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Sheryl A. Stitt
Acting Executive Director

**MINUTES OF THE MEETING OF THE
NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY
HELD REMOTELY ON TUESDAY, FEBRUARY 28, 2023**

The meeting was called to order at 10:04 a.m. by Board Chair Joshua Hodes. The New Jersey Educational Facilities Authority gave notice of the time, place and date of this meeting via email on June 14, 2022, to The Star Ledger, The Times of Trenton and the Secretary of State and by posting the notice at the offices of the Authority in Princeton, New Jersey and on the Authority's website. Pursuant to the New Jersey Open Public Meetings Act, a resolution must be passed by the New Jersey Educational Facilities Authority in order to hold a session from which the public is excluded.

AUTHORITY MEMBERS PRESENT (VIA ZOOM):

Joshua Hodes, Chair
Ridgeley Hutchinson, Vice Chair
Elizabeth Maher Muoio, State Treasurer, Treasurer (represented by Ryan Feeney)
Louis Rodriguez
Dr. Brian Bridges, Secretary of Higher Education

AUTHORITY MEMBERS ABSENT:

None

STAFF PRESENT (VIA ZOOM):

Sheryl A. Stitt, Acting Executive Director
Steven Nelson, Acting Deputy Executive Director
Ellen Yang, Director of Compliance Management
Brian Sootkoos, Director of Finance-Controller
Edward DiFiglia, Public Information Officer
Linda Hazley, Office Manager-Documents Specialist
Carl MacDonald, Project Manager

Kristen Middleton, Assistant Controller
Jamie O'Donnell, Senior Grant Program Manager
Sheila Toles, Senior Human Resources Manager
Gary Vencius, Accounting Manager

ALSO PRESENT (VIA ZOOM):

Victoria Nilsson, Esq., Deputy Attorney General
Janice Venables, Esq., Governor's Authorities Unit
Dorit Kressel, Esq., Chiesa Shahinian & Giantomasi
Susan Shaffer, Moody's Investors Service
Patrick Ronk, Moody's Investors Service
Alex Greenwald, Moody's Investors Service
Angela Bethea, Office of the Secretary of Higher Education
Kevin Kobylowski, Office of the Secretary of Higher Education

ITEMS OF DISCUSSION

1. Approval of the Minutes of the Meeting of December 13, 2022

The minutes of the meeting of December 13, 2022 were delivered electronically and via United Parcel Service to Governor Philip Murphy under the date of December 13, 2022. Mr. Rodriguez moved that the minutes of the meeting be approved as presented; the motion was seconded by Mr. Hodes and passed unanimously.

Secretary Bridges joined the meeting during the vote.

2. Executive Director's Report

Ms. Stitt provided the Executive Director's report for informational purposes only.

Ms. Stitt reported that since the December meeting, significant staff time had been dedicated to the administration of various grant programs. She reported that under Round 2 of the Library Construction Bond Act grant agreements for 32 projects had been executed and currently the grantees could submit requisitions to receive grant funds for project costs. She reported that the Authority would begin processing requisitions and assisting the State Library with annual compliance reporting.

Ms. Stitt reported that under Round 2 of the Securing Our Children's Future Bond Act all grant agreements had been fully executed and that Authority staff would begin processing requisitions and assisting the Office of the Secretary of Higher Education (OSHE) with annual compliance reporting.

Ms. Stitt reported that under the Authority's four higher education grant programs, the Higher Education Facilities Trust Fund, Higher Education Capital Improvement Fund, Higher Education Equipment Leasing Fund and Higher Education Technology Infrastructure Fund, 121 applications were submitted by the October 28, 2022 deadline totaling nearly \$1.16 billion in grant funds requested, which was nearly three times more than what was available. She reported that the completeness review and due diligence phases of program administration was largely complete and that the applications were currently being reviewed by OSHE's review committee for recommendations to the Secretary.

Ms. Stitt reported that staff had been working with the broader grant team on the development of forms of grant and lease agreements. She explained that the Members would be presented with substantially final forms of the documents for approval, which would eventually be submitted to the Joint Budget Oversight Committee of the Legislature, along with the Secretary's grant recommendations. Ms. Stitt also reported on next steps and future board actions related to the grant programs.

Ms. Stitt reported that the Authority's Finance and Project Management Divisions continued to work on transitioning the Authority's bond fund accounting systems to new service provider Adaje. She explained that upon completion, the new system would modernize how the Authority tracks and reconciles its bond fund accounts and develops and disseminates related information and reports. The new system would also enable Project Management to integrate its transaction activities into the same system, providing cost efficiencies and allowing better communication and collaboration between the two divisions.

Ms. Stitt reported that the Finance Division's work with the Authority's auditors was underway on the preparation of the Authority's 2022 financial statements and that the Board's Audit Committee had its initial kickoff meeting on January 31, 2023.

Ms. Stitt reported that the Authority was working to develop and distribute a new Investment Advisor RFP with the intent to bring a procurement recommendation to the Board in April. The Authority also recently distributed RFPs for Bidding Agent and an Independent Registered Municipal Advisor (IRMA) for the Authority. Staff anticipates bringing these two procurements to the Members for consideration in March or April.

Ms. Stitt invited Steve Nelson, the Authority's Acting Deputy Executive Director and Diversity, Equity, & Inclusion Coordinator, to describe Governor Murphy's Executive Order 319, which establishes an Equity and Sustainability Advisory Council charged with developing a Statewide Equity Infrastructure Policy to achieve increased equity within the State government workforce.

3. **Legislative Update**

Mr. DiFiglia gave a legislative report that included bills that the Authority was monitoring in the current legislative session.

4. **Resolutions of the New Jersey Educational Facilities Authority Relating to the Capital Facilities Grant Program**

Ms. Yang reported that as stated by Ms. Stitt in her executive director's report, Authority staff, pursuant to a Memorandum of Understanding, has been working with the Office of the Secretary of Higher Education on a joint solicitation for grant applications. The four grant programs are authorized under the Authority's statute and include the Higher Education Facilities Trust Fund (HEFT); Higher Education Capital Improvement Fund (CIF); Higher Education Equipment Leasing Fund (ELF); and Higher Education Technology Infrastructure Fund (HETI).

She reported that grant applications were due in October 2022 and were currently undergoing an evaluation and approval process. She explained that the competitive process involved evaluation and scoring by a review committee, approval by the Secretary of Higher Education, and approval by the State Legislature or the Joint Budget Oversight Committee.

Ms. Yang reported that, for awards to be made under HETI and ELF, the Authority must provide to the Joint Budget Oversight Committee for its review and approval, forms of the agreements that successful applicants would enter into with the Authority.

Ms. Yang reported that the Authority sought the Members' approval of the next four resolutions relating to the forms of grant agreements or lease agreements under each of the grant programs which were developed in consultation with bond counsel, the Attorney General's Office, and the Office of the Secretary of Higher Education.

Dorit Kressel, Esq. of Chiesa, Shahinian & Giantomasi, bond counsel to the Authority, described the resolutions for the Members' consideration.

Mr. Feeney moved the adoption of the following entitled resolution:

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES
AUTHORITY APPROVING FORMS OF GRANT AGREEMENTS TO
BE ENTERED INTO IN CONNECTION WITH THE AUTHORITY'S
HIGHER EDUCATION FACILITIES TRUST FUND PROGRAM

The motion was seconded by Mr. Rodriguez and passed unanimously.

The adopted resolution is appended as Exhibit I.

Mr. Hutchinson moved the adoption of the following entitled resolution:

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES
AUTHORITY APPROVING FORMS OF GRANT AGREEMENTS TO
BE ENTERED INTO IN CONNECTION WITH THE AUTHORITY'S
HIGHER EDUCATION CAPITAL IMPROVEMENT FUND
PROGRAM

The motion was seconded by Mr. Rodriguez and passed unanimously.

The adopted resolution is appended as Exhibit II.

Mr. Rodriguez moved the adoption of the following entitled resolution:

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES
AUTHORITY APPROVING FORMS OF LEASE AGREEMENTS TO
BE ENTERED INTO IN CONNECTION WITH THE AUTHORITY'S
HIGHER EDUCATION EQUIPMENT LEASING FUND PROGRAM

The motion was seconded by Mr. Hutchinson and passed unanimously.

The adopted resolution is appended as Exhibit III.

Mr. Feeney moved the adoption of the following entitled resolution:

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES
AUTHORITY APPROVING FORMS OF GRANT AGREEMENTS TO
BE ENTERED INTO IN CONNECTION WITH THE AUTHORITY'S
HIGHER EDUCATION TECHNOLOGY INFRASTRUCTURE FUND
PROGRAM

The motion was seconded by Mr. Rodriguez and passed unanimously.

The adopted resolution is appended as Exhibit IV.

5. Report on Operating and Construction Fund Statements and Disbursements

Mr. Sootkoos reviewed the Results of Operations and Budget Variance Analysis and reported on the status of construction funds and related investments for December 2022 and January 2023.

Mr. Hutchinson moved that the reports be accepted as presented; the motion was seconded by Mr. Hodes and passed unanimously.

The reports are appended as Exhibit V.

6. Moody's Investors Service Presentation: 2023 Higher Education Outlook

Moody's Investors Service representatives Susan Shaffer, Vice President/Senior Credit Officer for Public Finance, and Analyst Patrick Ronk provided the Members with an informative presentation on Moody's higher education outlook. Topics covered in the overview included macro conditions affecting the higher education sector, Moody's outlook for 2023 and Moody's general overview of the rating environment for New Jersey's higher education institutions.

A copy of the presentation is appended as Exhibit VI.

7. Next Meeting Date

Mr. Hodes reminded everyone that the next meeting was scheduled for Tuesday, March 28th at 10:00 a.m. and requested a motion to adjourn.

Mr. Rodriguez moved that the meeting be adjourned at 10:58 a.m. The motion was seconded by Secretary Bridges and passed unanimously.

Respectfully submitted,



Sheryl A. Stitt
Acting Secretary

**RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES
AUTHORITY APPROVING FORMS OF GRANT AGREEMENTS TO BE
ENTERED INTO IN CONNECTION WITH THE AUTHORITY'S HIGHER
EDUCATION FACILITIES TRUST FUND PROGRAM**

Adopted: February 28, 2023

- WHEREAS:** The New Jersey Educational Facilities Authority (the "Authority") is a public body corporate and politic of the State of New Jersey (the "State") established pursuant to the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented), N.J.S.A. 18A:72A-1 et seq. (the "Act"); and
- WHEREAS:** The Authority is authorized pursuant to the New Jersey Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49 et seq. (the "HEFT Act") to issue bonds ("HEFT Bonds") to finance the cost, or a portion of the cost, of the construction, reconstruction, development, extension, and improvement of instructional, laboratory, communication, and research facilities at New Jersey's public and private institutions of higher education ("Institutions"); and
- WHEREAS:** The Secretary of Higher Education (the "Secretary") promulgated regulations to provide the mechanism by which Institutions may apply for and receive grants under the HEFT Act, set forth at N.J.A.C. 9A:15-1.1 to -1.7; and
- WHEREAS:** In accordance with the HEFT Act, the Authority intends to issue HEFT Bonds to finance grants (each, a "HEFT Grant") to be made to Institutions to pay all or a portion of the costs of projects approved for funding pursuant to the HEFT Act; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-54, Institutions may apply for HEFT Grants, and the Secretary shall review the applications, shall approve or disapprove each grant, shall establish the amount of each approved grant, and shall send a written certification of the approval and amount of each approved grant to the Authority; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-54, the Secretary shall submit to the New Jersey Legislature (the "Legislature") a copy of the written certification of each approved grant and the amount thereof; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-54 and N.J.A.C. 9A:15-1.6(c), if the Legislature does not disapprove a grant by the adoption of a concurrent resolution within 60 days of receipt from the Secretary of the written certification, the grant shall be deemed to be approved by the Legislature and by the Secretary; and
- WHEREAS:** Pursuant to N.J.A.C. 9A:15-1.6(d), upon authorization of a HEFT Grant, an Institution shall enter into a grant agreement (each, a "HEFT Grant Agreement") with the Authority, which agreement shall be approved by a resolution of the

Authority, and which agreement shall set forth the terms of the award of the HEFT Grant in accordance with the provisions of the HEFT Act and other applicable law; and

WHEREAS: The Authority now wishes to approve the forms only of the HEFT Grant Agreements to be entered into with Institutions in connection with the HEFT Grants to be approved by the Secretary and the Legislature pursuant to the HEFT Act.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY AS FOLLOWS:

Section 1. The recitals set forth above are incorporated herein by reference as if set forth at length herein. For the purposes hereof, “Authorized Authority Representatives” shall mean the Chair, the Vice Chair, the Secretary, any Assistant Secretary, the Executive Director, the Deputy Executive Director or the Director of Compliance Management of the Authority and any such officers designated as “acting” or “interim”.

Section 2. The HEFT Grant Agreements to be entered into with Institutions that are New Jersey public institutions of higher education shall be substantially in the form presented to this meeting (a copy of which shall be filed with the records of the Authority), and such form is hereby approved, provided that the Authorized Authority Representatives are hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate (including, without limitation, the inclusion of additional representations, warranties and/or covenants on the part of the Institutions, and any other provision that may be necessary or convenient).

Section 3. The HEFT Grant Agreements to be entered into with Institutions that are New Jersey private institutions of higher education shall be substantially in the form presented to this meeting (a copy of which shall be filed with the records of the Authority), and such form is hereby approved, provided that the Authorized Authority Representatives are hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate (including, without limitation, the inclusion of additional representations, warranties and/or covenants on the part of the Institutions, and any other provision that may be necessary or convenient).

Section 4. The execution and delivery of the HEFT Grant Agreements shall be authorized by subsequent resolution of the Authority following approval of the HEFT Grants by the Legislature and the Secretary pursuant to N.J.S.A. 18A:72A-54 and N.J.A.C.

9A:15-1.6(c).

Section 5. This Resolution shall take effect in accordance with the provisions of the Act.

____ Mr. Feeney ____ moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by ____ Mr. Rodriguez __ and upon roll call the following members voted:

AYE: Joshua Hodes
Ridgeley Hutchinson
Louis Rodriguez
Brian Bridges
Elizabeth Maher Muoio (represented by Ryan Feeney)

NAY: None

ABSTAIN: None

ABSENT: None

The Chair thereupon declared said motion carried and said resolution adopted.

GRANT AGREEMENT

Between the

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY,
as Grantor

and

[NAME OF INSTITUTION],
as Grantee

Dated as of _____ 1, 2023

HIGHER EDUCATION FACILITIES TRUST FUND

Grant Amount: \$ _____

Project ID#: _____

**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY
HIGHER EDUCATION FACILITIES TRUST FUND**

GRANT AGREEMENT

[Institution]

THIS GRANT AGREEMENT, is executed as of _____ 1, 2023 (the “Effective Date”) by and between the New Jersey Educational Facilities Authority (the “Authority”), a public body corporate and politic of the State of New Jersey (the “State”) and [NAME OF INSTITUTION] (the “Institution”), a private institution of higher education as defined in N.J.S.A. 18A:72A-3 (collectively, “the Parties”), pursuant to the provisions of the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49 to -58, as amended (the “Act”), for the purpose of providing funds for construction, reconstruction, development, extension and improvement of instructional, laboratory, communication, and research facilities at the State’s private nonprofit institutions of higher education.

ARTICLE I: THE GRANT

SECTION 1.1: Grant Amount.

(a) The Institution is hereby awarded a grant (the “Grant”) in the amount of _____ dollars (\$_____) (the “Grant Amount”) to be used to finance costs of the project described in the attached Exhibit A (the “Project”), as approved by the Secretary of Higher Education (the “Secretary”). A description of the Project as so approved is attached hereto and incorporated herein by reference. The Grant Amount will be funded with the proceeds of one or more series of tax-exempt revenue bonds issued or to be issued by the Authority pursuant to the Act (the “Bonds”); provided, however, that the payment of the Grant Amount is expressly conditioned upon the issuance of the Bonds, if, when, and as issued, in an amount sufficient to fund the Grant Amount, and also upon the Institution’s execution and delivery of all documents, certificates, opinions and other items as may be required by the Authority in connection with the issuance of the Bonds and the making of the Grant. The issuance of the Bonds is subject to the approval of the Authority’s Board and the funding of the Grant Amount is subject to final review by the Authority’s bond counsel as to the eligibility of the Project for financing with tax-exempt Bonds.

(b) The term “Allocable Bonds”, when used herein, shall mean that portion of the principal amount of the Bonds that is allocable to the financing of the Grant (i.e., the amount of Bonds issued to finance the Grant Amount and a proportionate share of the costs of issuance of the Bonds and the Authority’s administrative costs associated with the approval process for the projects financed by the Bonds).

SECTION 1.2: Reduction or Cancellation of Grant Amount.

The Institution acknowledges and agrees that the Secretary may reduce or cancel the Grant Amount (a) if the Institution determines not to undertake the Project, (b) if the Bonds are not issued for any reason whatsoever, (c) to adjust for actual Project expenses in a manner consistent with the Grant Amount, or (d) if the Project is not substantially completed and the Grant Amount is not substantially disbursed six (6) months after the estimated construction completion date set forth in the Grant application, as adjusted for any actual delay to the Institution entering into the contract(s) specified in Section 4.1 below. Notwithstanding anything to the contrary foregoing, no adjustment or reduction pursuant to clause (d) above will be made if (i) delays are the result of federal, State, or local governmental approvals, or regulatory requirements not attributable to the Institution; (ii) delays are the result of the availability of funding under this Grant Agreement; or (iii) other compelling and documentable reasons exist, as determined by the Secretary.

SECTION 1.3: Eligibility for Reimbursement of Expenditures.

The Institution agrees that the Grant Amount may not be used to reimburse expenditures incurred by the Institution prior to _____, 2023 (the “Reimbursement Eligibility Date”). As used herein, the term “incurred” as applied to any expenditure shall mean the earlier to occur of (i) the date services were provided or goods were delivered, or (ii) the date that the Institution expended funds to pay (or prepay) for the expenditure. Only expenditures incurred on or after the Reimbursement Eligibility Date may be reimbursed. All such reimbursements shall be subject to approval by the Authority and, upon the request of the Authority, review by its bond counsel. No financing costs or interest expense of any interim debt shall be reimbursed, and no liens in respect of any interim debt shall be permitted to exist at the time of issuance of the Bonds.

