Non-Profit Organizations" and any implementing regulations.
  17. VENDOR is provided a goal to achieve the Agreement target number of units within the program year. If VENDOR's production reports indicate difficulties in reaching the contracted unit target, DNREC may require a performance improvement plan be prepared and implemented to address the deficiency.
  18. If deficiencies persist, DNREC may, at its sole discretion, terminate the Agreement pursuant to terms

**Appendix A**  
**Scope of Services**

- in Section 13 of this Agreement, or take such other action as it may find necessary.
19. Supplies and equipment, as defined in the WAP Manual, purchased by VENDOR in furtherance of this Agreement are property of the VENDOR, however, upon termination of this agreement for any cause, ownership of all supplies and equipment with a value in excess of \$500 and all field equipment with a value of greater than \$100 will be transferred to the Delaware Weatherization Assistance Program and shall be managed, maintained and/or disposed of according to the Delaware WAP Manual and 10 CFR 600.
  20. DNREC may withhold payment and issue a defective invoice notification for any claim submitted if it finds errors or omission in file contents or if the work is found to be substandard or has not passed final inspection.
  21. DNREC may withhold payment and VENDOR shall repay DNREC for any claim submitted that is inaccurate or if VENDOR has not complied with the claim preparation instructions issued by DNREC, including, but not limited to, following the current price list and costing procedures. Prior to requiring repayment, DNREC will provide VENDOR with reasonable written notice of any error in the claims submitted and allow a reasonable time for VENDOR to make corrections or revisions to the satisfaction of DNREC necessary for payment.
  22. Any subcontractors hired by VENDOR to perform weatherization services shall be retained and managed in accordance with the Delaware WAP Manual and shall be approved in writing by DNREC prior to engagement.
  23. Any subcontractor hired by the VENDOR to conduct weatherization services shall provide no less than a one year warranty on labor conducted under the program. Warranty for supplies or materials installed in any home shall be for the product warranty from the manufacturer.
  24. VENDOR shall hire a WAP Program Manager with experience in running complex governmental regulatory programs involving technical and administrative components. WAP experience is recommended but not essential. DNREC may make recommendations to VENDOR for suitable employees in the program.
  25. VENDOR shall furnish to DNREC written job descriptions of each staff position involved in the Program, prior to hiring, noting the position's duties and functions and the necessary educational or experiential qualifications for the position. DNREC shall approve the job description and duties prior to hiring by the VENDOR.
  26. VENDOR shall only use properly licensed private subcontractors who have attended required training and have attained the required certifications to provide and install weatherization measures, as detailed in the Delaware WAP Manual
  27. VENDOR shall submit weekly performance reports to DNREC on a spreadsheet as provided by DNREC. VENDOR shall use the reporting spreadsheet as a tool to manage progress in weatherizing units and to ensure adequate production to meet the requirements of the Agreement. Weekly reports for weeks normally ending on Friday's are due to DNREC by COB the following work day, and shall include all data and information through COB the previous Friday.
  28. VENDOR shall utilize and provide data entry into the Hancock WAP On-Line database for all clients entering the Program. DNREC will provide training for VENDOR's staff as needed.
  29. VENDOR shall maintain a computerized master spreadsheet of all training hours, training modules, and training activities conducted through its Training and Technical Assistance funding and attended by its staff and subcontractors.
  30. DNREC shall conduct at least one on-site comprehensive monitoring inspection of VENDOR's Administrative operations and field work per year and may conduct additional monitoring at any time, as it deems necessary. Monitoring procedures and requirements are found in the Delaware WAP Manual.
  31. VENDOR and its employees, officers, board members, and subcontractors shall cooperate in all monitoring reviews, audits, or inspections conducted by authorized representatives of DNREC or the United State Department of Energy.

## Appendix B - Contract Budget

VENDOR shall adhere to all fiscal practices outlined in the DNREC WAP Manual. VENDOR shall maintain its weatherization accounts separate and distinct from any other accounts within its organization. All accounts maintained for weatherization purposes shall be interest bearing.

### Coordination of Funds

VENDOR shall adhere to the weatherization budget below. Amendments to the budget are permissible and shall be approved in writing by DNREC, subject to availability of funds.

The WAP Program uses the following cost categories (also referred to as "market titles") as required by the U.S. Department of Energy (DOE). Each cost category is described below.

1. Administration
2. Insurance
3. Fiscal Audit
4. Health and Safety
5. Program Operations
6. Training and Technical Assistance

### 1. Administrative Costs

Administrative Costs are those costs of a general nature, not specific to one program, but applied to a range of VENDOR's programs: for example, salary and fringe costs for individuals such as directors, bookkeepers, clerks, and information technology specialists. Personnel functions such as agency planning, budgeting, accounting, and activities that establish and direct VENDOR's policies, goals, and objectives overall, may be considered part of its administrative costs. Consumable office supplies used across programs, such as copier paper, notepaper and pads, pencils and pens, and application pads, are considered administrative costs. Rental or purchase of equipment that is used across programs may be allocated partially to the Weatherization Program on a reasonable basis.

Administration Budget Examples -Some specific examples of costs that, so far as they are not directly chargeable to program operations, may be considered as administrative include:

- Executive functions
- Office management functions
- Accounting, auditing, and budgeting
- Corporate legal services
- Personnel management
- Purchasing and distribution of supplies
- General operational insurance and bonding
- Receptionist, mail distribution, filing, and other central clerical services
- Data processing and computer services
- Computer equipment used for administrative functions
- General record keeping

## Appendix B - Contract Budget

- Office space/facilities lease or rental
- Utilities in the office space/facilities
- Postage
- Duplicating/copying.
- Telephone equipment and services
- Administrative staff training
- Applicable state and local taxes
- General personal liability and property insurance

### Cost Basis for Administrative Costs

Each administrative cost category as shown above must employ a cost allocation formula or basis that reveals how the relative proportion of the WAP administrative expenses to overall VENDOR administrative expenses is determined. VENDOR shall annually prepare and submit to DNREC the cost allocation formula and rationale for each administrative cost. Cost allocation justifications shall be due to DNREC within 60 days of the close of VENDOR's fiscal year and at the time of program monitoring as determined by DNREC.

### **2. Insurance**

**Liability Insurance:** Liability insurance required by the DOE and DNREC may be charged to the Weatherization Program at the actual direct cost. Liability insurance is a separate line item in the budget and as such is not considered part of the administrative or operational costs of the program. VENDOR must carry liability insurance at the rates specified in the Delaware WAP Manual.

**Workers' Compensation:** VENDOR must abide by federal and state laws and regulations concerning Workers' Compensation Insurance and must provide Workers' Compensation as required by law.

**Unemployment Insurance:** VENDOR must abide by federal and state laws and regulations concerning Unemployment Insurance and provide Unemployment Insurance as required by law.

**Pollution Occurrence Insurance:** Standard liability insurance policies do not generally provide coverage for many health and safety circumstances which the weatherization program may encounter. For example, standard liability policies may not extend to such hazards as lead based paint or asbestos. DOE has mandated that if the VENDOR's current policy does not specifically cover liability for these work-related hazards, it must obtain additional insurance to protect against these risks. VENDOR shall review its existing policies and shall ensure that they have coverage in accordance with the Delaware WAP manual.

### **3. Fiscal Audit**

Fiscal Audit costs are budgeted for VENDOR's fiscal audit of its weatherization funds, which is performed on an Annual basis. The audit costs must be a separate line item in the budget and not considered a part of administrative or program operations costs. In the event that more than one program is being audited, the cost to the weatherization program is to be allocated on a reasonable basis and included with other cost allocation plans as specified in paragraph #1 above. The audit must be conducted by an independent public or certified public accountant and may be a part of the agency-wide audit as

## Appendix B - Contract Budget

required under OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations".