SECTION 1.4: Sufficient Funding.

The Institution represents and warrants that it has or reasonably expects to have sufficient funding to complete the Project. The Institution also acknowledges that any Project costs exceeding the costs of the Project approved by the Secretary shall be the responsibility of the Institution.

SECTION 1.5: Use of Grant Amount; Disbursement Pursuant to Requisitions.

The Institution has committed, by resolution of its governing board, to use the Grant Amount to finance costs of the Project, and to operate and maintain the Project. All costs to be funded or reimbursed from the Grant Amount shall be subject to the State prevailing wage requirements of N.J.S.A. 18A:72A-5.1 et seq.

The Authority shall disburse, or cause the trustee for the Bonds (the “Bond Trustee”) to disburse, from time to time, the Grant Amount to the Institution, but only upon receipt and approval of requisitions submitted to and approved by the Authority. Each requisition shall be executed by an authorized representative of the Institution and

shall be in the form set forth in Exhibit C attached hereto, or in such other form as the Authority may require. The Institution shall not alter, retype, reformat, or otherwise modify or revise the approved form of requisition. The Authority will not accept any requisition that does not conform to the Authority’s approved form.

The Institution shall submit requisitions promptly and shall comply with any time constraints for the submission of requisitions that the Authority or the Secretary may impose.

SECTION 1.6: No Assignment; No Pledge.

This Grant Agreement may not be assigned by the Institution, nor may it be pledged as collateral for any purpose.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1: Existence.

The Institution is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State, and has the necessary power and authority to execute and deliver this Grant Agreement and any other documents to which the Institution is a party, and to perform its obligations hereunder and thereunder.

SECTION 2.2: Eligible Institution; Accuracy of Grant Application.

(a) The Institution represents and warrants that it is a duly accredited “private institution of higher education” as defined in N.J.S.A. 18A:72A-3, meaning that it is an independent college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education which is equivalent to the education provided by the State’s public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid.

(b) The Institution represents and warrants that all of the statements and representations made in its application for the Grant were on the date made, are on the Effective Date hereof, and shall continue to be, true and correct in all material respects.

SECTION 2.3: Authorization and Validity.

The execution, delivery and performance of this Grant Agreement by the Institution shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or a breach of any provision contained in its certificate of formation or authorizing legislation (as applicable), or contained in any agreement, instrument, document, bond indenture, law, rule, regulation, order, decree, writ, judgment, injunction, or award to which it is now a party or by which it or any of its assets is bound.

The execution and delivery by the Institution of this Grant Agreement and any other documents to which the Institution is a party related to the execution and delivery of this Grant Agreement (including, without limitation, the application for the Grant submitted to the Secretary, resolutions adopted by the Institution, and any Tax Representation Certificates, as defined below (collectively, the “Other Grant Documents”)) have been or will be as of their date of execution, duly authorized by proper proceedings of the Institution, and no further approval, authorization or consents are required by law or otherwise. This Grant Agreement and the Other Grant Documents constitute or shall, upon their execution and delivery, constitute the legal, valid and binding obligations of the Institution enforceable in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, and by general equitable principles.

SECTION 2.4: Reporting; Inspection; Disclosure; Recordkeeping.

(a) Annual Financial Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term (as defined in Section 3.1 hereof) of this Grant Agreement, the Institution shall provide the following to the Authority: copies of the Institution’s annual financial statements, auditor’s reports, and IRS Form 990 for the prior fiscal year, prepared in compliance with applicable State and federal law and policy, as may be amended from time to time, including but not limited to the provisions of any State policies applicable to the receipt of grants from the State.

(b) Annual Compliance Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term of this Grant Agreement, the Institution shall provide the following information and certifications to the Authority in response to the Authority’s annual compliance questionnaire or in such other format as may be requested by the Authority:

(i) A detailed description of any use of the Project by any person or entity other than the Institution (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(ii) A detailed description of the receipt by the Institution of any previously undisclosed contribution or other amount earmarked for the Project (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(iii) If the Grant Amount has not yet been fully disbursed, (A) a detailed report of all expenditures for the Project during the prior calendar year and during the current calendar year up to the date of submission of the Institution’s response (including the amount and purpose of each expenditure), and (B) a detailed description of the amounts or estimated amounts expected to be spent on the Project during the current calendar year (including the timing, amount, and purpose of each such expenditure);

(iv) If a Completion Certificate (as defined in Section 4.2 hereof) has not yet been submitted to the Authority, a statement regarding the status and progress of the Project, including the estimated percentage of completion of the Project;

(v) Written confirmation that the Institution has used all disbursements of the Grant Amount for approved Project costs, in the amounts and for the purposes stated on the related requisitions, such confirmation to be made as of the date of submission of the Institution's response, or, if the Institution cannot provide such confirmation, a detailed description and explanation of the use of any amounts of the Grant Amount for which the Institution cannot so confirm;

(vi) Written confirmation that the Institution is in compliance with the Written Procedures (as defined in Section 5.6 hereof), has conducted an annual review for compliance with federal tax requirements during the prior calendar year, and has determined that the Project and the use of the Grant Amount are in compliance with federal tax requirements;

(vii) Written confirmation that there have been no material changes to the Project or to the use of the Grant during the prior calendar year or during the current calendar year up to the date of submission of the Institution's response;

(viii) Written confirmation that the Institution has procured and is maintaining the Required Insurance (as defined in Section 4.8 hereof); and

(ix) Such other information and certifications relating to the use of the Project and the use of the Grant Amount as may be reasonably requested by the Authority for the purpose of confirming the Institution's compliance with applicable State and federal law and policy.

(c) Reporting of Special Notice Events. The Institution shall provide prompt written notice to the Authority of the occurrence of any Special Notice Event, as described in Section 5.7.

(d) Inspection. The Institution agrees to permit inspection of the Project and the Institution's books and records pertaining thereto by the Authority and the Secretary upon written request during normal business hours.

(e) Disclosure. The Institution agrees that, whenever requested by the Authority, it shall provide and certify, in form satisfactory to the Authority, such information concerning the Institution and the Project, the operations and finances of the Institution and such other matters that the Authority considers to be necessary in order to enable the Authority to prepare and publish an official statement or other similar disclosure document relating to the sale of the Bonds or any refunding bonds or to enable the Authority to make any reports which are required by any law or governmental regulations in connection with the Bonds.

(f) Recordkeeping. The Institution shall retain until three (3) years after the retirement of the Bonds and any refunding bonds, adequate records with respect to the

use of the Project and the expenditure of the proceeds of the Grant, as described in Section 5.8.

SECTION 2.5: Disclaimer of Warranties; Indemnification.

(a) The Institution acknowledges and agrees that (i) neither the Authority nor the Secretary makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or the Secretary or their respective agents be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Grant Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Grant Agreement; and (iii) the Institution shall indemnify and hold the Authority and the Secretary harmless against, and the Institution shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the Authority and the Secretary may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Institution, the Institution's ownership of the Project, or the acquisition, construction or installation of the Project.

(b) The Institution shall at all times protect and hold the State, the Secretary, the Department of the Treasury, the Authority, the Bond Trustee, and each of their assigns, directors, officers, agents, contractors and employees (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, attorneys' fees) and liabilities for losses, damage and injury, resulting from or arising out of: (1) any claim for the non-delivery of the Grant Amount in the event that the Bonds are not issued, (2) the financing of the costs of the Project, (3) the ownership, planning, design, acquisition, site preparation, transportation, construction, renovation, equipping, installation, maintenance, repair, replacement or completion of the Project or any part thereof or the effecting of any work done as part of the Project, (4) any defects (whether latent or patent) in the Project or any part thereof, (5) the maintenance, repair, replacement, restoration, rebuilding, demolition, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, (6) any act of negligence of the Institution or of any of its agents, contractors, servants, employees or licensees at the Project, (7) any act of negligence of any assignee or sublessee of the Institution at the Project, (8) any violation of or failure to comply by the Institution with any legal requirement applicable to the Project, including environmental laws, or any cost imposed upon any of the Indemnified Parties by any legal requirement applicable to the Project, or (9) any action or inaction of the Institution that may adversely affect the tax-exempt status of the Bonds or any refunding bonds (assuming for this purpose that the Bonds consist only of the Allocable Bonds). The Institution shall reimburse any such Indemnified Party for any reasonable legal or other expenses incurred by it in investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the Project. The indemnification

required pursuant hereto shall be binding upon the Institution for any and all claims, demands, expenses, liabilities and taxes set forth herein. No Indemnified Party shall be liable for any damage or injury to the person or property of the Institution or its assigns, directors, officers, agents, contractors or employees, or persons under the control or supervision of the Institution or any other person who may be involved with the Project in any way, due to any action, inaction, or negligence of any person. This provision shall survive the expiration or earlier termination of this Grant Agreement.

SECTION 2.6: Litigation.

There is no action or proceeding pending, or to the best knowledge of the Institution, threatened by or against it by or before any court or administrative agency that might adversely affect the ability of the Institution to perform its obligations under this Grant Agreement.

SECTION 2.7: Compliance with Laws and Regulations.

To the best of its knowledge, the Institution is in compliance with all applicable statutes, regulations or ordinances of governmental agencies and authorities having jurisdiction over it and the Project, including without limitation, those of the United States of America, the State and any municipal or local government entity with jurisdiction over the Project, including but not limited to those relating to the procurement and any and all environmental laws.

The Institution agrees to comply with the Act, all State and federal laws, all rules and regulations, and any other requirements imposed by law, including but not limited to those relating to the procurement of contracts to effectuate the Project.

Except as set forth on Exhibit B attached hereto and made a part hereof, the Institution has obtained, and is in material compliance with respect to, all government approvals, permits, certificates, inspections, consents and franchises necessary to complete the Project, to conduct its business, and to own or lease and operate its properties, and all such government approvals, permits and certificates are in full force and effect.

ARTICLE III: TERM OF THE GRANT AGREEMENT

SECTION 3.1: Term.

The term of this Grant Agreement shall commence on the Effective Date and continue in effect until such time as all of the Bonds and any refunding bonds have been paid (the “Term”).

This Grant Agreement shall not terminate prior to the end of the Term (other than such termination as is provided for elsewhere herein) for any cause including, without limitation, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the failure of the Secretary or the Authority to perform and observe any agreement or

covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Grant Agreement.

ARTICLE IV: THE PROJECT

SECTION 4.1: Project Acquisition or Construction.

The Institution agrees to enter into contract(s) for the acquisition or construction of the Project no later than twelve (12) months after the Effective Date. Additional requirements with respect to carrying out the Project will be set forth in the Tax Representation Certificate(s) (as defined in Section 5.1 hereof).

SECTION 4.2: Completion of Project.

Completion of the Project shall be evidenced by delivery to the Authority of a completion certificate (the “Completion Certificate”) in the form set forth in Exhibit E attached hereto, or in such other form as the Authority may require, certifying (a) the date of completion of the Project, (b) that the Institution has received and delivered to the Authority a copy of the permanent or temporary certificate of occupancy for the Project, if applicable, and (c) that the Institution has required in each construction contract with respect to the Project that wages paid to workers employed in the performance of such construction contract be paid, or has determined that such workers were paid, at a rate not less than the State prevailing wage rate, in compliance with N.J.S.A. 18A:72A-5.1 et seq.

SECTION 4.3: Title to Project.

With respect to the property or facility comprising the Project and in or on which the Project is to be constructed, located, affixed, and/or installed, the Institution represents, warrants, and covenants that it has either (i) good, indefeasible and marketable title to and fee simple ownership of such property or facility, or (ii) the legal and enforceable right to use and occupy such property or facility, and to construct, locate, affix, and/or install the Project therein or thereon, pursuant to a written agreement, the term of which extends or can be renewed at the Institution’s option for so long as the Project is located therein or thereon.

The Institution shall not sell, lease, abandon, or otherwise dispose of the Project prior to the expiration of the Term without the prior written approval of the Authority and the Secretary. In addition, the Institution acknowledges and agrees that, notwithstanding the receipt of any such approval, the Institution may be required to repay the Grant in full in the event of any sale, lease, abandonment, or other disposition of the Project.

SECTION 4.4: Default in Contractors’, Vendors’ or Suppliers’ Performance.

In the event of a default of any contractor, subcontractor, vendor or supplier under the terms of any contract made in connection with the Project, the Institution will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Institution against the contractor, subcontractor, vendor or supplier in default and against each surety for the performance of such contractor, subcontractor, vendor or

supplier. The Institution agrees to advise the Authority, in writing, of the steps it intends to take in connection with any such default. The Authority, after notifying the Institution in writing, in good faith and in its own name, may but shall not be required under any circumstances to, prosecute or defend any action or proceeding or take any other action which the Authority deems reasonably necessary, and in such event the Institution hereby agrees to cooperate fully with the Authority. Such action may be taken in the sole discretion of the Authority. Any amounts which are recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, net of expenses incurred by the Authority to obtain such recovery, shall be paid to the Institution, and applied to payment of the costs of the Project.

SECTION 4.5: Maintenance of the Project.

The Institution covenants that it shall at all times during and after the completion of the Project cause the same to be maintained, preserved and kept properly, with the appurtenances and every part and parcel thereof in good repair, working order and condition.

SECTION 4.6: Covenant Against Waste.

The Institution covenants not to cause, suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, the Project.

SECTION 4.7: Damage or Destruction.

The Institution agrees to immediately notify the Authority in the event of damage to or destruction of all or a portion of the Project resulting from fire or other casualty. The Institution agrees to promptly repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction and the Institution will apply the net proceeds of any insurance relating to such damage or destruction received by the Institution to the payment or reimbursement of the costs of such repair and restoration, except as expressly authorized by the Authority in its sole discretion upon the advice of its bond counsel.

SECTION 4.8: Insurance.

Prior to the execution of this Grant Agreement, the Institution shall provide evidence to the Authority that the Institution has procured the insurance required by this Section 4.8.

The Institution shall procure and maintain, or cause to be procured and maintained, sufficient coverage under its commercial general liability insurance policy and, if applicable, builder's risk insurance policy to cover not only its own liability but also any liability which might arise against the Indemnified Parties (as defined in Section 2.5(b)) to the extent such liability is insurable under a commercial general liability insurance policy or a builder's risk insurance policy. The Institution shall include or cause to be included the Indemnified Parties as additional insureds in any liability

insurance coverage for the Project, including insurance obtained by the Institution’s general contractor and subcontractors performing work on the Project.

In addition to procuring and maintaining the liability insurance specified above, the Institution agrees to procure and maintain, or to cause to be procured and maintained, to the extent reasonably obtainable, at the expense of the Institution, such insurance as is customarily maintained on facilities and equipment similar to the facilities and equipment comprising the Project. The Authority, the State, the Secretary, the Department of the Treasury and the Bond Trustee shall be named as additional insureds on such insurance.

All insurance required by this Section 4.8 (collectively, the “Required Insurance”) shall be procured from financially sound and reputable insurers qualified to do business in the State with a minimum A-VII rating per AM BEST or insurers approved, in writing, by the Authority.

Upon the Authority’s request from time to time, the Institution shall provide evidence to the Authority that the Institution has procured the Required Insurance in accordance with this Section 4.8. In addition, pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution has procured and is maintaining the Required Insurance.

The Institution shall promptly notify the Authority and the Secretary in writing in the event of any change in the insurance coverage being maintained by the Institution.

Notwithstanding the foregoing, nothing herein shall be deemed to prohibit the Institution from participating in a program of self-insurance, a cooperative insurance purchasing program, or a similar insurance program, and such programs may, upon review by the Authority, be deemed to meet the requirements of this Section 4.8. The procurement of insurance shall not relieve the Institution from its obligations under Section 2.5 hereof.

SECTION 4.9: Mechanics’ Liens.

The Institution covenants to keep the Project, and the fixtures and equipment thereof, free and clear of mechanics’ liens and other liens of like nature at all times during the Term of this Grant Agreement, and the Institution shall at all times duly protect the State, the Authority, the Secretary, the Department of the Treasury and their respective directors, officers, and employees against any and all attorney’s fees, costs and expenses which may accrue, grow out of or be incurred by reason of or on account of any such liens or claims.

SECTION 4.10: Modification of Project.

Pursuant to N.J.A.C. 9A:15-1.6(i), in the event that the Institution requires a modification to the Project, the Institution shall submit a formal written request to the Secretary, prior to the Institution taking any action to modify the Project, in order to allow the Secretary to evaluate the merits of the proposed modification against the objectives set forth at N.J.A.C. 9A:15-1.5(b). The Secretary may exercise discretion to

allow the Institution to modify the Project if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved project and if such modification does not constitute a material change. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the Grant Agreement, the Tax Representation Certificate, any other applicable Bond documents, and applicable State and federal law.

SECTION 4.11: No Use of Project for Religious Instruction or Worship.

The Institution covenants and agrees that the Project shall be used solely for the approved purposes of the Grant and as permitted under the Act. The Institution further covenants and agrees that at no time shall the Project, or any part thereof, be used or be allowed to be used for religious instruction or as a place for religious worship, even after the Bonds or any refunding bonds are no longer outstanding.

SECTION 4.12: Additional Covenants.

The Institution covenants, represents and agrees that:

- (i) The Institution is, and during the full Term of this Grant Agreement will be, in compliance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.;
- (ii) The use of the Project, the admission of students to the Institution, and the provision of services to students, are not, and shall at no time be, restricted on racial or religious grounds, nor shall there be a religious test for such use, admission, or provision of services;
- (iii) There is not, and shall at no time be, a requirement that individuals gaining admission to or receiving services from the Institution, or otherwise using the Project, receive instruction in the tenets of a particular faith, nor shall religious instruction be mandatory.

ARTICLE V: TAX COVENANTS

SECTION 5.1: Tax Status; Tax Representation Certificate.