### 4. Health and Safety

Health and Safety costs are budgeted at 14.9 percent of the program operations budget. In no event shall funds for Health and Safety exceed 14.9 percent of the program operations budget without the prior, express written consent of DNREC. Expenditures for Health and Safety must be made in accordance with the Delaware WAP Manual.

### 5. Program Operation Costs

Program Operations costs are those that are clearly related to the operation of VENDOR's weatherization program. VENDOR's direct costs for weatherization costs as well as the cost of subcontractors to the agency are included in this budget line item.

#### VENDOR Costs

- a. Staff: VENDOR's projected costs are budgeted for the staff and labor working directly in the operation of the weatherization program. These personnel include technical staff, the program manager, and program support staff. Where employees work on other VENDOR activities outside of weatherization, the allocation of their salaries or wages to the weatherization program must be supported by adequate documentation that establishes the percentage of each employee's work time devoted to the weatherization program together with the specific activities performed.
- b. Program Support: VENDOR program support costs include the direct costs to the program for rent and utilities for agency labor, program advertising, supplies consumed by the program, as well as office equipment, furnishings, and computer equipment used in the program. Program support charges must be budgeted using the actual, net projected cost.
- c. Supplies and Equipment:
  - a) "Equipment" is defined by federal and state regulation as an item of non-expendable, tangible personal property, having a useful life of more than one year and an acquisition cost which equals or exceeds a unit cost of \$5,000.
  - b) Purchases less than \$5,000 are considered supplies and are further defined as "office supplies" or "field supplies".
  - c) "Office supplies" are those articles ordinarily found in an office environment which are necessary to conduct everyday business, including paper, copiers, notebooks, furniture, chairs, phones, envelopes, etc.
  - d) "Field supplies" are those items that are instrumental in the weatherization of a home, including blower door equipment, infrared cameras, gas meters, smoke detectors, moisture meters borescopes, tape measures, circular saws, building supplies etc.

## Appendix B - Contract Budget

- e) All equipment and supplies are the property of the Delaware Weatherization Assistance Program and are not considered to be the property of the VENDOR.
- f) VENDOR shall receive prior, written approval from DNREC before making any equipment purchases.
- g) Office supplies costing less than \$500 unit cost are exempt from inventory tracking requirements as specified in the WAP Manual.
- h) Field supplies costing less than \$100 are exempt from inventory tracking requirements as specified in the WAP Manual.
- i) All supply and equipment purchases must be made in accordance with VENDORS procurement standards.

### Subcontractor Costs

The cost of all anticipated weatherization subcontractor costs are budgeted in the program operations cost category. This includes all subcontractor costs for staff and labor; including subcontractor management staff, supervisory staff and laborers, as well as subcontractor overhead. The funds to be used by the subcontractor for purchase of weatherization materials are also included.

### **6. Training and Technical Assistance (T&TA)**

T&TA funds are used for training expenses of VENDOR's staff, as well as travel to training conferences and other expenses related to training or the provision of technical assistance to staff or workers in the program. All T&TA expenses and expenditures shall comply with the requirements contained in the Delaware WAP Manual.

### **7. Advance Funding**

- a. DNREC may advance funds to VENDOR at the inception of this Agreement and as needed at any time during the term of the Agreement. The authorization to advance funds is provided at 10 CFR 600.221(c) "Advances" and 10 CFR 600.221(e) "Working capital advances."
- b. VENDOR shall not use advanced funds for any costs other than eligible weatherization program expenditures in accordance with the requirements of the funding source from which they are provided, or as otherwise authorized in writing by DNREC.
- c. Advance funding requests shall be in writing and include a plan for how the advance will be used and a justification for the amount of advance requested. If justified, DNREC also limits such requests to no more than 10% of the total initial contract amount.

## **Appendix B - Contract Budget**

- d. After receiving the advance, VENDOR shall use it as “working capital” as authorized in writing by DNREC in its approval of the advance.
  