(a) The Institution represents that it is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code” or the “Code”) that is not a private foundation. The Institution covenants that, for as long as the Bonds and any refunding bonds are outstanding, it will take all actions necessary to remain an organization described in Code Section 501(c)(3) that is not a private foundation.

(b) The Institution covenants and represents that it has executed or will execute one or more Tax Representation Certificates (each, a “Tax Representation Certificate”) as to compliance with the Code and the Treasury Regulations promulgated thereunder or made applicable thereto (the “Treasury Regulations”) relating to the Grant,

the Project and the Bonds (and any refunding bonds), in the form required by the Authority’s bond counsel. The provisions of each such Tax Representation Certificate shall be incorporated herein by reference and shall be binding upon the Institution. The Institution represents and covenants that the representations and covenants of the Institution set forth in the Institution’s Tax Representation Certificate(s) are and will be true, correct and complete as of the date of issuance of the Bonds, and, in the case of any Tax Representation Certificate delivered in connection with refunding bonds, as of the date of issuance of the refunding bonds. The Institution understands that the statements, covenants and undertakings made in the Tax Representation Certificate(s) and this Grant Agreement shall be relied upon by the Authority and its bond counsel in connection with the issuance of the Bonds and any refunding bonds, and that any misstatement or failure to comply with any such undertaking on the part of the Institution may result in adverse consequences affecting a significantly greater principal amount of Bonds (or refunding bonds) than the amount of the Grant Amount.

SECTION 5.2: No Change in Use of Grant Amount or Project.

The Institution acknowledges and agrees that the Grant Amount is or will be funded from Bonds issued or to be issued by the Authority pursuant to the Act, and that such Bonds have been or are expected to be issued on a tax-exempt basis. In order to ensure the continued compliance of the Project with applicable State law and policy, and to ensure the continued tax-exempt status of the Bonds and any bonds issued to refund the Bonds, the Institution shall use the Grant Amount and the Project as described in Section 1.1 hereof and in the Institution’s Tax Representation Certificate(s) and shall not change or permit a change in the use of the Grant Amount or the Project unless (i) the Authority approves such change in use of all or a portion of the Grant Amount and the Project, (ii) all other required approvals are obtained, including the approval of the Secretary, and (iii) if required, the Authority receives an opinion from nationally recognized bond counsel that such change in use will not adversely affect the tax-exempt status of the Bonds and any bonds issued to refund such Bonds. The Institution shall pay any and all fees incurred to obtain such opinion(s).

SECTION 5.3: No Arbitrage Bonds.

The Institution does not anticipate any fundraising campaigns or the receipt of any charitable contributions or other sources of funding for the Project that would result in having such other sources of funds and the proceeds of the Allocable Bonds available for the same costs of the Project. Without limiting the foregoing, the Institution hereby covenants that it will make no use of the proceeds of the Allocable Bonds or the proceeds of any refunding bonds if such use would cause the Bonds or the refunding bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

SECTION 5.4: Certain Uses of Proceeds of the Grant Not Permitted.

The Institution covenants and agrees that, unless the Institution obtains the prior written consent of the Authority, which consent shall be based upon the advice of bond

counsel to the Authority, the Institution shall not, directly or indirectly, (i) use or allow any portion of the Project or any amount of the Grant to be used in any trade or business carried on by any person other than the Institution or a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code); (ii) use any portion of the Project or any amount of the Grant in any unrelated business activity of the Institution; (iii) use any amount of the Grant to make or finance loans to any person; or (iv) use or allow the Project or the Grant to be used with respect to any output facility or to acquire non-governmental output property (within the meaning of Section 141 of the Code).

SECTION 5.5: Covenant Not to Purchase Bonds.

The Institution covenants and agrees that neither it nor any party related to it, within the meaning of Treasury Regulation 1.150-1(b), pursuant to an arrangement, formal or informal, shall purchase bonds of the Authority issued to finance or refinance the Grant or the Project.

SECTION 5.6: Written Procedures as to Post-Issuance Tax Compliance.

The Institution acknowledges and agrees that the Authority has adopted written post-issuance compliance procedures (the “Authority Written Procedures”) to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. Unless the Institution has already adopted its own written post-issuance compliance procedures with respect to bond-financed facilities to monitor compliance with the applicable provisions of the Code and Treasury Regulations, then, within ninety (90) days after the Effective Date of this Grant Agreement or within ninety (90) days after the date of issuance of the Bonds, whichever is earlier, the Institution shall adopt written post-issuance compliance procedures (collectively, the “Institution Written Procedures” and, together with the Authority Written Procedures, the “Written Procedures”) to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. The Institution shall provide a copy of the Institution Written Procedures to the Authority upon adoption thereof. The Institution agrees to comply with the Written Procedures and, at least once each year, the Institution shall review the use of the Institution’s facilities that have been financed or refinanced with proceeds of the Allocable Bonds and/or proceeds of any other outstanding bonds of the Authority (“Other Authority Bonds”) in order to determine whether the use of such facilities complies with all federal tax requirements applicable to the Allocable Bonds and the Other Authority Bonds. Pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution is in compliance with the Written Procedures and this Section 5.6.

SECTION 5.7: Special Notice Events.

The Institution shall provide prompt written notice to the Authority of the occurrence of any of the acts or events listed on Exhibit D attached hereto and made a

part hereof (each, a “Special Notice Event”). The Institution acknowledges and agrees that the occurrence of any of such acts or events may jeopardize the tax-exempt status of the Bonds (and any refunding bonds). The Institution will use its best efforts to provide advance notice of any such occurrence, but will in any event provide notice no later than thirty (30) days after the occurrence of any such Special Notice Event, whether the Institution is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Special Notice Event shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event shall have occurred, or otherwise. The Institution agrees that, in consultation with the Authority, and at the sole cost and expense of the Institution, the Institution shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, or it shall assist the Authority in the Authority’s taking of such actions, including without limitation such actions as may be required pursuant to Treasury Regulations Section 1.141-12 or a closing agreement with the Internal Revenue Service, and shall provide to the Authority an opinion of nationally recognized bond counsel as to such plan of remediation and whether or not the tax-exempt status of the Bonds will be preserved. Without limiting the foregoing, the Authority shall have the right, upon prior written notice to the Institution, to conduct its own investigation of any Special Notice Event and, at the sole cost and expense of the Institution, retain bond counsel to determine any and all actions required to remediate such Special Notice Event including but not limited to the delivery of an opinion of bond counsel.

SECTION 5.8: Records Retention.

The Institution covenants and agrees to create and maintain records with respect to the Grant and the Project which, in the judgment of the Authority, are sufficient to determine the compliance of the Allocable Bonds (and any refunding bonds) with the requirements of the applicable provisions of the Code and Treasury Regulations, including but not limited to records with respect to (i) the allocation and use of the proceeds of the Allocable Bonds, (ii) the ownership and use of all property financed with proceeds of the Allocable Bonds, (iii) the existence or creation of any “replacement proceeds” (as defined in the Institution’s Tax Representation Certificate) as such records are further described in the Institution’s Tax Representation Certificate with respect to the Allocable Bonds, and (iv) the information necessary to establish any exception to the arbitrage rebate requirement (as defined in the Institution’s Tax Representation Certificate) with respect to the Allocable Bonds, as such records are further described in the Institution’s Tax Representation Certificate. The Institution covenants to retain all such records until the expiration of three (3) years after the later of (i) the last scheduled maturity date or earlier retirement of the Bonds, and (ii) if any of the Bonds have been refunded, the last scheduled maturity date or earlier retirement of any refunding bonds. Such records of the Institution shall be provided to the Authority upon written request.

SECTION 5.9: Right to Obtain Bond Counsel Opinion.

The Authority and the Institution shall not be required to comply with any one or more requirements of this Article V to the extent that an opinion of nationally recognized

bond counsel is obtained to the effect that failure to comply with such requirements, or compliance with other requirements in lieu thereof, will not impair the exclusion from gross income of interest on the Bonds for purposes of federal income taxation under Section 103 of the Code.

ARTICLE VI: EVENTS OF DEFAULT

SECTION 6.1: Events of Default.

The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree, or order of any court, or any order, rule or regulation of any administrative or governmental body) shall constitute an “Event of Default”:

- (a) Any representation or warranty, statement, report, financial statement or certificate made by the Institution in its application or in this Grant Agreement is false, misleading, or inaccurate in any material respect.
- (b) Failure by the Institution to observe and perform in any material respect any term, covenant, or condition imposed on it under this Grant Agreement and such failure shall have continued for thirty (30) days after the earlier of (i) delivery to the Institution of written notice thereof from the Authority, or (ii) the Institution’s actual or constructive knowledge of such failure, however, if such failure is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) day period, but such diligent efforts are properly commenced within the cure period and the Institution is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional forty-five (45) days and in no case to extend beyond the expiration of the Term of this Grant Agreement.

SECTION 6.2: Remedies.

- (a) Upon the occurrence of any Event of Default, following applicable notice and cure periods, the Authority shall have the right, at its sole and absolute discretion, upon thirty (30) days written notice to the Institution, to terminate this Grant Agreement, at which time any obligation of the Authority to make any further payments as contemplated by this Grant Agreement shall immediately terminate. The Authority shall also have any remedies at law or equity, including specific performance.
- (b) If, after thirty (30) days written notice is sent, the Institution has failed to comply with any of the terms of this Grant Agreement, or if there are disallowed costs, or the payment of a Grant Amount in excess of eligible Project costs, then the State Treasurer is authorized to withhold and/or intercept any State aid or appropriation payable to the Institution, in an amount sufficient to satisfy any default or failure

of the Institution, including return of the Grant Amount to the Authority.

- (c) Upon the occurrence of an Event of Default, the Grant Amount is subject to forfeiture, provided that the Grant Amount shall not be forfeited if such non-compliance is curable within forty-five (45) days and the Institution is diligently pursuing such cure.
- (d) Upon the occurrence of an Event of Default, the amount of the Grant Amount that has been expended as of the date of such Event of Default for or on behalf of the Institution may, upon demand of the Authority, in consultation with the Secretary, the Attorney General and the Authority’s bond counsel, be required to be repaid to the Authority by the Institution. The Authority shall determine whether repayment of the Grant Amount is required, in consultation with the Secretary, the Attorney General and its bond counsel, based on the facts and circumstances related to the Event of Default and whether there exists the need to redeem or defease Allocable Bonds to ensure the continued tax-exempt status of the Bonds.
- (e) No remedy conferred herein upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Grant Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section 6.2, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.
- (f) Absent an Event of Default, there is no obligation or expectation that any repayments will be made by the Institution to the Authority with respect to the Grant Amount.

ARTICLE VII: MISCELLANEOUS

SECTION 7.1: No Additional Waiver Implied by One Waiver.

In the event any agreement, covenant, warranty, or representation contained in this Grant Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7.2: Severability.

In case any one or more of the provisions of this Grant Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any

other provision of this Grant Agreement, but this Grant Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

SECTION 7.3: Successors and Assigns.

This Grant Agreement shall inure to the benefit of and shall be binding upon the Institution, the Authority and their respective successors and assigns.

SECTION 7.4: Governing Law.

This Grant Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to its choice of law rules thereof. The Institution hereby consents to the jurisdiction of the Superior Court of the County of Mercer, New Jersey and agrees that any lawsuits of any nature pertaining to this Grant Agreement shall be brought in that Court in the first instance.

SECTION 7.5: Non-Waiver.

It is understood and agreed that nothing contained in this Grant Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right not explicitly waived in this Grant Agreement.

SECTION 7.6: Torts Claim and Contractual Liability Acts.

The liability of the Secretary, the Authority, the Department of the Treasury and their respective directors, officers and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., is not applicable by its terms to the Authority, the Institution hereby agrees that such statute (except for N.J.S.A. 59:13-9) shall be applicable to all claims against the Authority under this Grant Agreement.

SECTION 7.7: Headings.

The Section headings in this Grant Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Grant Agreement.

SECTION 7.8: Notices.

All notices required to be given or authorized to be given by the Parties pursuant to this Grant Agreement shall be in writing and shall be sent to the main offices of the respective Parties by registered or certified mail, or by email with confirmation of receipt.

SECTION 7.9: Amendments.

This Agreement shall not be amended or modified in any manner without the written consent of the Secretary and the State Treasurer. Any amendments or modifications shall be in writing and signed by each of the Parties. Material changes to this Agreement will not be allowed.

SECTION 7.10: Rights Cumulative.

All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

SECTION 7.11: Third Party Beneficiary.

The Parties agree that the State is intended to be and shall be a third party beneficiary of this Agreement.

SECTION 7.12: Additional Representations and Covenants.

Upon or prior to the issuance of the Bonds, a schedule reflecting additional representations, undertakings and covenants applicable to the Project and the Grant may be attached hereto as a condition to this Agreement. Any such additional provisions shall be incorporated herein and shall be binding upon the Institution.

SECTION 7.13: Electronic Signatures.

Pursuant to N.J.S.A. 12A:12-1 et seq., the “Uniform Electronic Transactions Act,” electronic signatures to a contract shall be binding upon agreement of all parties. The Parties hereto agree that this Grant Agreement, and all documents, certificates, opinions and requisitions delivered pursuant to the terms hereof, may be executed with electronic signatures.

SECTION 7.14: Counterparts.

This Grant Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives, each acting in their official capacities, have caused this Grant Agreement to be executed and delivered as of the Effective Date.

[NAME OF INSTITUTION]

NEW JERSEY EDUCATIONAL
FACILITIES AUTHORITY

By: _____
Name:
Title:

By: _____
Name:
Title:

List of Exhibits:

Exhibit A: Description of Project

Exhibit B: Compliance Exceptions

Exhibit C: Form of Requisition

Exhibit D: Special Notice Events

Exhibit E: Completion Certificate

EXHIBIT A
DESCRIPTION OF PROJECT

[Project Description]

* The Project financed by the Bonds only includes components of the Project that can be financed under the Act and does not include those items that are described, but which are being financed by other grants or leases from the Authority or the State and/or other funding sources. To the extent the Project includes components that cannot be financed under the Act, the Institution represents that amounts advanced under this Grant Agreement will only be used for eligible components and that the Institution has sufficient funds from other sources to finance the balance of the Project. The portions of the Project that are financed with the Bonds will be described in the Institution's Tax Representation Certificate.

EXHIBIT B

COMPLIANCE EXCEPTIONS

- No compliance exceptions.
- Compliance exceptions as described below:

EXHIBIT C

FORM OF REQUISITION

EXHIBIT D

SPECIAL NOTICE EVENTS

EXHIBIT E

FORM OF COMPLETION CERTIFICATE

GRANT AGREEMENT

Between the

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY,
as Grantor

and

[NAME OF INSTITUTION],
as Grantee

Dated as of _____ 1, 2023

HIGHER EDUCATION FACILITIES TRUST FUND

Grant Amount: \$ _____

Project ID#: _____

New Jersey Educational Facilities Authority
HIGHER EDUCATION FACILITIES TRUST FUND

GRANT AGREEMENT

[Institution]

THIS GRANT AGREEMENT, is executed as of _____ 1, 2023 (the “Effective Date”) by and between the New Jersey Educational Facilities Authority (the “Authority”), a public body corporate and politic of the State of New Jersey (the “State”) and [NAME OF INSTITUTION] (the “Institution”), a public institution of higher education as defined in N.J.S.A. 18A:72A-3 (collectively, “the Parties”), pursuant to the provisions of the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49 to -58, as amended (the “Act”), for the purpose of providing funds for construction, reconstruction, development, extension and improvement of instructional, laboratory, communication, and research facilities at the State’s public institutions of higher education.

ARTICLE I: THE GRANT

SECTION 1.1: Grant Amount.

(a) The Institution is hereby awarded a grant (the “Grant”) in the amount of _____ dollars (\$_____) (the “Grant Amount”) to be used to finance costs of the project described in the attached Exhibit A (the “Project”), as approved by the Secretary of Higher Education (the “Secretary”). A description of the Project as so approved is attached hereto and incorporated herein by reference. The Grant Amount will be funded with the proceeds of one or more series of tax-exempt revenue bonds issued or to be issued by the Authority pursuant to the Act (the “Bonds”); provided, however, that the payment of the Grant Amount is expressly conditioned upon the issuance of the Bonds, if, when, and as issued, in an amount sufficient to fund the Grant Amount, and also upon the Institution’s execution and delivery of all documents, certificates, opinions and other items as may be required by the Authority in connection with the issuance of the Bonds and the making of the Grant. The issuance of the Bonds is subject to the approval of the Authority’s Board and the funding of the Grant Amount is subject to final review by the Authority’s bond counsel as to the eligibility of the Project for financing with tax-exempt Bonds.

(b) The term “Allocable Bonds,” when used herein, shall mean that portion of the principal amount of the Bonds that is allocable to the financing of the Grant (i.e., the amount of Bonds issued to finance the Grant Amount and a proportionate share of the costs of issuance of the Bonds and the Authority’s administrative costs associated with the approval process for the projects financed by the Bonds).

SECTION 1.2: Reduction or Cancellation of Grant Amount.

The Institution acknowledges and agrees that the Secretary may reduce or cancel the Grant Amount (a) if the Institution determines not to undertake the Project, (b) if the Bonds are not issued for any reason whatsoever, (c) to adjust for actual Project expenses in a manner consistent with the Grant Amount, or (d) if the Project is not substantially completed and the Grant Amount is not substantially disbursed six (6) months after the estimated construction completion date set forth in the Grant application, as adjusted for any actual delay to the Institution entering into the contract(s) specified in Section 4.1 below. Notwithstanding anything to the contrary foregoing, no adjustment or reduction pursuant to clause (d) above will be made if (i) delays are the result of federal, State, or local governmental approvals, or regulatory requirements not attributable to the Institution; (ii) delays are the result of the availability of funding under this Grant Agreement; or (iii) other compelling and documentable reasons exist, as determined by the Secretary.

SECTION 1.3: Eligibility for Reimbursement of Expenditures.

The Institution agrees that the Grant Amount may not be used to reimburse expenditures incurred by the Institution prior to _____, 2023 (the “Reimbursement Eligibility Date”). As used herein, the term “incurred” as applied to any expenditure shall mean the earlier to occur of (i) the date services were provided or goods were delivered, or (ii) the date that the Institution expended funds to pay (or prepay) for the expenditure. Only expenditures incurred on or after the Reimbursement Eligibility Date may be reimbursed. All such reimbursements shall be subject to approval by the Authority and, upon the request of the Authority, review by its bond counsel. No financing costs or interest expense of any interim debt shall be reimbursed, and no liens in respect of any interim debt shall be permitted to exist at the time of issuance of the Bonds.

SECTION 1.4: Sufficient Funding.

The Institution represents and warrants that it has or reasonably expects to have sufficient funding to complete the Project. The Institution also acknowledges that any Project costs exceeding the costs of the Project approved by the Secretary shall be the responsibility of the Institution.

SECTION 1.5: Use of Grant Amount; Disbursement Pursuant to Requisitions.

The Institution has committed, by resolution of its governing board, to use the Grant Amount to finance costs of the Project, and to operate and maintain the Project. All costs to be funded or reimbursed from the Grant Amount shall be subject to the State prevailing wage requirements of N.J.S.A. 18A:72A-5.1 et seq.

The Authority shall disburse, or cause the trustee for the Bonds (the “Bond Trustee”) to disburse, from time to time, the Grant Amount to the Institution, but only upon receipt and approval of requisitions submitted to and approved by the Authority. Each requisition shall be executed by an authorized representative of the Institution and

shall be in the form set forth in Exhibit C attached hereto, or in such other form as the Authority may require. The Institution shall not alter, retype, reformat, or otherwise modify or revise the approved form of requisition. The Authority will not accept any requisition that does not conform to the Authority’s approved form.

The Institution shall submit requisitions promptly and shall comply with any time constraints for the submission of requisitions that the Authority or the Secretary may impose.

SECTION 1.6: No Assignment; No Pledge.

This Grant Agreement may not be assigned by the Institution, nor may it be pledged as collateral for any purpose.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1: Existence.

The Institution is a body corporate and politic created under the laws of the State, and has the necessary power and authority to execute and deliver this Grant Agreement and any other documents to which the Institution is a party, and to perform its obligations hereunder and thereunder.

SECTION 2.2: Eligible Institution; Accuracy of Grant Application.

(a) The Institution represents and warrants that it is a duly accredited “public institution of higher education” as defined in N.J.S.A. 18A:72A-3.

(b) The Institution represents and warrants that all of the statements and representations made in its application for the Grant were on the date made, are on the Effective Date hereof, and shall continue to be, true and correct in all material respects.

SECTION 2.3: Authorization and Validity.

The execution, delivery and performance of this Grant Agreement by the Institution shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or a breach of any provision contained in its certificate of formation or authorizing legislation (as applicable), or contained in any agreement, instrument, document, bond indenture, law, rule, regulation, order, decree, writ, judgment, injunction, or award to which it is now a party or by which it or any of its assets is bound.

The execution and delivery by the Institution of this Grant Agreement and any other documents to which the Institution is a party related to the execution and delivery of this Grant Agreement (including, without limitation, the application for the Grant submitted to the Secretary, resolutions adopted by the Institution, and any Tax Representation Certificates, as defined below (collectively, the “Other Grant Documents”)) have been or will be as of their date of execution, duly authorized by

proper proceedings of the Institution, and no further approval, authorization or consents are required by law or otherwise. This Grant Agreement and the Other Grant Documents constitute or shall, upon their execution and delivery, constitute the legal, valid and binding obligations of the Institution enforceable in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, and by general equitable principles.

SECTION 2.4: Reporting; Inspection; Disclosure; Recordkeeping.

(a) Annual Financial Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term (as defined in Section 3.1 hereof) of this Grant Agreement, the Institution shall provide the following to the Authority: copies of the Institution’s annual financial statements and auditor’s reports for the prior fiscal year, prepared in compliance with applicable State policy, as may be amended from time to time, including but not limited to the provisions of any policies applicable to the receipt of grants from the State.

(b) Annual Compliance Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term of this Grant Agreement, the Institution shall provide the following information and certifications to the Authority in response to the Authority’s annual compliance questionnaire or in such other format as may be requested by the Authority:

(i) A detailed description of any use of the Project by any person or entity other than the Institution (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(ii) A detailed description of the receipt by the Institution of any previously undisclosed contribution or other amount earmarked for the Project (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(iii) If the Grant Amount has not yet been fully disbursed, (A) a detailed report of all expenditures for the Project during the prior calendar year and during the current calendar year up to the date of submission of the Institution’s response (including the amount and purpose of each expenditure), and (B) a detailed description of the amounts or estimated amounts expected to be spent on the Project during the current calendar year (including the timing, amount, and purpose of each such expenditure);

(iv) If a Completion Certificate (as defined in Section 4.2 hereof) has not yet been submitted to the Authority, a statement regarding the status and progress of the Project, including the estimated percentage of completion of the Project;

(v) Written confirmation that the Institution has used all disbursements of the Grant Amount for approved Project costs, in the amounts and for the purposes

stated on the related requisitions, such confirmation to be made as of the date of submission of the Institution's response, or, if the Institution cannot provide such confirmation, a detailed description and explanation of the use of any amounts of the Grant Amount for which the Institution cannot so confirm;

(vi) Written confirmation that the Institution is in compliance with the Written Procedures (as defined in Section 5.6 hereof), has conducted an annual review for compliance with federal tax requirements during the prior calendar year, and has determined that the Project and the use of the Grant Amount are in compliance with federal tax requirements;

(vii) Written confirmation that there have been no material changes to the Project or to the use of the Grant during the prior calendar year or during the current calendar year up to the date of submission of the Institution's response;

(viii) Written confirmation that the Institution has procured and is maintaining the Required Insurance (as defined in Section 4.8 hereof); and

(ix) Such other information and certifications relating to the use of the Project and the use of the Grant Amount as may be reasonably requested by the Authority for the purpose of confirming the Institution's compliance with applicable State and federal law and policy.

(c) Reporting of Special Notice Events. The Institution shall provide prompt written notice to the Authority of the occurrence of any Special Notice Event, as described in Section 5.7.

(d) Inspection. The Institution agrees to permit inspection of the Project and the Institution's books and records pertaining thereto by the Authority and the Secretary upon written request during normal business hours.

(e) Disclosure. The Institution agrees that, whenever requested by the Authority, it shall provide and certify, in form satisfactory to the Authority, such information concerning the Institution and the Project, the operations and finances of the Institution and such other matters that the Authority considers to be necessary in order to enable the Authority to prepare and publish an official statement or other similar disclosure document relating to the sale of the Bonds or any refunding bonds or to enable the Authority to make any reports which are required by any law or governmental regulations in connection with the Bonds.

(f) Recordkeeping. The Institution shall retain until three (3) years after the retirement of the Bonds and any refunding bonds, adequate records with respect to the use of the Project and the expenditure of the proceeds of the Grant, as described in Section 5.8.

SECTION 2.5: Disclaimer of Warranties; Indemnification.

(a) The Institution acknowledges and agrees that (i) neither the Authority nor the Secretary makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or the Secretary or their respective agents be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Grant Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Grant Agreement; and (iii) to the fullest extent permitted by law, the Institution shall indemnify and hold the Authority and the Secretary harmless against, and the Institution shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the Authority and the Secretary may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Institution, the Institution's ownership of the Project, or the acquisition, construction or installation of the Project.

(b) To the fullest extent permitted by law, the Institution shall at all times protect and hold the State, the Secretary, the Department of the Treasury, the Authority, the Bond Trustee and each of their assigns, directors, officers, agents, contractors and employees (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, attorneys' fees) and liabilities for losses, damage and injury, resulting from or arising out of: (1) any claim for the non-delivery of the Grant Amount in the event that the Bonds are not issued (2) the financing of the costs of the Project, (3) the ownership, planning, design, acquisition, site preparation, transportation, construction, renovation, equipping, installation, maintenance, repair, replacement or completion of the Project or any part thereof or the effecting of any work done as part of the Project, (4) any defects (whether latent or patent) in the Project or any part thereof, (5) the maintenance, repair, replacement, restoration, rebuilding, demolition, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, (6) any act of negligence of the Institution or of any of its agents, contractors, servants, employees or licensees at the Project, (7) any act of negligence of any assignee or sublessee of the Institution at the Project, (8) any violation of or failure to comply by the Institution with any legal requirement applicable to the Project, including environmental laws, or any cost imposed upon any of the Indemnified Parties by any legal requirement applicable to the Project, or (9) any action or inaction of the Institution that may adversely affect the tax-exempt status of the Bonds or any refunding bonds (assuming for this purpose that the Bonds consist only of the Allocable Bonds). The Institution shall reimburse any such Indemnified Party for any reasonable legal or other expenses incurred by it in investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the Project. The indemnification required pursuant hereto shall be binding upon the Institution for any and all claims, demands, expenses, liabilities and taxes set forth herein. No Indemnified

Party shall be liable for any damage or injury to the person or property of the Institution or its assigns, directors, officers, agents, contractors or employees, or persons under the control or supervision of the Institution or any other person who may be involved with the Project in any way, due to any action, inaction, or negligence of any person. This provision shall survive the expiration or earlier termination of this Grant Agreement.

SECTION 2.6: Litigation.

There is no action or proceeding pending, or to the best knowledge of the Institution, threatened by or against it by or before any court or administrative agency that might adversely affect the ability of the Institution to perform its obligations under this Grant Agreement.

SECTION 2.7: Compliance with Laws and Regulations.

To the best of its knowledge, the Institution is in compliance with all applicable statutes, regulations or ordinances of governmental agencies and authorities having jurisdiction over it and the Project, including without limitation, those of the United States of America, the State and any municipal or local government entity with jurisdiction over the Project, including but not limited to those relating to the procurement and any and all environmental laws.

The Institution agrees to comply with the Act, all State and federal laws, all rules and regulations, and any other requirements imposed by law, including but not limited to those relating to the procurement of contracts to effectuate the Project.

Except as set forth on Exhibit B attached hereto and made a part hereof, the Institution has obtained, and is in material compliance with respect to, all government approvals, permits, certificates, inspections, consents and franchises necessary to complete the Project, to conduct its business, and to own or lease and operate its properties, and all such government approvals, permits and certificates are in full force and effect.

ARTICLE III: TERM OF THE GRANT AGREEMENT

SECTION 3.1: Term.

The term of this Grant Agreement shall commence on the Effective Date and continue in effect until such time as all of the Bonds and any refunding bonds have been paid (the “Term”).

This Grant Agreement shall not terminate prior to the end of the Term (other than such termination as is provided for elsewhere herein) for any cause including, without limitation, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the failure of the Secretary or the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Grant Agreement.

ARTICLE IV: THE PROJECT

SECTION 4.1: Project Acquisition or Construction.

The Institution agrees to enter into contract(s) for the acquisition or construction of the Project no later than twelve (12) months after the Effective Date. Additional requirements with respect to carrying out the Project will be set forth in the Tax Representation Certificate(s) (as defined in Section 5.1 hereof).

SECTION 4.2: Completion of Project.

Completion of the Project shall be evidenced by delivery to the Authority of a completion certificate (the “Completion Certificate”) in the form set forth in Exhibit E attached hereto, or in such other form as the Authority may require, certifying (a) the date of completion of the Project; (b) that the Institution has received and delivered to the Authority a copy of the permanent or temporary certificate of occupancy for the Project, if applicable; and (c) that the Institution has required in each construction contract with respect to the Project that wages paid to workers employed in the performance of such construction contract be paid, or has determined that such workers were paid, at a rate not less than the State prevailing wage rate, in compliance with N.J.S.A. 18A:72A-5.1 et seq.

SECTION 4.3: Title to Project.

With respect to the property or facility comprising the Project and in or on which the Project is to be constructed, located, affixed, and/or installed, the Institution represents, warrants, and covenants that it has either (i) good, indefeasible and marketable title to and fee simple ownership of such property or facility, or (ii) the legal and enforceable right to use and occupy such property or facility, and to construct, locate, affix, and/or install the Project therein or thereon, pursuant to a written agreement, the term of which extends or can be renewed at the Institution’s option for so long as the Project is located therein or thereon.

The Institution shall not sell, lease, abandon, or otherwise dispose of the Project prior to the expiration of the Term without the prior written approval of the Authority and the Secretary. In addition, the Institution acknowledges and agrees that, notwithstanding the receipt of any such approval, the Institution may be required to repay the Grant in full in the event of any sale, lease, abandonment, or other disposition of the Project.

SECTION 4.4: Default in Contractors’, Vendors’ or Suppliers’ Performance.

In the event of a default of any contractor, subcontractor, vendor or supplier under the terms of any contract made in connection with the Project, the Institution will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Institution against the contractor, subcontractor, vendor or supplier in default and against each surety for the performance of such contractor, subcontractor, vendor or supplier. The Institution agrees to advise the Authority, in writing, of the steps it intends to take in connection with any such default. The Authority, after notifying the Institution in writing, in good faith and in its own name, may but shall not be required under any

circumstances to, prosecute or defend any action or proceeding or take any other action which the Authority deems reasonably necessary, and in such event the Institution hereby agrees to cooperate fully with the Authority. Such action may be taken in the sole discretion of the Authority. Any amounts which are recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, net of expenses incurred by the Authority to obtain such recovery, shall be paid to the Institution, and applied to payment of the costs of the Project.

SECTION 4.5: Maintenance of the Project.

The Institution covenants that it shall at all times during and after the completion of the Project cause the same to be maintained, preserved and kept properly, with the appurtenances and every part and parcel thereof in good repair, working order and condition.

SECTION 4.6: Covenant Against Waste.

The Institution covenants not to cause, suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, the Project.

SECTION 4.7: Damage or Destruction.

The Institution agrees to immediately notify the Authority in the event of damage to or destruction of all or a portion of the Project resulting from fire or other casualty. The Institution agrees to promptly repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction and the Institution will apply the net proceeds of any insurance relating to such damage or destruction received by the Institution to the payment or reimbursement of the costs of such repair and restoration, except as expressly authorized by the Authority in its sole discretion upon the advice of its bond counsel.

SECTION 4.8: Insurance.

Prior to the execution of this Grant Agreement, the Institution shall provide evidence to the Authority that the Institution has procured the insurance required by this Section 4.8.

The Institution shall procure and maintain, or cause to be procured and maintained, sufficient coverage under its commercial general liability insurance policy and, if applicable, builder's risk insurance policy to cover not only its own liability but also any liability which might arise against the Indemnified Parties (as defined in Section 2.5(b)) to the extent such liability is insurable under a commercial general liability insurance policy or a builder's risk insurance policy. The Institution shall include or cause to be included the Indemnified Parties as additional insureds in any liability insurance coverage for the Project, including insurance obtained by the Institution's general contractor and subcontractors performing work on the Project.

In addition to procuring and maintaining the liability insurance specified above, the Institution agrees to procure and maintain, or to cause to be procured and maintained, to the extent reasonably obtainable, at the expense of the Institution, such insurance as is customarily maintained on facilities and equipment similar to the facilities and equipment comprising the Project. The Authority, the State, the Secretary, the Department of the Treasury and the Bond Trustee shall be named as additional insureds on such insurance.

All insurance required by this Section 4.8 (collectively, the “Required Insurance”) shall be procured from financially sound and reputable insurers qualified to do business in the State with a minimum A-VII rating per AM BEST or insurers approved, in writing, by the Authority.

Upon the Authority’s request from time to time, the Institution shall provide evidence to the Authority that the Institution has procured the Required Insurance in accordance with this Section 4.8. In addition, pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution has procured and is maintaining the Required Insurance.

The Institution shall promptly notify the Authority and the Secretary in writing in the event of any change in the insurance coverage being maintained by the Institution.

Notwithstanding the foregoing, nothing herein shall be deemed to prohibit the Institution from participating in a program of self-insurance, a cooperative insurance purchasing program, or a similar insurance program, and such programs may, upon review by the Authority, be deemed to meet the requirements of this Section 4.8. The procurement of insurance shall not relieve the Institution from its obligations under Section 2.5 hereof.

SECTION 4.9: Mechanics’ Liens.

The Institution covenants to keep the Project, and the fixtures and equipment thereof, free and clear of mechanics’ liens and other liens of like nature at all times during the Term of this Grant Agreement, and the Institution shall at all times duly protect the State, the Authority, the Secretary, the Department of the Treasury and their respective directors, officers, and employees against any and all attorney’s fees, costs and expenses which may accrue, grow out of or be incurred by reason of or on account of any such liens or claims.

SECTION 4.10: Modification of Project.

Pursuant to N.J.A.C. 9A:15-1.6(i), in the event that the Institution requires a modification to the Project, the Institution shall submit a formal written request to the Secretary, prior to the Institution taking any action to modify the Project, in order to allow the Secretary to evaluate the merits of the proposed modification against the objectives set forth at N.J.A.C. 9A:15-1.5(b). The Secretary may exercise discretion to allow the Institution to modify the Project if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved project and if such modification does not constitute a material change. Project

modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the Grant Agreement, the Tax Representation Certificate, any other applicable Bond documents, and applicable State and federal law.

SECTION 4.11: No Use of Project for Religious Instruction or Worship.

The Institution covenants and agrees that the Project shall be used solely for the approved purposes of the Grant and as permitted under the Act. The Institution further covenants and agrees that at no time shall the Project, or any part thereof, be used or be allowed to be used for religious instruction or as a place for religious worship even after the Bonds or any refunding bonds are no longer outstanding.

SECTION 4.12: Additional Covenants.

(a) The Institution covenants, represents and agrees that the Institution is and during the Term of this Grant Agreement will be in compliance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

(b) The use of the Project, the admission of students to the Institution, and the provision of services to students, are not, and shall at no time be, restricted on racial or religious grounds, nor shall there be a religious test for such use, admission, or provision of services.

(c) There is not, and shall at no time be, a requirement that individuals gaining admission to or receiving services from the Institution, or otherwise using the Project, receive instruction in the tenets of a particular faith, nor shall religious instruction be mandatory.

ARTICLE V: TAX COVENANTS

SECTION 5.1: Tax Status; Tax Representation Certificate.