- e. VENDOR shall keep detailed records of each invoice or expense where advance funds are used, and shall provide those records to DNREC upon request. Prior to the end of the Agreement’s term, or at any time during the contract period, VENDOR may elect to return an advance of funds in one of two ways: as a lump sum payment to DNREC; or, by deducting from VENDOR’S claims for payment an amount equal to the original advance. Should a funding advance balance exceed the final claim at the close of the Agreement, VENDOR shall reimburse DNREC by direct payment of the remaining balance of the advance within 10 days of the termination of the contract.
  
- f. DNREC will monitor the use of any Funding Advance. If DNREC determines that any portion of the funding advance is used improperly or in violation of DNREC’s approval of the advance, DNREC may require the immediate return of the Funding Advance and VENDOR shall immediately but, in no case, more than 7 days after the written demand repay the full outstanding balance of the Funding Advance.
  
- g. VENDOR shall deposit and hold any advances in an interest-bearing account, with interest treated under applicable federal regulations, such as 10 CFR 600.221.

### **Contract Budget**

Budget categories and appropriations are shown in the following budget sheet.

# Appendix B - Contract Budget

Total Budget - By Federal Reporting Category - 4/1/14 thru 3/31/15	
Subgrantee Admin	\$ 121,448
Subgrantee T&TA	\$ 53,000
Fiscal Audit	\$ 7,000
Insurance	\$ 8,000
Program Operations	2,435,552.34
Health and safety	\$ 475,000
<b>Total</b>	<b>\$ 3,100,000</b>

## WAP Staff Salaries - Program Operations (PO)

Position	Salary	Medical benefits	long term disability	FICA	MC	Worker's Comp	403B match	Total
Program Manager	\$66,625	\$22,116	\$ 169	\$4,131	\$966	\$975	\$3,331	\$98,313
Technical Staff	\$51,250	\$15,183	\$ 104	\$3,178	\$743	\$600	\$2,563	\$73,620
Technical Staff	\$51,250	\$15,183	\$ 104	\$3,178	\$743	\$600	\$2,563	\$73,620
Technical Staff	\$51,250	\$22,116	\$ 130	\$3,178	\$743	\$750	\$2,563	\$80,729
Technical Staff	\$51,250	\$22,116	\$ 130	\$3,178	\$743	\$750	\$2,563	\$80,729
Support Staff	\$33,825	\$15,183	\$ 86	\$2,097	\$490	\$495	\$1,691	\$53,868
Support Staff	\$38,950	\$9,744	\$ 99	\$2,415	\$565	\$570	\$1,948	\$54,290
Intake (.5FTE)	\$14,145	\$9,744	\$ 36	\$877	\$205	\$207	\$707	\$25,921
Intake (.5FTE)	\$14,145	\$9,744	\$ 36	\$877	\$205	\$207	\$707	\$25,921
Intake (.5FTE)	\$14,145	\$9,744	\$ 36	\$877	\$205	\$207	\$707	\$25,921
Intake (.5FTE)	\$14,145	\$9,744	\$ 36	\$877	\$205	\$207	\$707	\$25,921
Accountant	\$51,250	\$15,183	\$ 130	\$3,178	\$743	\$750	\$2,563	\$73,796
<b>Totals</b>	<b>\$452,230</b>	<b>\$175,800</b>	<b>\$1,096</b>	<b>\$28,038</b>	<b>\$6,557</b>	<b>\$6,318</b>	<b>\$22,612</b>	<b>\$692,651</b>

Direct Charges		Federal Reporting Category
Expense	Amount	
WAP Salaries	\$ 692,651.10	Program Operations
Rent/occupancy	\$ 45,000.00	Program Operations
Office supplies	\$ 8,000.00	Program Operations
Postage	\$ 1,000.00	Program Operations
Advertising	\$ 2,000.00	Program Operations
Vehicle insurance	\$ 8,000.00	Program Operations
Travel	\$ 10,000.00	T&TA
Field supplies	\$ 3,000.00	T&TA
Training	\$ 40,000.00	T&TA
Admin charge - 15% of above charges	\$ 121,448	Subgrantee Admin
Client Services	\$ 1,678,901	Program Operations

## Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements for Subgrantee Contracts

### 1. STATEMENT OF FEDERAL AND STATE STEWARDSHIP

DOE and DNREC will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

### 2. SITE VISITS

DOE's and DNREC's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

### 3. REPORTING REQUIREMENTS

- a. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge ([www.osti.gov/bridge](http://www.osti.gov/bridge)), unless the report contains patentable material, protected data or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database ([www.osti.gov/energycitations](http://www.osti.gov/energycitations)).
- c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

### 4. PUBLICATIONS

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

**Appendix C - Department Of Energy (DOE) Terms and Condition “Flow Down” Requirements  
for Subgrantee Contracts**

*Acknowledgment:* “This material is based upon work supported by the Department of Energy [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)].”

*Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

**5. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

**6. INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION**

- a. The intellectual property provisions applicable to this award will be provided as an attachment to this award. A list of all intellectual property provisions may be found at: <http://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>
- b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator identified and the Patent Counsel designated as the service provider for the DOE office that issued the award. The Patent Counsel for the Golden Field Office is Julia Moody who may be reached at [julia.moody@go.doe.gov](mailto:julia.moody@go.doe.gov) or 720-356-1699.

**7. LOBBYING RESTRICTIONS**

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**8. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS**

To the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

**9. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS**

## **Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements for Subgrantee Contracts**

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

### **10. HISTORIC PRESERVATION**

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

### **11. MINIMUM PRIVACY PROTECTIONS REGARDING APPLICANT INFORMATION**

(1) States, Tribes and their subawardees, including, but not limited to subrecipients, subgrantees, contractors and subcontractors that participate in the Weatherization program are required to treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the federal government's treatment of information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, including the privacy protections contained in Exemption (b)(6) of the FOIA, 5 U.S.C. 552(b)(6). Under 5 U.S.C. 552(b)(6), information relating to an individual's eligibility application or the individual's participation in the program, such as name, address, or income information, are generally exempt from disclosure.

**Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements  
for Subgrantee Contracts**

(2) A balancing test must be used in applying Exemption (b)(6) in order to determine:  
(A) whether a significant privacy interest would be invaded;  
(B) whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and  
(C) whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

(3) A request for personal information including but not limited to the names, addresses, or income information of WAP applicants or recipients would require the state or other service provider to balance a clearly defined public interest in obtaining this information against the individuals' legitimate expectation of privacy.

(4) Given a legitimate, articulated public interest in the disclosure, States and other service providers may release information regarding recipients in the aggregate that does not identify specific individuals. However, a State or service provider must apply a FOIA Exemption (b)(6) balancing test to any request for information that cannot be satisfied by such less-intrusive methods.

**12. WASTE STREAM**

The Recipient assures that it will create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe the Recipient's or subrecipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. The Recipient shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. The Recipient shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit).

**13. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION**

**a. Reporting of Total Compensation of Executives.**

1. Applicability and what to report. Unless you are exempt as provided in paragraph b. of this award term, you shall report the names and total compensation of each of your five most highly compensated executives for the preceding completed fiscal year, if;

i. In your preceding fiscal year, you received;

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

**Appendix C - Department Of Energy (DOE) Terms and Condition “Flow Down” Requirements  
for Subgrantee Contracts**

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm> )

2. Where and when to report. You must report executive total compensation described in paragraph c.1. of this award term:

i. To DNREC.

ii. By the end of the month following the month during which you received the award

**b. Exemptions**

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards and;

ii. The total compensation of the five most highly compensated executives of any subrecipient.

**c. Definitions. For purposes of this award term:**

1. Entity means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

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

**Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements  
for Subgrantee Contracts**

3. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (*e.g.* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.