The Institution covenants and represents that it has executed or will execute one or more Tax Representation Certificates (each, a “Tax Representation Certificate”) as to compliance with the Code and the Treasury Regulations promulgated thereunder or made applicable thereto (the “Treasury Regulations”) relating to the Grant, the Project and the Bonds (and any refunding bonds), in the form required by the Authority’s bond counsel. The provisions of each such Tax Representation Certificate shall be incorporated herein by reference and shall be binding upon the Institution. The Institution represents, and covenants that the representations and covenants of the Institution set forth in the Institution’s Tax Representation Certificate(s) are and will be true, correct and complete as of the date of issuance of the Bonds, and, in the case of any Tax Representation Certificate delivered in connection with refunding bonds, as of the date of issuance of the refunding bonds. The Institution understands that the statements, covenants and undertakings made in the Tax Representation Certificate(s) and this Grant Agreement shall be relied upon by the Authority and its bond counsel in connection with the issuance of the Bonds and any refunding bonds, and that any misstatement or failure to comply

with any such undertaking on the part of the Institution may result in adverse consequences affecting a significantly greater principal amount of Bonds (or refunding bonds) than the amount of the Grant Amount.

SECTION 5.2: No Change in Use of Grant Amount or Project.

The Institution acknowledges and agrees that the Grant Amount is or will be funded from Bonds issued or to be issued by the Authority pursuant to the Act, and that such Bonds have been or are expected to be issued on a tax-exempt basis. In order to ensure the continued compliance of the Project with applicable State law and policy, and to ensure the continued tax-exempt status of the Bonds and any bonds issued to refund the Bonds, the Institution shall use the Grant Amount and the Project as described in Section 1.1 hereof and in the Institution’s Tax Representation Certificate(s) and shall not change or permit a change in the use of the Grant Amount or the Project unless (i) the Authority approves such change in use of all or a portion of the Grant Amount and the Project, (ii) all other required approvals are obtained, including the approval of the Secretary, and (iii) if required, the Authority receives an opinion from nationally recognized bond counsel that such change in use will not adversely affect the tax-exempt status of the Bonds and any bonds issued to refund such Bonds. The Institution shall pay any and all fees incurred to obtain such opinion(s).

SECTION 5.3: No Arbitrage Bonds.

The Institution does not anticipate any fundraising campaigns or the receipt of any charitable contributions or other sources of funding for the Project that would result in having such other sources of funds and the proceeds of the Allocable Bonds available for the same costs of the Project. Without limiting the foregoing, the Institution hereby covenants that it will make no use of the proceeds of the Allocable Bonds or the proceeds of any refunding bonds if such use would cause the Bonds or the refunding bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

SECTION 5.4: Certain Uses of Proceeds of the Grant Not Permitted.

The Institution covenants and agrees that, unless the Institution obtains the prior written consent of the Authority, which consent shall be based upon the advice of bond counsel to the Authority, the Institution shall not, directly or indirectly, (i) use or allow any portion of the Project or any amount of the Grant to be used by any person or entity that is not a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code); (ii) use any amount of the Grant to make or finance loans to any person; or (iii) use or allow the Project or the Grant to be used with respect to any output facility or to acquire non-governmental output property (within the meaning of Section 141 of the Code).

SECTION 5.5: Covenant Not to Purchase Bonds.

The Institution covenants and agrees that neither it nor any party related to it, within the meaning of Treasury Regulation 1.150-1(b), pursuant to an arrangement, formal or informal, shall purchase bonds of the Authority issued to finance or refinance the Grant or the Project.

SECTION 5.6: Written Procedures as to Post-Issuance Tax Compliance.

The Institution acknowledges and agrees that the Authority has adopted written post-issuance compliance procedures (the “Authority Written Procedures”) to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. Unless the Institution has already adopted its own written post-issuance compliance procedures with respect to bond-financed facilities to monitor compliance with the applicable provisions of the Code and Treasury Regulations, then, within ninety (90) days after the Effective Date of this Grant Agreement or within ninety (90) days after the date of issuance of the Bonds (whichever is earlier), the Institution shall adopt written post-issuance compliance procedures (collectively, the “Institution Written Procedures” and, together with the Authority Written Procedures, the “Written Procedures”) to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. The Institution shall provide a copy of the Institution Written Procedures to the Authority upon adoption thereof. The Institution agrees to comply with the Written Procedures and, at least once each year, the Institution shall review the use of the Institution’s facilities that have been financed or refinanced with proceeds of the Allocable Bonds and/or proceeds of any other outstanding bonds of the Authority (“Other Authority Bonds”), in order to determine whether the use of such facilities complies with all federal tax requirements applicable to the Allocable Bonds and the Other Authority Bonds. Pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution is in compliance with the Written Procedures and this Section 5.6.

SECTION 5.7: Special Notice Events.

The Institution shall provide prompt written notice to the Authority of the occurrence of any of the acts or events listed on Exhibit D attached hereto and made a part hereof (each, a “Special Notice Event”). The Institution acknowledges and agrees that the occurrence of any of such acts or events may jeopardize the tax-exempt status of the Bonds (and any refunding bonds). The Institution will use its best efforts to provide advance notice of any such occurrence, but will in any event provide notice no later than thirty (30) days after the occurrence of any such Special Notice Event, whether the Institution is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Special Notice Event shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event shall have occurred, or otherwise. The Institution agrees that,

in consultation with the Authority, and at the sole cost and expense of the Institution, the Institution shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, or it shall assist the Authority in the Authority's taking of such actions, including without limitation such actions as may be required pursuant to Treasury Regulations Section 1.141-12 or a closing agreement with the Internal Revenue Service, and shall provide to the Authority an opinion of nationally recognized bond counsel as to such plan of remediation and whether or not the tax-exempt status of the Bonds will be preserved. Without limiting the foregoing, the Authority shall have the right, upon prior written notice to the Institution, to conduct its own investigation of any Special Notice Event and, at the sole cost and expense of the Institution, retain bond counsel to determine any and all actions required to remediate such Special Notice Event including but not limited to the delivery of an opinion of bond counsel.

SECTION 5.8: Records Retention.

The Institution covenants and agrees to create and maintain records with respect to the Grant and the Project which, in the judgment of the Authority, are sufficient to determine the compliance of the Allocable Bonds (and any refunding bonds) with the requirements of the applicable provisions of the Code and Treasury Regulations, including but not limited to records with respect to (i) the allocation and use of the proceeds of the Allocable Bonds, (ii) the ownership and use of all property financed with proceeds of the Allocable Bonds, (iii) the existence or creation of any "replacement proceeds" (as defined in the Institution's Tax Representation Certificate) as such records are further described in the Institution's Tax Representation Certificate with respect to the Allocable Bonds, and (iv) the information necessary to establish any exception to the arbitrage rebate requirement (as defined in the Institution's Tax Representation Certificate) with respect to the Allocable Bonds, as such records are further described in the Institution's Tax Representation Certificate. The Institution covenants to retain all such records until the expiration of three (3) years after the later of (i) the last scheduled maturity date or earlier retirement of the Bonds, and (ii) if any of the Bonds have been refunded, the last scheduled maturity date or earlier retirement of any refunding bonds. Such records of the Institution shall be provided to the Authority upon written request.

SECTION 5.9: Right to Obtain Bond Counsel Opinion.

The Authority and the Institution shall not be required to comply with any one or more requirements of this Article V to the extent that an opinion of nationally recognized bond counsel is obtained to the effect that failure to comply with such requirements, or compliance with other requirements in lieu thereof, will not impair the exclusion from gross income of interest on the Bonds for purposes of federal income taxation under Section 103 of the Code.

ARTICLE VI: EVENTS OF DEFAULT

SECTION 6.1: Events of Default.

The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree, or order of any court, or any order, rule or regulation of any administrative or governmental body) shall constitute an “Event of Default”:

- (a) Any representation or warranty, statement, report, financial statement or certificate made by the Institution in its application or in this Grant Agreement is false, misleading, or inaccurate in any material respect.
- (b) Failure by the Institution to observe and perform in any material respect any term, covenant, or condition imposed on it under this Grant Agreement and such failure shall have continued for thirty (30) days after the earlier of (i) delivery to the Institution of written notice thereof from the Authority, or (ii) the Institution’s actual or constructive knowledge of such failure, however, if such failure is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) day period, but such diligent efforts are properly commenced within the cure period and the Institution is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional forty-five (45) days and in no case to extend beyond the expiration of the Term of this Grant Agreement.

SECTION 6.2: Remedies.

- (a) Upon the occurrence of any Event of Default, following applicable notice and cure periods, the Authority shall have the right, at its sole and absolute discretion, upon thirty (30) days written notice to the Institution, to terminate this Grant Agreement, at which time any obligation of the Authority to make any further payments as contemplated by this Grant Agreement shall immediately terminate. The Authority shall also have any remedies at law or equity, including specific performance.
- (b) If, after thirty (30) days written notice is sent, the Institution has failed to comply with any of the terms of this Grant Agreement, or if there are disallowed costs, or the payment of a Grant Amount in excess of eligible Project costs, then the State Treasurer is authorized to withhold and/or intercept any State aid or appropriation payable to the Institution, in an amount sufficient to satisfy any default or failure of the Institution, including return of the Grant Amount to the Authority.
- (c) Upon the occurrence of any Event of Default, the Grant Amount is subject to forfeiture, provided that the Grant Amount shall not be forfeited if such non-compliance is curable within forty-five (45) days and the Institution is diligently pursuing such cure.

- (d) Upon the occurrence of an Event of Default, the amount of the Grant Amount that has been expended as of the date of such Event of Default for or on behalf of the Institution may, upon demand of the Authority, in consultation with the Secretary, the Attorney General and the Authority’s bond counsel, be required to be repaid to the Authority by the Institution. The Authority shall determine whether repayment of the Grant Amount is required, in consultation with the Secretary, the Attorney General and its bond counsel, based on the facts and circumstances related to the Event of Default and whether there exists the need to redeem or defease Allocable Bonds to ensure the continued tax-exempt status of the Bonds.
- (e) No remedy conferred herein upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Grant Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section 6.2, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.
- (f) Absent an Event of Default, there is no obligation or expectation that any repayments will be made by the Institution to the Authority with respect to the Grant Amount.

ARTICLE VII: MISCELLANEOUS

SECTION 7.1: No Additional Waiver Implied by One Waiver.

In the event any agreement, covenant, warranty, or representation contained in this Grant Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7.2: Severability.

In case any one or more of the provisions of this Grant Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Grant Agreement, but this Grant Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

SECTION 7.3: Successors and Assigns.

This Grant Agreement shall inure to the benefit of and shall be binding upon the Institution, the Authority and their respective successors and assigns.

SECTION 7.4: Governing Law.

This Grant Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to its choice of law rules thereof. The Institution hereby consents to the jurisdiction of the Superior Court of the County of Mercer, New Jersey and agrees that any lawsuits of any nature pertaining to this Grant Agreement shall be brought in that Court in the first instance.

SECTION 7.5: Non-Waiver.

It is understood and agreed that nothing contained in this Grant Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right not explicitly waived in this Grant Agreement.

SECTION 7.6: Torts Claim and Contractual Liability Acts.

The liability of the Secretary, the Authority, the Department of the Treasury and their respective directors, officers and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., is not applicable by its terms to the Authority, the Institution hereby agrees that such statute (except for N.J.S.A. 59:13-9) shall be applicable to all claims against the Authority under this Grant Agreement.

SECTION 7.7: Headings.

The Section headings in this Grant Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Grant Agreement.

SECTION 7.8: Notices.

All notices required to be given or authorized to be given by the Parties pursuant to this Grant Agreement shall be in writing and shall be sent to the main offices of the respective Parties by registered or certified mail or by email with confirmation of receipt.

SECTION 7.9: Amendments.

This Agreement shall not be amended or modified in any manner without the written consent of the Secretary and the State Treasurer. Any amendments or modifications shall be in writing and signed by each of the Parties. Material changes to this Agreement will not be allowed.

SECTION 7.10: Rights Cumulative.

All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

SECTION 7.11: Third Party Beneficiary.

The Parties agree that the State is intended to be and shall be a third party beneficiary of this Agreement.

SECTION 7.12: Additional Representations and Covenants.

Upon or prior to the issuance of the Bonds, a schedule reflecting additional representations, undertakings and covenants applicable to the Project and the Grant may be attached hereto as a condition to this Agreement. Any such additional provisions shall be incorporated herein and shall be binding upon the Institution.

SECTION 7.13: Electronic Signatures.

Pursuant to N.J.S.A. 12A:12-1 et seq., the “Uniform Electronic Transactions Act,” electronic signatures to a contract shall be binding upon agreement of all parties. The Parties hereto agree that this Grant Agreement, and all documents, certificates, opinions and requisitions delivered pursuant to the terms hereof, may be executed with electronic signatures.

SECTION 7.14: Counterparts.

This Grant Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives, each acting in their official capacities, have caused this Grant Agreement to be executed and delivered as of the Effective Date.

[NAME OF INSTITUTION]

**NEW JERSEY EDUCATIONAL
FACILITIES AUTHORITY**

By: _____
Name:
Title:

By: _____
Name:
Title:

List of Exhibits:

- Exhibit A:** Description of Project
- Exhibit B:** Compliance Exceptions
- Exhibit C:** Form of Requisition
- Exhibit D:** Special Notice Events
- Exhibit E:** Completion Certificate

EXHIBIT A
DESCRIPTION OF PROJECT

[Project Description]

* The Project financed by the Bonds only includes components of the Project that can be financed under the Act and does not include those items that are described, but which are being financed by other grants or leases from the Authority or the State and/or other funding sources. To the extent the Project includes components that cannot be financed under the Act, the Institution represents that amounts advanced under this Grant Agreement will only be used for eligible components and that the Institution has sufficient funds from other sources to finance the balance of the Project. The portions of the Project that are financed with the Bonds will be described in the Institution's Tax Representation Certificate.

EXHIBIT B

COMPLIANCE EXCEPTIONS

- No compliance exceptions.**
- Compliance exceptions as described below:**

EXHIBIT C

FORM OF REQUISITION

EXHIBIT D

SPECIAL NOTICE EVENTS

EXHIBIT E

FORM OF COMPLETION CERTIFICATE

**RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES
AUTHORITY APPROVING FORMS OF GRANT AGREEMENTS TO BE
ENTERED INTO IN CONNECTION WITH THE AUTHORITY'S HIGHER
EDUCATION CAPITAL IMPROVEMENT FUND PROGRAM**

Adopted: February 28, 2023

- WHEREAS:** The New Jersey Educational Facilities Authority (the “Authority”) is a public body corporate and politic of the State of New Jersey (the “State”) established pursuant to the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented), N.J.S.A. 18A:72A-1 et seq. (the “Act”); and
- WHEREAS:** The Authority is authorized pursuant to the New Jersey Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 et seq. (the “CIF Act”) to issue bonds (“CIF Bonds”) to finance the cost, or a portion of the cost, of the renewal, renovation, improvement, expansion, construction, and reconstruction of instructional, laboratory, communication, research, and administrative facilities, or technology infrastructure, at New Jersey’s four-year public and private institutions of higher education (“Institutions”); and
- WHEREAS:** The Secretary of Higher Education (the “Secretary”) promulgated regulations to provide the mechanism by which Institutions may apply for and receive grants under the CIF Act, set forth at N.J.A.C. 9A:12-1.1 to -1.8; and
- WHEREAS:** In accordance with the CIF Act, the Authority intends to issue CIF Bonds to finance grants (each, a “CIF Grant”) to be made to Institutions to pay all or a portion of the costs of projects approved for funding pursuant to the CIF Act; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-77, Institutions may apply for CIF Grants, and the Secretary shall review the applications, shall approve or disapprove each grant, shall establish the amount of each approved grant, and shall send a written certification of the approval and amount of each approved grant to the Authority; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-77, the Secretary shall submit to the New Jersey Legislature (the “Legislature”) a copy of the written certification of each approved grant and the amount thereof; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-77 and N.J.A.C. 9A:12-1.6(c), if the Legislature does not disapprove a grant by the adoption of a concurrent resolution within 45 days of receipt from the Secretary of the written certification, the grant shall be deemed to be approved by the Legislature and by the Secretary; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-78 and N.J.A.C. 9A:12-1.6(d), upon authorization of a CIF Grant, an Institution shall enter into a grant agreement (each, a “CIF Grant

Agreement”) with the Authority, which agreement shall be approved by a resolution of the Authority, and which agreement shall set forth the terms of the award of the CIF Grant in accordance with the provisions of the CIF Act and other applicable law; and

WHEREAS: Pursuant to N.J.S.A. 18A:72A-78, the Authority shall include in the CIF Grant Agreements such provisions as may be necessary to ensure that the Institutions shall provide one-third, in the case of public institutions of higher education, or one-half, in the case of private institutions of higher education, of the debt service on the CIF Bonds allocable to finance the Institution’s CIF Grant; and

WHEREAS: The Authority now wishes to approve the forms only of the CIF Grant Agreements to be entered into with Institutions in connection with the CIF Grants to be approved by the Secretary and the Legislature pursuant to the CIF Act.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY AS FOLLOWS:

Section 1. The recitals set forth above are incorporated herein by reference as if set forth at length herein. For the purposes hereof, “Authorized Authority Representatives” shall mean the Chair, the Vice Chair, the Secretary, any Assistant Secretary, the Executive Director, the Deputy Executive Director or the Director of Compliance Management of the Authority and any such officers designated as “acting” or “interim”.

Section 2. The CIF Grant Agreements to be entered into with Institutions that are New Jersey four-year public institutions of higher education shall be substantially in the form presented to this meeting (a copy of which shall be filed with the records of the Authority), and such form is hereby approved, provided that the Authorized Authority Representatives are hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate (including, without limitation, the inclusion of additional representations, warranties and/or covenants on the part of the Institutions, and any other provision that may be necessary or convenient).

Section 3. The CIF Grant Agreements to be entered into with Institutions that are New Jersey four-year private institutions of higher education shall be substantially in the form presented to this meeting (a copy of which shall be filed with the records of the Authority), and such form is hereby approved, provided that the Authorized Authority Representatives are hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate (including, without limitation, the inclusion of additional representations, warranties and/or covenants on the part of the Institutions, and any other provision that may be

necessary or convenient).

Section 4. The execution and delivery of the CIF Grant Agreements shall be authorized by subsequent resolution of the Authority following approval of the CIF Grants by the Legislature and the Secretary pursuant to N.J.S.A. 18A:72A-77 and N.J.A.C. 9A:12-1.6(c).

Section 5. This Resolution shall take effect in accordance with the provisions of the Act.

____ Mr. Hutchinson ____ moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by ____ Mr. Rodriguez __ and upon roll call the following members voted:

AYE: Joshua Hodes
Ridgeley Hutchinson
Louis Rodriguez
Brian Bridges
Elizabeth Maher Muoio (represented by Ryan Feeney)

NAY: None

ABSTAIN: None

ABSENT: None

The Chair thereupon declared said motion carried and said resolution adopted.

GRANT AGREEMENT

Between the

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY,
as Grantor

and

[NAME OF INSTITUTION],
as Grantee

Dated as of _____ 1, 2023

HIGHER EDUCATION CAPITAL IMPROVEMENT FUND

Grant Amount: \$ _____

Project ID#: _____

THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY
HIGHER EDUCATION CAPITAL IMPROVEMENT FUND

GRANT AGREEMENT

[Institution]

THIS GRANT AGREEMENT, is executed as of _____ 1, 2023 (the “Effective Date”) by and between the New Jersey Educational Facilities Authority (the “Authority”), a public body corporate and politic of the State of New Jersey (the “State”) and [NAME OF INSTITUTION] (the “Institution”), a private institution of higher education as defined in N.J.S.A. 18A:72A-3 (collectively, the “Parties”), pursuant to the provisions of the Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 to -80, as amended (the “Act”), for the purpose of providing funds for the renewal, renovation, improvement, expansion, construction and/or reconstruction of certain facilities, or technology infrastructure, at the Institution, in accordance with the Act and as further described herein.

ARTICLE I: THE GRANT

SECTION 1.1: Grant Amount.

(a) The Institution is hereby awarded a grant (the “Grant”) in the amount of _____ dollars (\$_____) (the “Grant Amount”) to be used to finance the costs of the project described in the attached Exhibit A (the “Project”), as approved by the Secretary of Higher Education (the “Secretary”). A description of the Project as so approved is attached hereto and incorporated herein by reference. The Grant Amount will be funded with the proceeds of one or more series of tax-exempt revenue bonds issued or to be issued by the Authority pursuant to the Act (the “Bonds”); provided, however, that the payment of the Grant Amount is expressly conditioned upon the issuance of the Bonds, if, when, and as issued, in an amount sufficient to fund the Grant Amount, and also upon the Institution’s execution and delivery of all documents, certificates, opinions and other items as may be required by the Authority in connection with the issuance of the Bonds and the making of the Grant. The issuance of the Bonds is subject to the approval of the Authority’s Board and the funding of the Grant Amount is subject to final review by the Authority’s bond counsel as to the eligibility of the Project for financing with tax-exempt Bonds.

(b) The term “Allocable Bonds,” when used herein, shall mean the portion of the Bonds allocable to this Grant (i.e., the amount of Bonds issued to finance the Grant Amount and a proportionate share of the costs of issuance of the Bonds and the Authority’s administrative costs associated with the approval process for the projects financed by the Bonds).

SECTION 1.2: Institution’s Financing Requirements.

In exchange for receipt of the Grant Amount, the Institution agrees to pay to the Authority an amount equal to one-half of the amount necessary to pay the principal of and interest on the Allocable Bonds and any refunding bonds, plus the Institution’s share of any Fees (defined below) allocable to the Institution, plus its share of any amounts payable in connection with any agreement authorized under N.J.S.A. 18A:72A-78(e) (collectively the “Debt Service Requirement”). “Fees” shall mean any fees, costs or expenses, including without limitation, swap termination fees, remarketing agent fees, annual rating agency fees, escrow agent fees, annual Authority fees and any other fees or amounts payable under or in connection with a swap agreement or variable rate debt or otherwise relating to the Allocable Bonds. A schedule reflecting the amounts in respect of the principal of and interest on the Allocable Bonds (or refunding bonds) payable by the Institution shall be attached hereto as Schedule I, “Institutional Debt Service Schedule” and shall be incorporated herein, and such schedule shall be binding upon the Institution. Such amounts shall be payable to the Authority at such time and place that may be specified by the Authority, not more than thirty (30) days nor less than fifteen (15) days prior to the payment dates listed on the Institutional Debt Service Schedule. The State Treasurer may retain from State aid or an appropriation payable to the Institution an amount sufficient to satisfy any amount that such Institution fails or is unable to make to pay principal and interest on the Allocable Bonds (or refunding bonds) under this Grant Agreement and such retention shall not obligate the State to make, nor the Institution to receive, any additional appropriation or apportionment.

The obligation of the Institution to provide funding as described in this Section 1.2 and to perform its obligations under this Grant Agreement shall be absolute and unconditional, and such funds shall be required without any rights of set off, recoupment or counterclaim it might have against the Secretary, the State, the Authority, or any other person and whether or not the Project is used by the Institution or available for use by the Institution.

SECTION 1.3: Reduction or Cancellation of Grant Amount.

The Institution acknowledges and agrees that the Secretary may reduce or cancel the Grant Amount (a) if the Institution determines not to undertake the Project, (b) if the Bonds are not issued for any reason whatsoever, (c) to adjust for actual Project expenses in a manner consistent with the Grant Amount, or (d) if the Project is not substantially completed and the Grant Amount is not substantially disbursed six (6) months after the estimated construction completion date set forth in the Grant application, as adjusted for any actual delay to the Institution entering into the contract(s) specified in Section 4.1 below. Notwithstanding anything to the contrary foregoing, no adjustment or reduction pursuant to clause (d) above will be made if (i) delays are the result of federal, State, or local governmental approvals or regulatory requirements not attributable to the Institution; (ii) delays are the result of the availability of funding under this Grant Agreement; or (iii) other compelling and documentable reasons exist as determined by the Secretary.

SECTION 1.4: Eligibility for Reimbursement of Expenditures.

The Institution agrees that the Grant Amount may not be used to reimburse expenditures incurred by the Institution prior to _____, 2023 (the “Reimbursement Eligibility Date”). As used herein, the term “incurred” as applied to any expenditure shall mean the earlier to occur of (i) the date services were provided or goods were delivered, or (ii) the date that the Institution expended funds to pay (or prepay) for the expenditure. Only expenditures incurred on or after the Reimbursement Eligibility Date may be reimbursed. All such reimbursements shall be subject to approval by the Authority and, upon the request of the Authority, review by its bond counsel. No financing costs or interest expense of any interim debt shall be reimbursed, and no liens in respect of any interim debt shall be permitted to exist at the time of issuance of the Bonds.

SECTION 1.5: Sufficient Funding.

The Institution represents and warrants that it has or reasonably expects to have sufficient funding to complete the Project, including to pay the Debt Service Requirement. The Institution also acknowledges that any Project costs exceeding the costs of the Project approved by the Secretary shall be the responsibility of the Institution.

SECTION 1.6: Use of Grant Amount; Disbursement Pursuant to Requisitions.

The Institution has committed, by resolution of its governing board, to use the Grant Amount to finance costs of the Project, and to operate and maintain the Project. All costs to be funded or reimbursed from the Grant Amount shall be subject to the State prevailing wage requirements of N.J.S.A. 18A:72A-5.1 et seq.

The Institution covenants that not more than twenty percent (20%) of the Grant Amount shall be used for renewal and renovation or improvement, expansion, construction and reconstruction with respect to “student-support facilities” (as defined in the Act).

The Authority shall disburse, or cause the trustee for the bonds (the “Bond Trustee”) to disburse, from time to time, the Grant Amount to the Institution, but only upon receipt and approval of requisitions submitted to and approved by the Authority. Each requisition shall be executed by an authorized representative of the Institution and shall be in the form set forth in Exhibit C attached hereto, or in such other form as the Authority may require. The Institution shall not alter, retype, reformat, or otherwise modify or revise the approved form of requisition. The Authority will not accept any requisition that does not conform to the Authority’s approved form.

The Institution shall submit requisitions promptly and shall comply with any time constraints for the submission of requisitions that the Authority or the Secretary may impose.

SECTION 1.7: No Assignment; No Pledge.

This Grant Agreement may not be assigned by the Institution, nor may it be pledged as collateral for any purpose.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1: Existence.

The Institution is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State, and has the necessary power and authority to execute and deliver this Grant Agreement and any other documents to which the Institution is a party, and to perform its obligations hereunder and thereunder.

SECTION 2.2: Eligible Institution; Accuracy of Grant Application.

(a) The Institution represents and warrants that it is a duly accredited four-year “private institution of higher education” as defined in N.J.S.A. 18A:72A-3, meaning that it is an independent college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education which is equivalent to the education provided by the State’s public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid.

(b) The Institution represents and warrants that all of the statements and representations made in its application for the Grant were on the date made, are on the Effective Date hereof, and shall continue to be, true and correct in all material respects.

SECTION 2.3: Authorization and Validity.

The execution, delivery and performance of this Grant Agreement by the Institution shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or a breach of any provision contained in its certificate of formation or authorizing legislation (as applicable), or contained in any agreement, instrument, document, bond indenture, law, rule, regulation, order, decree, writ, judgment, injunction, or award to which it is now a party or by which it or any of its assets is bound.

The execution and delivery by the Institution of this Grant Agreement and any other documents to which the Institution is a party related to the execution and delivery of this Grant Agreement (including, without limitation, the application for the Grant submitted to the Secretary, resolutions adopted by the Institution and any Tax Representation Certificates, as defined below (collectively, the “Other Grant Documents”)) have been or will be as of their date of execution duly authorized by proper proceedings of the Institution, and no further approval, authorization or consents are required by law or otherwise. This Grant Agreement and the Other Grant Documents

constitute or shall, upon their execution and delivery, constitute the legal, valid and binding obligations of the Institution enforceable in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, and by general equitable principles.

SECTION 2.4: Reporting; Inspection; Disclosure; Recordkeeping.

(a) Annual Financial Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term (as defined in Section 3.1 hereof) of this Grant Agreement, the Institution shall provide the following to the Authority: copies of the Institution’s annual financial statements, auditor’s reports, and IRS Form 990 for the prior fiscal year, prepared in compliance with applicable State and federal law and policy, as may be amended from time to time, including but not limited to the provisions of any State policies applicable to the receipt of grants from the State.

(b) Annual Compliance Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term of this Grant Agreement, the Institution shall provide the following information and certifications to the Authority in response to the Authority’s annual compliance questionnaire or in such other format as may be requested by the Authority:

(i) A detailed description of any use of the Project by any person or entity other than the Institution (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(ii) A detailed description of the receipt by the Institution of any previously undisclosed contribution or other amount earmarked for the Project (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(iii) If the Grant Amount has not yet been fully disbursed, (A) a detailed report of all expenditures for the Project during the prior calendar year and during the current calendar year up to the date of submission of the Institution’s response (including the amount and purpose of each expenditure), and (B) a detailed description of the amounts or estimated amounts expected to be spent on the Project during the current calendar year (including the timing, amount, and purpose of each such expenditure);

(iv) If a Completion Certificate (as defined in Section 4.2 hereof) has not yet been submitted to the Authority, a statement regarding the status and progress of the Project, including the estimated percentage of completion of the Project;

(v) Written confirmation that the Institution has used all disbursements of the Grant Amount for approved Project costs, in the amounts and for the purposes stated on the related requisitions, such confirmation to be made as of the date of submission of the Institution’s response, or, if the Institution cannot provide such

confirmation, a detailed description and explanation of the use of any amounts of the Grant Amount for which the Institution cannot so confirm;

(vi) Written confirmation that the Institution is in compliance with the Written Procedures (as defined in Section 5.6 hereof), has conducted an annual review for compliance with federal tax requirements during the prior calendar year, and has determined that the Project and the use of the Grant Amount are in compliance with federal tax requirements;

(vii) Written confirmation that there have been no material changes to the Project or to the use of the Grant Amount during the prior calendar year or during the current calendar year up to the date of submission of the Institution's response;

(viii) Written confirmation that the Institution has procured and is maintaining the Required Insurance (as defined in Section 4.8 hereof); and

(ix) Such other information and certifications relating to the use of the Project and the use of the Grant Amount as may be reasonably requested by the Authority for the purpose of confirming the Institution's compliance with applicable State and federal law and policy.

(c) Reporting of Special Notice Events. The Institution shall provide prompt written notice to the Authority of the occurrence of any Special Notice Event, as described in Section 5.7.

(d) Inspection. The Institution agrees to permit inspection of the Project and the Institution's books and records pertaining thereto by the Authority and the Secretary upon written request during normal business hours.

(e) Disclosure. The Institution agrees that, whenever requested by the Authority, it shall provide and certify, in form satisfactory to the Authority, such information concerning the Institution and the Project, the operations and finances of the Institution and such other matters that the Authority considers to be necessary in order to enable the Authority to prepare and publish an official statement or other similar disclosure document relating to the sale of the Bonds or any refunding bonds or to enable the Authority to make any reports which are required by any law or governmental regulations in connection with the Bonds.

(f) Recordkeeping. The Institution shall retain until three (3) years after the retirement of the Bonds and any refunding bonds, adequate records with respect to the use of the Project and the expenditure of the proceeds of the Grant, as described in Section 5.8.

SECTION 2.5: Disclaimer of Warranties; Indemnification.

(a) The Institution acknowledges and agrees that (i) neither the Authority nor the Secretary makes any warranty or representation, either express or implied, as to the

value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or the Secretary or their respective agents be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Grant Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Grant Agreement; and (iii) the Institution shall indemnify and hold the Authority and the Secretary harmless against, and the Institution shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the Authority and the Secretary may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Institution, the Institution's ownership of the Project, or the acquisition, construction or installation of the Project.

(b) The Institution shall at all times protect and hold the State, the Secretary, the Department of the Treasury, the Authority, the Bond Trustee and each of their assigns, directors, officers, agents, contractors and employees (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, attorneys' fees) and liabilities for losses, damage and injury, resulting from or arising out of: (1) any claim for the non-delivery of the Grant Amount in the event that the Bonds are not issued (2) the financing of the costs of the Project, (3) the ownership, planning, design, acquisition, site preparation, transportation, construction, renovation, equipping, installation, maintenance, repair, replacement or completion of the Project or any part thereof or the effecting of any work done as part of the Project, (4) any defects (whether latent or patent) in the Project or any part thereof, (5) the maintenance, repair, replacement, restoration, rebuilding, demolition, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, (6) any act of negligence of the Institution or of any of its agents, contractors, servants, employees or licensees at the Project, (7) any act of negligence of any assignee or sublessee of the Institution at the Project, (8) any violation of or failure to comply by the Institution with any legal requirement applicable to the Project, including environmental laws, or any cost imposed upon any of the Indemnified Parties by any legal requirement applicable to the Project, or (9) any action or inaction of the Institution that may adversely affect the tax-exempt status of the Bonds or any refunding bonds (assuming for this purpose that the Bonds consist only of the Allocable Bonds). The Institution shall reimburse any such Indemnified Party for any reasonable legal or other expenses incurred by it in investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the Project. The indemnification required pursuant hereto shall be binding upon the Institution for any and all claims, demands, expenses, liabilities and taxes set forth herein. No Indemnified Party shall be liable for any damage or injury to the person or property of the Institution or its assigns, directors, officers, agents, contractors or employees, or persons under the control or supervision of the Institution or any other person who may be involved with the Project

in any way, due to any action, inaction, or negligence of any person. This provision shall survive the expiration or earlier termination of this Grant Agreement.

SECTION 2.6: Litigation.

There is no action or proceeding pending, or to the best knowledge of the Institution, threatened by or against it by or before any court or administrative agency that might adversely affect the ability of the Institution to perform its obligations under this Grant Agreement.

SECTION 2.7: Compliance with Laws and Regulations.

To the best of its knowledge, the Institution is in compliance with all applicable statutes, regulations or ordinances of governmental agencies and authorities having jurisdiction over it and the Project, including without limitation, those of the United States of America, the State and any municipal or local government entity with jurisdiction over the Project, including but not limited to those relating to the procurement and any and all environmental laws.

The Institution agrees to comply with the Act, all State and federal laws, all rules and regulations, and any other requirements imposed by law, including but not limited to those relating to the procurement of contracts to effectuate the Project.

Except as set forth on Exhibit B attached hereto and made a part hereof, the Institution has obtained, and is in material compliance with respect to, all government approvals, permits, certificates, inspections, consents and franchises necessary to complete the Project, to conduct its business, and to own or lease and operate its properties, and all such government approvals, permits and certificates are in full force and effect.

ARTICLE III: TERM OF THE GRANT AGREEMENT

SECTION 3.1: Term.

The term of this Grant Agreement shall commence on the Effective Date and continue in effect until such time as all of the Bonds and any refunding bonds have been paid (the “Term”).

This Grant Agreement shall not terminate prior to the end of the Term (other than such termination as is provided for elsewhere herein) for any cause including, without limitation, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the failure of the Secretary or the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Grant Agreement.

ARTICLE IV: THE PROJECT

SECTION 4.1: Project Acquisition or Construction.

The Institution agrees to enter into contract(s) for the acquisition or construction of the Project no later than twelve (12) months after the Effective Date. Additional requirements with respect to carrying out the Project will be set forth in the Institution’s Tax Representation Certificate(s) (as defined in Section 5.1 hereof).

SECTION 4.2: Completion of Project.

Completion of the Project shall be evidenced by delivery to the Authority of a completion certificate (the “Completion Certificate”) in the form set forth in Exhibit E attached hereto, or in such other form as the Authority may require, certifying (a) the date of completion of the Project, (b) that the Institution has received and delivered to the Authority a copy of the permanent or temporary certificate of occupancy for the Project, if applicable, and (c) that the Institution has required in each construction contract with respect to the Project that wages paid to workers employed in the performance of such construction contract be paid, or has determined that such workers were paid, at a rate not less than the State prevailing wage rate, in compliance with N.J.S.A. 18A:72A-5.1 et seq.

SECTION 4.3: Title to Project.

With respect to the property or facility comprising the Project and in or on which the Project is to be constructed, located, affixed, and/or installed, the Institution represents, warrants, and covenants that it has either (i) good, indefeasible and marketable title to and fee simple ownership of such property or facility, or (ii) the legal and enforceable right to use and occupy such property or facility, and to construct, locate, affix, and/or install the Project therein or thereon, pursuant to a written agreement, the term of which extends or can be renewed at the Institution’s option for so long as the Project is located therein or thereon.

The Institution shall not sell, lease, abandon, or otherwise dispose of the Project prior to the expiration of the Term without the prior written approval of the Authority and the Secretary. In addition, the Institution acknowledges and agrees that, notwithstanding the receipt of any such approval, the Institution may be required to repay the Grant in full in the event of any sale, lease, abandonment, or other disposition of the Project.

SECTION 4.4: Default in Contractors’, Vendors’ or Suppliers’ Performance.

In the event of a default of any contractor, subcontractor, vendor or supplier under the terms of any contract made in connection with the Project, the Institution will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Institution against the contractor, subcontractor, vendor or supplier in default and against each surety for the performance of such contractor, subcontractor, vendor or supplier. The Institution agrees to advise the Authority, in writing, of the steps it intends to take in connection with any such default. The Authority, after notifying the Institution in writing, in good faith and in its own name, may but shall not be required under any

circumstances to, prosecute or defend any action or proceeding or take any other action which the Authority deems reasonably necessary, and in such event the Institution hereby agrees to cooperate fully with the Authority. Such action may be taken in the sole discretion of the Authority. Any amounts which are recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, net of expenses incurred by the Authority to obtain such recovery, shall be paid to the Institution, and applied to payment of the costs of the Project.

SECTION 4.5: Maintenance of the Project.

The Institution covenants that it shall at all times during and after the completion of the Project cause the same to be maintained, preserved and kept properly, with the appurtenances and every part and parcel thereof in good repair, working order and condition.

SECTION 4.6: Covenant Against Waste.

The Institution covenants not to cause, suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, the Project.

SECTION 4.7: Damage or Destruction.

The Institution agrees to immediately notify the Authority in the event of damage to or destruction of all or a portion of the Project resulting from fire or other casualty. The Institution agrees to promptly repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction and the Institution will apply the net proceeds of any insurance relating to such damage or destruction received by the Institution to the payment or reimbursement of the costs of such repair and restoration, except as expressly authorized by the Authority in its sole discretion upon the advice of its bond counsel.

SECTION 4.8: Insurance.

Prior to the execution of this Grant Agreement, the Institution shall provide evidence to the Authority that the Institution has procured the insurance required by this Section 4.8.

The Institution shall procure and maintain, or cause to be procured and maintained, sufficient coverage under its commercial general liability insurance policy and, if applicable, builder's risk insurance policy to cover not only its own liability but also any liability which might arise against the Indemnified Parties (as defined in Section 2.5(b)) to the extent such liability is insurable under a commercial general liability insurance policy or a builder's risk insurance policy. The Institution shall include or cause to be included the Indemnified Parties as additional insureds in any liability insurance coverage for the Project, including insurance obtained by the Institution's general contractor and subcontractors performing work on the Project.

In addition to procuring and maintaining the liability insurance specified above, the Institution agrees to procure and maintain, or to cause to be procured and maintained, to the extent reasonably obtainable, at the expense of the Institution, such insurance as is customarily maintained on facilities and equipment similar to the facilities and equipment comprising the Project. The Authority, the State, the Secretary, the Department of the Treasury, and the Bond Trustee shall be named as additional insureds on such insurance.

All insurance required by this Section 4.8 (collectively, the “Required Insurance”) shall be procured from financially sound and reputable insurers qualified to do business in the State with a minimum A-VII rating per AM BEST or insurers approved, in writing, by the Authority.

Upon the Authority’s request from time to time, the Institution shall provide evidence to the Authority that the Institution has procured the Required Insurance in accordance with this Section 4.8. In addition, pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution has procured and is maintaining the Required Insurance.

The Institution shall promptly notify the Authority and the Secretary in writing in the event of any change in the insurance coverage being maintained by the Institution.

Notwithstanding the foregoing, nothing herein shall be deemed to prohibit the Institution from participating in a program of self-insurance, a cooperative insurance purchasing program, or a similar insurance program, and such programs may, upon review by the Authority, be deemed to meet the requirements of this Section 4.8. The procurement of insurance shall not relieve the Institution from its obligations under Section 2.5 hereof.

SECTION 4.9: Mechanics’ Liens.

The Institution covenants to keep the Project, and the fixtures and equipment thereof, free and clear of mechanics’ liens and other liens of like nature, at all times during the Term of this Grant Agreement, and the Institution shall at all times duly protect the State, the Secretary, the Authority, the Department of the Treasury and their respective directors, officers, and employees against any and all attorney’s fees, costs and expenses which may accrue, grow out of or be incurred by reason of or on account of any such liens or claims.

SECTION 4.10: Modification of Project.

Pursuant to N.J.A.C. 9A:12-1.6(i), in the event that the Institution requires a modification to the Project, the Institution shall submit a formal written request to the Secretary, prior to the Institution taking any action to modify the Project, in order to allow the Secretary to evaluate the merits of the proposed modification against the objectives set forth at N.J.A.C. 9A:12-1.5(b). The Secretary may exercise discretion to allow the Institution to modify the Project if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved

project and if such modification does not constitute a material change. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the Grant Agreement, the Tax Representation Certificate, any other applicable Bond documents, and applicable State and federal law.

SECTION 4.11: No Use of Project for Religious Instruction or Worship.

The Institution covenants and agrees that the Project shall be used solely for the approved purposes of the Grant and as permitted under the Act. The Institution further covenants and agrees that at no time shall the Project, or any part thereof, be used or be allowed to be used for religious instruction or as a place for religious worship, even after the Bonds or any refunding bonds are no longer outstanding.

SECTION 4.12: Additional Covenants.

The Institution covenants, represents and agrees that:

- (i) The Institution is, and during the full Term of this Grant Agreement will be, in compliance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.;
- (ii) The use of the Project, the admission of students to the Institution, and the provision of services to students, are not, and shall at no time be, restricted on racial or religious grounds, nor shall there be a religious test for such use, admission, or provision of services;
- (iii) There is not, and shall at no time be, a requirement that individuals gaining admission to or receiving services from the Institution, or otherwise using the Project, receive instruction in the tenets of a particular faith, nor shall religious instruction be mandatory.

ARTICLE V: TAX COVENANTS

SECTION 5.1: Tax Status; Tax Representation Certificate.

(a) The Institution represents that it is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code” or the “Code”) that is not a private foundation. The Institution covenants that, for as long as the Bonds and any refunding bonds are outstanding, it will take all actions necessary to remain an organization described in Code Section 501(c)(3) that is not a private foundation.

(b) The Institution covenants and represents that it has executed or will execute one or more Tax Representation Certificates (each, a “Tax Representation Certificate”) as to compliance with the Code and the Treasury Regulations promulgated thereunder or made applicable thereto (the “Treasury Regulations”) relating to the Grant, the Project and the Bonds (and any refunding bonds), in the form required by the

Authority's bond counsel. The provisions of each such Tax Representation Certificate shall be incorporated herein by reference and shall be binding upon the Institution. The Institution represents, and covenants that the representations and covenants of the Institution set forth in the Institution's Tax Representation Certificate(s) are and will be true, correct and complete as of the date of issuance of the Bonds, and, in the case of any Tax Representation Certificate delivered in connection with refunding bonds, as of the date of issuance of the refunding bonds. The Institution understands that the statements, covenants and undertakings made in the Tax Representation Certificate(s) and this Grant Agreement shall be relied upon by the Authority and its bond counsel in connection with the issuance of the Bonds and any refunding bonds, and that any misstatement or failure to comply with any such undertaking on the part of the Institution may result in adverse consequences affecting a significantly greater principal amount of Bonds (or refunding bonds) than the amount of the Grant Amount.

SECTION 5.2: No Change in Use of Grant Amount or Project.

The Institution acknowledges and agrees that the Grant Amount is or will be funded from Bonds issued or to be issued by the Authority pursuant to the Act, and that such Bonds have been or are expected to be issued on a tax-exempt basis. In order to ensure the continued compliance of the Project with applicable State law and policy, and to ensure the continued tax-exempt status of the Bonds and any bonds issued to refund the Bonds, the Institution shall use the Grant Amount and the Project as described in Section 1.1 hereof and in the Institution's Tax Representation Certificate(s) and shall not change or permit a change in the use of the Grant Amount or the Project unless (i) the Authority approves such change in use of all or a portion of the Grant Amount and the Project, (ii) all other required approvals are obtained, including the approval of the Secretary, and (iii) if required, the Authority receives an opinion from nationally recognized bond counsel that such change in use will not adversely affect the tax-exempt status of the Bonds and any bonds issued to refund such Bonds. The Institution shall pay any and all fees incurred to obtain such opinion(s).

SECTION 5.3: No Arbitrage Bonds.

(a) The Institution does not anticipate any fundraising campaigns or the receipt of any charitable contributions or other sources of funding for the Project that would result in having such other sources of funds and the proceeds of the Allocable Bonds available for the same costs of the Project. Without limiting the foregoing, the Institution hereby covenants that it will make no use of the proceeds of the Allocable Bonds or the proceeds of any refunding bonds if such use would cause the Bonds or the refunding bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and applicable Treasury Regulations.

(b) The Authority and the Institution covenant and agree that the Authority shall calculate or cause to be calculated the amount of any rebate payable with respect to the Allocable Bonds (the "Rebate Amount") at the times and in the manner set forth in the Tax Representation Certificate and shall pay or direct the Bond Trustee to pay the

Rebate Amount to the United States, in the percentage, at the times and in the manner set forth in the Tax Representation Certificate.

(c) Notwithstanding any other provision of this Grant Agreement, to the extent that funds and accounts held by the Bond Trustee are less than the amount required to be deposited by the Authority in the Rebate Fund for the Allocable Bonds (and any refunding bonds), the Institution will pay to the Authority the amount equal to the Rebate Amount for the Allocable Bonds.

SECTION 5.4: Use of Proceeds.

The Institution covenants and agrees that unless the Institution obtains advance written consent of the Authority, which consent shall be based upon the advice of bond counsel to the Authority, other than the Authority's costs of issuing the Allocable Bonds, none of the proceeds of the Allocable Bonds (and any refunding bonds) will be used directly or indirectly in any trade or business carried on by any person other than the Institution or a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code) and none of the proceeds of the Allocable Bonds (and any refunding bonds) will be used in an unrelated business activity of the Institution. None of the proceeds of the Allocable Bonds (and any refunding bonds) will be used directly or indirectly to make or finance loans to any person other than a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code). No portion of the proceeds will be used with respect to any output facility (other than a water facility) or used to acquire non-governmental output property (within the meaning of Section 141 of the Code). The Institution acknowledges that these limitations are more stringent than the requirements of Section 145 of the Code and accompanying Treasury Regulations, which the Authority has elected to apply on an aggregate versus individual basis.

SECTION 5.5: Covenant Not to Purchase Bonds.

The Institution covenants and agrees that neither it nor any party related to it, within the meaning of Treasury Regulation 1.150-1(b), pursuant to an arrangement, formal or informal, shall purchase bonds of the Authority issued to finance or refinance the Grant or the Project in an amount related to the amount of the principal payments to be made pursuant to this Grant Agreement.

SECTION 5.6: Written Procedures as to Post-Issuance Tax Compliance.

The Institution acknowledges and agrees that the Authority has adopted written post-issuance compliance procedures (the "Authority Written Procedures") to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. Unless the Institution has already adopted its own written post-issuance compliance procedures with respect to bond-financed facilities to monitor compliance with the applicable provisions of the Code and Treasury Regulations, then, within ninety (90) days after the Effective Date of this Grant Agreement or within ninety (90) days after the date of issuance of the Bonds, whichever

is earlier, the Institution shall adopt written post-issuance compliance procedures (collectively, the “Institution Written Procedures” and, together with the Authority Written Procedures, the “Written Procedures”) to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. The Institution shall provide a copy of the Institution Written Procedures to the Authority upon adoption thereof. The Institution agrees to comply with the Written Procedures and, at least once each year, the Institution shall review the use of the Institution’s facilities that have been financed or refinanced with proceeds of the Allocable Bonds and/or proceeds of any other outstanding bonds of the Authority (“Other Authority Bonds”) in order to determine whether the use of such facilities complies with all federal tax requirements applicable to the Allocable Bonds and the Other Authority Bonds. Pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution is in compliance with the Written Procedures and this Section 5.6.

SECTION 5.7: Special Notice Events.

The Institution shall provide prompt written notice to the Authority of the occurrence of any of the acts or events listed on Exhibit D attached hereto and made a part hereof (each, a “Special Notice Event”). The Institution acknowledges and agrees that the occurrence of any of such acts or events may jeopardize the tax-exempt status of the Bonds (and any refunding bonds). The Institution will use its best efforts to provide advance notice of any such occurrence, but will in any event provide notice no later than thirty (30) days after the occurrence of any such Special Notice Event, whether the Institution is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Special Notice Event shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event shall have occurred, or otherwise. The Institution agrees that, in consultation with the Authority, and at the sole cost and expense of the Institution, the Institution shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, or it shall assist the Authority in the Authority’s taking of such actions, including without limitation such actions as may be required pursuant to Treasury Regulations Section 1.141-12 or a closing agreement with the Internal Revenue Service, and shall provide to the Authority an opinion of nationally recognized bond counsel as to such plan of remediation and whether or not the tax-exempt status of the Bonds will be preserved. Without limiting the foregoing, the Authority shall have the right, upon prior written notice to the Institution, to conduct its own investigation of any Special Notice Event and, at the sole cost and expense of the Institution, retain bond counsel to determine any and all actions required to remediate such Special Notice Event including but not limited to the delivery of an opinion of bond counsel.

SECTION 5.8: Records Retention.

The Institution covenants and agrees to create and maintain records with respect to the Grant and the Project which, in the judgment of the Authority, are sufficient to

determine the compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations, including but not limited to records with respect to (i) the allocation and use of the proceeds of the Allocable Bonds, (ii) the ownership and use of all property financed with proceeds of the Allocable Bonds, (iii) the existence or creation of any “replacement proceeds” (as defined in the Institution’s Tax Representation Certificate), and (iv) any information necessary to establish any exception to the arbitrage rebate requirement (as defined in the Institution’s Tax Representation Certificate) with respect to the Allocable Bonds, as such records are further described in the Institution’s Tax Representation Certificate with respect to the Allocable Bonds. The Institution covenants to retain all of such records until the expiration of three (3) years after the later of (i) the last scheduled maturity date or earlier retirement of the Bonds, and (ii) if any of the Bonds have been refunded, the last scheduled maturity date or earlier retirement of any refunding bonds. Such records of the Institution shall be provided to the Authority upon written request.

SECTION 5.9: Right to Obtain Bond Counsel Opinion.

The Authority and the Institution shall not be required to comply with any one or more requirements of this Article V to the extent that an opinion of nationally recognized bond counsel is obtained to the effect that failure to comply with such requirements, or compliance with other requirements in lieu thereof, will not impair the exclusion from gross income of interest on the Bonds for purposes of federal income taxation under Section 103 of the Code.

ARTICLE VI: EVENTS OF DEFAULT

SECTION 6.1: Events of Default.

The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree, or order of any court, or any order, rule or regulation of any administrative or governmental body) shall constitute an “Event of Default”:

- (a) Any representation or warranty, statement, report, financial statement or certificate made by the Institution in its application or in this Grant Agreement is false, misleading, or inaccurate in any material respect.
- (b) Failure by the Institution to observe and perform in any material respect any term, covenant, or condition imposed on it under this Grant Agreement and such failure shall have continued for thirty (30) days after the earlier of (i) delivery to the Institution of written notice thereof from the Authority, or (ii) Institution’s actual or constructive knowledge of such failure, however, if such failure is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) day period, but such diligent efforts are properly commenced within the cure period and the Institution is diligently pursuing, and shall continue to pursue

diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional forty-five (45) days and in no case to extend beyond the expiration of the Term of this Grant Agreement.

- (c) Failure to make the payments required under Section 1.2, when due.

SECTION 6.2: Remedies.

- (a) Upon the occurrence of any Event of Default, following applicable notice and cure periods, the Authority shall have the right, at its sole and absolute discretion, upon thirty (30) days written notice to the Institution, to terminate this Grant Agreement, at which time any obligation of the Authority to make any further payments as contemplated by this Grant Agreement shall immediately terminate. The Authority shall also have any remedies at law or equity, including specific performance.
- (b) If, after thirty (30) days written notice is sent, the Institution has failed to make payments required under Section 1.2 hereof, or if there are disallowed costs, or if there has been payment of a Grant Amount in excess of eligible Project costs, then the State Treasurer is authorized to withhold and/or intercept any State aid or appropriation payable to the Institution, in an amount sufficient to satisfy any default or failure of the Institution, including return of the Grant Amount to the Authority.
- (c) Upon the occurrence of an Event of Default, the Grant Amount is subject to forfeiture, provided that the Grant Amount shall not be forfeited if such non-compliance is curable within forty-five (45) days and the Institution is diligently pursuing such cure.
- (d) Upon the occurrence of an Event of Default, the amount of the Grant Amount that has been expended as of the date of such Event of Default for or on behalf of the Institution may, upon demand of the Authority, in consultation with the Secretary, the Attorney General and the Authority's bond counsel, be required to be repaid to the Authority by the Institution. In the event repayment is required, the Institution will receive a credit for the portion of any previous payments made by the Institution to the Authority under Section 1.2 hereof attributable to the principal amount of the Allocable Bonds, but shall not be entitled to a credit for those payments attributable to interest on the Allocable Bonds or attributable to any Fees. The Authority shall determine whether repayment of the Grant Amount is required, in consultation with the Secretary, the Attorney General and its bond counsel, based on the facts and circumstances related to the Event of Default and whether there exists the need to redeem or defease Allocable Bonds to ensure the continued tax-exempt status of the Bonds.

- (e) No remedy conferred herein upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Grant Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section 6.2, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.
- (f) Other than the provisions of Section 1.2, absent an Event of Default, there is no obligation or expectation that any repayments will be made by the Institution to the Authority with respect to the Grant Amount.

ARTICLE VII: MISCELLANEOUS

SECTION 7.1: No Additional Waiver Implied by One Waiver.

In the event any agreement, covenant, warranty, or representation contained in this Grant Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7.2: Severability.

In case any one or more of the provisions of this Grant Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Grant Agreement, but this Grant Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

SECTION 7.3: Successors and Assigns.

This Grant Agreement shall inure to the benefit of and shall be binding upon the Institution, the Authority and their respective successors and assigns.

SECTION 7.4: Governing Law.

This Grant Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to its choice of law rules thereof. The Institution hereby consents to the jurisdiction of the Superior Court of the County of Mercer, New Jersey and agrees that any lawsuits of any nature pertaining to this Grant Agreement shall be brought in that Court in the first instance.

SECTION 7.5: Non-Waiver.

It is understood and agreed that nothing contained in this Grant Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right not explicitly waived in this Grant Agreement.

SECTION 7.6: Torts Claim and Contractual Liability Acts

The liability of the Secretary, the Authority, the Department of the Treasury and their respective directors, officers and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., is not applicable by its terms to the Authority, the Institution hereby agrees that such statute (except for N.J.S.A. 59:13-9) shall be applicable to all claims against the Authority under this Grant Agreement.

SECTION 7.7: Headings.

The Section headings in this Grant Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Grant Agreement.

SECTION 7.8: Notices.

All notices required to be given or authorized to be given by the Parties pursuant to this Grant Agreement shall be in writing and shall be sent to the main offices of the respective Parties by registered or certified mail or by email with confirmation of receipt.

SECTION 7.9: Amendments.

This Agreement shall not be amended or modified in any manner without the written consent of the Secretary and the State Treasurer. Any amendments or modifications shall be in writing and signed by each of the Parties. Material changes to this Agreement will not be allowed.

SECTION 7.10: Rights Cumulative.

All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

SECTION 7.11: Third Party Beneficiary.

The Parties agree that the State is intended to be and shall be a third party beneficiary of this Agreement.

SECTION 7.12: Additional Representations and Covenants.

Upon or prior to the issuance of the Bonds, a schedule reflecting additional representations, undertakings and covenants applicable to the Project and the Grant may be attached hereto as a condition to this Agreement. Any such additional provisions shall be incorporated herein and shall be binding upon the Institution.

SECTION 7.13: Electronic Signatures

Pursuant to N.J.S.A. 12A:12-1 et seq., the “Uniform Electronic Transactions Act,” electronic signatures to a contract shall be binding upon agreement of all parties. The Parties hereto agree that this Grant Agreement, and all documents, certificates, opinions and requisitions delivered pursuant to the terms hereof, may be executed with electronic signatures.

SECTION 7.14: Counterparts.

This Grant Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives, each acting in their official capacities, have caused this Grant Agreement to be executed and delivered as of the Effective Date.

[NAME OF INSTITUTION]

**NEW JERSEY EDUCATIONAL
FACILITIES AUTHORITY**

By: _____
Name:
Title:

By: _____
Name:
Title:

List of Exhibits:

- Exhibit A:** Description of Project
- Exhibit B:** Compliance Exceptions
- Exhibit C:** Form of Requisition
- Exhibit D:** Special Notice Events
- Exhibit E:** Completion Certificate

List of Schedules:

Schedule I: Institutional Debt Service Schedule

EXHIBIT A

DESCRIPTION OF PROJECT

[Project Description to be attached]

* The Project financed by the Bonds only includes components of the Project that can be financed under the Act and does not include those items that are described, but which are being financed by other grants or leases from the Authority or the State and/or other funding sources. To the extent the Project includes components that cannot be financed under the Act, the Institution represents that amounts advanced under this Grant Agreement will only be used for eligible components and that the Institution has sufficient funds from other sources to finance the balance of the Project. The portions of the Project that are financed with the Bonds will be described in the Institution's Tax Representation Certificate.

EXHIBIT B

COMPLIANCE EXCEPTIONS

- No compliance exceptions.**
- Compliance exceptions as described below:**

EXHIBIT C

FORM OF REQUISITION

EXHIBIT D

SPECIAL NOTICE EVENTS

EXHIBIT E

FORM OF COMPLETION CERTIFICATE

SCHEDULE I
INSTITUTIONAL DEBT SERVICE SCHEDULE

GRANT AGREEMENT

Between the

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY,
as Grantor

and

[NAME OF INSTITUTION],
as Grantee

Dated as of _____ 1, 2023

HIGHER EDUCATION CAPITAL IMPROVEMENT FUND

Grant Amount: \$ _____

Project ID#: _____

THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY

HIGHER EDUCATION CAPITAL IMPROVEMENT FUND

GRANT AGREEMENT

[Institution]

THIS GRANT AGREEMENT, is executed as of _____ 1, 2023 (the “Effective Date”) by and between the New Jersey Educational Facilities Authority (the “Authority”), a public body corporate and politic of the State of New Jersey (the “State”) and [NAME OF INSTITUTION] (the “Institution”), a public institution of higher education as defined in N.J.S.A. 18A:72A-3 (collectively, the “Parties”), pursuant to the provisions of the Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 et seq., as amended (the “Act”), for the purpose of providing funds for the renewal, renovation, improvement, expansion, construction and/or reconstruction of certain facilities, or technology infrastructure, at the Institution, in accordance with the Act and as further described herein.

ARTICLE I: THE GRANT

SECTION 1.1: Grant Amount.

(a) The Institution is hereby awarded a grant (the “Grant”) in the amount of _____ dollars (\$_____) (the “Grant Amount”) to be used to finance the costs of the project described in the attached Exhibit A (the “Project”), as approved by the Secretary of Higher Education (the “Secretary”). A description of the Project as so approved is attached hereto and incorporated herein by reference. The Grant Amount will be funded with the proceeds of one or more series of tax-exempt revenue bonds issued or to be issued by the Authority pursuant to the Act (the “Bonds”); provided, however, that the payment of the Grant Amount is expressly conditioned upon the issuance of the Bonds, if, when, and as issued, in an amount sufficient to fund the Grant Amount, and also upon the Institution’s execution and delivery of all documents, certificates, opinions and other items as may be required by the Authority in connection with the issuance of the Bonds and the making of the Grant. The issuance of the Bonds is subject to the approval of the Authority’s Board and the funding of the Grant Amount is subject to final review by the Authority’s bond counsel as to the eligibility of the Project for financing with tax-exempt Bonds.

(b) The term “Allocable Bonds,” when used herein, shall mean the portion of the Bonds allocable to this Grant (i.e., the amount of Bonds issued to finance the Grant Amount and a proportionate share of the costs of issuance of the Bonds and the Authority’s administrative costs associated with the approval process for the projects financed by the Bonds).

SECTION 1.2: Institution’s Financing Requirements.

In exchange for receipt of the Grant Amount, the Institution agrees to pay to the Authority an amount equal to one-third of the amount necessary to pay the principal of and interest on the Allocable Bonds and any refunding bonds, plus the Institution’s share of any Fees (defined below) allocable to the Institution, plus its share of any amounts payable in connection with any agreement authorized under N.J.S.A. 18A:72A-78(e) (collectively the “Debt Service Requirement”). “Fees” shall mean any fees, costs or expenses, including without limitation, swap termination fees, remarketing agent fees, annual rating agency fees, escrow agent fees, annual Authority fees and any other fees or amounts payable under or in connection with a swap agreement or variable rate debt or otherwise relating to the Allocable Bonds. A schedule reflecting the amounts in respect of the principal of and interest on the Allocable Bonds (or refunding bonds) payable by the Institution shall be attached hereto as Schedule I, “Institutional Debt Service Schedule” and shall be incorporated herein, and such schedule shall be binding upon the Institution. Such amounts shall be payable to the Authority at such time and place that may be specified by the Authority, not more than thirty (30) days nor less than fifteen (15) days prior to the payment dates listed on the Institutional Debt Service Schedule. The State Treasurer may retain from State aid or an appropriation payable to the Institution an amount sufficient to satisfy any amount that such Institution fails or is unable to make to pay principal and interest on the Allocable Bonds (or refunding bonds) under this Grant Agreement and such retention shall not obligate the State to make, nor the Institution to receive, any additional appropriation or apportionment.

The obligation of the Institution to provide funding as described in this Section 1.2 and to perform its obligations under this Grant Agreement shall be absolute and unconditional, and such funds shall be required without any rights of set off, recoupment or counterclaim it might have against the Secretary, the State, the Authority, or any other person and whether or not the Project is used by the Institution or available for use by the Institution.

SECTION 1.3: Reduction or Cancellation of Grant Amount.

The Institution acknowledges and agrees that the Secretary may reduce or cancel the Grant Amount (a) if the Institution determines not to undertake the Project, (b) if the Bonds are not issued for any reason whatsoever, (c) to adjust for actual Project expenses in a manner consistent with the Grant Amount, or (d) if the Project is not substantially completed and the Grant Amount is not substantially disbursed six (6) months after the estimated construction completion date set forth in the Grant application, as adjusted for any actual delay to the Institution entering into the contract(s) specified in Section 4.1 below. Notwithstanding anything to the contrary foregoing, no adjustment or reduction pursuant to clause (d) above will be made if (i) delays are the result of federal, State, or local governmental approvals or regulatory requirements not attributable to the Institution; (ii) delays are the result of the availability of funding under this Grant Agreement; or (iii) other compelling and documentable reasons exist as determined by the Secretary.

SECTION 1.4: Eligibility for Reimbursement of Expenditures.

The Institution agrees that the Grant Amount may not be used to reimburse expenditures incurred by the Institution prior to _____, 2023 (the “Reimbursement Eligibility Date”). As used herein, the term “incurred” as applied to any expenditure shall mean the earlier to occur of (i) the date services were provided or goods were delivered, or (ii) the date that the Institution expended funds to pay (or prepay) for the expenditure. Only expenditures incurred on or after the Reimbursement Eligibility Date may be reimbursed. All such reimbursements shall be subject to approval by the Authority and, upon the request of the Authority, review by its bond counsel. No financing costs or interest expense of any interim debt shall be reimbursed, and no liens in respect of any interim debt shall be permitted to exist at the time of issuance of the Bonds.

SECTION 1.5: Sufficient Funding.

The Institution represents and warrants that it has or reasonably expects to have sufficient funding to complete the Project, including to pay the Debt Service Requirement. The Institution also acknowledges that any Project costs exceeding the costs of the Project approved by the Secretary shall be the responsibility of the Institution.

SECTION 1.6: Use of Grant Amount; Disbursement Pursuant to Requisitions.

The Institution has committed, by resolution of its governing board, to use the Grant Amount to finance costs of the Project, and to operate and maintain the Project. All costs to be funded or reimbursed from the Grant Amount shall be subject to the State prevailing wage requirements of N.J.S.A. 18A:72A-5.1 et seq.

The Institution covenants that not more than twenty percent (20%) of the Grant Amount shall be used for renewal and renovation or improvement, expansion, construction and reconstruction with respect to “student-support facilities” (as defined in the Act).

The Authority shall disburse, or cause the trustee for the Bonds (the “Bond Trustee”) to disburse, from time to time, the Grant Amount to the Institution, but only upon receipt and approval of requisitions submitted to and approved by the Authority. Each requisition shall be executed by an authorized representative of the Institution and shall be in the form set forth in Exhibit C attached hereto, or in such other form as the Authority may require. The Institution shall not alter, retype, reformat, or otherwise modify or revise the approved form of requisition. The Authority will not accept any requisition that does not conform to the Authority’s approved form.

The Institution shall submit requisitions promptly and shall comply with any time constraints for the submission of requisitions that the Authority or the Secretary may impose.

SECTION 1.7: No Assignment; No Pledge.

This Grant Agreement may not be assigned by the Institution, nor may it be pledged as collateral for any purpose.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1: Existence.

The Institution is a body corporate and politic created under the laws of the State, and has the necessary power and authority to execute and deliver this Grant Agreement and any other documents to which the Institution is a party, and to perform its obligations hereunder and thereunder.

SECTION 2.2: Eligible Institution; Accuracy of Grant Application.

(a) The Institution represents and warrants that it is a duly accredited four-year “public institution of higher education” as defined in N.J.S.A. 18A:72A-3.

(b) The Institution represents and warrants that all of the statements and representations made in its application for the Grant were on the date made, are on the Effective Date hereof, and shall continue to be, true and correct in all material respects.

SECTION 2.3: Authorization and Validity.

The execution, delivery and performance of this Grant Agreement by the Institution shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or a breach of any provision contained in its certificate of formation or authorizing legislation (as applicable), or contained in any agreement, instrument, document, bond indenture, law, rule, regulation, order, decree, writ, judgment, injunction, or award to which it is now a party or by which it or any of its assets is bound.

The execution and delivery by the Institution of this Grant Agreement and any other documents to which the Institution is a party related to the execution and delivery of this Grant Agreement (including, without limitation, the application for the Grant submitted to the Secretary, resolutions adopted by the Institution and any Tax Representation Certificates, as defined below (collectively, the “Other Grant Documents”)) have been or will be as of their date of execution duly authorized by proper proceedings of the Institution, and no further approval, authorization or consents are required by law or otherwise. This Grant Agreement and the Other Grant Documents constitute or shall, upon their execution and delivery, constitute the legal, valid and binding obligations of the Institution enforceable in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, and by general equitable principles.

SECTION 2.4: Reporting; Inspection; Disclosure; Recordkeeping.

(a) Annual Financial Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term (as defined in Section 3.1 hereof) of this Grant Agreement, the Institution shall provide the following to the Authority: copies of the Institution’s annual financial statements and auditor’s reports for the prior fiscal year, prepared in compliance with applicable State policy, as may be amended from time to time, including but not limited to the provisions of any State policies applicable to the receipt of grants from the State.

(b) Annual Compliance Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term of this Grant Agreement, the Institution shall provide the following information and certifications to the Authority in response to the Authority’s annual compliance questionnaire or in such other format as may be requested by the Authority:

(i) A detailed description of any use of the Project by any person or entity other than the Institution (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(ii) A detailed description of the receipt by the Institution of any previously undisclosed contribution or other amount earmarked for the Project (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(iii) If the Grant Amount has not yet been fully disbursed, (A) a detailed report of all expenditures for the Project during the prior calendar year and during the current calendar year up to the date of submission of the Institution’s response (including the amount and purpose of each expenditure), and (B) a detailed description of the amounts or estimated amounts expected to be spent on the Project during the current calendar year (including the timing, amount, and purpose of each such expenditure);

(iv) If a Completion Certificate (as defined in Section 4.2 hereof) has not yet been submitted to the Authority, a statement regarding the status and progress of the Project, including the estimated percentage of completion of the Project;

(v) Written confirmation that the Institution has used all disbursements of the Grant Amount for approved Project costs, in the amounts and for the purposes stated on the related requisitions, such confirmation to be made as of the date of submission of the Institution’s response, or, if the Institution cannot provide such confirmation, a detailed description and explanation of the use of any amounts of the Grant Amount for which the Institution cannot so confirm;

(vi) Written confirmation that the Institution is in compliance with the Written Procedures (as defined in Section 5.6 hereof), has conducted an annual review

for compliance with federal tax requirements during the prior calendar year, and has determined that the Project and the use of the Grant Amount are in compliance with federal tax requirements;

(vii) Written confirmation that there have been no material changes to the Project or to the use of the Grant Amount during the prior calendar year or during the current calendar year up to the date of submission of the Institution's response;

(viii) Written confirmation that the Institution has procured and is maintaining the Required Insurance (as defined in Section 4.8 hereof); and

(ix) Such other information and certifications relating to the use of the Project and the use of the Grant Amount as may be reasonably requested by the Authority for the purpose of confirming the Institution's compliance with applicable State and federal law and policy.

(c) Reporting of Special Notice Events. The Institution shall provide prompt written notice to the Authority of the occurrence of any Special Notice Event, as described in Section 5.7.

(d) Inspection. The Institution agrees to permit inspection of the Project and the Institution's books and records pertaining thereto by the Authority and the Secretary upon written request during normal business hours.

(e) Disclosure. The Institution agrees that, whenever requested by the Authority, it shall provide and certify, in form satisfactory to the Authority, such information concerning the Institution and the Project, the operations and finances of the Institution and such other matters that the Authority considers to be necessary in order to enable the Authority to prepare and publish an official statement or other similar disclosure document relating to the sale of the Bonds or any refunding bonds or to enable the Authority to make any reports which are required by any law or governmental regulations in connection with the Bonds.

(f) Recordkeeping. The Institution shall retain until three (3) years after the retirement of the Bonds and any refunding bonds, adequate records with respect to the use of the Project and the expenditure of the proceeds of the Grant, as described in Section 5.8.

SECTION 2.5: Disclaimer of Warranties; Indemnification.

(a) The Institution acknowledges and agrees that (i) neither the Authority nor the Secretary makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or the Secretary or their respective agents be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Grant Agreement or the Project or the

existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Grant Agreement; and (iii) to the fullest extent permitted by law, the Institution shall indemnify and hold the Authority and the Secretary harmless against, and the Institution shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the Authority and the Secretary may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Institution, the Institution's ownership of the Project, or the acquisition, construction or installation of the Project.

(b) To the fullest extent permitted by law, the Institution shall at all times protect and hold the State, the Secretary, the Department of the Treasury, the Authority, the Bond Trustee and each of their assigns, directors, officers, agents, contractors and employees (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, attorneys' fees) and liabilities for losses, damage and injury, resulting from or arising out of: (1) any claim for the non-delivery of the Grant Amount in the event that the Bonds are not issued, (2) the financing of the costs of the Project, (3) the ownership, planning, design, acquisition, site preparation, transportation, construction, renovation, equipping, installation, maintenance, repair, replacement or completion of the Project or any part thereof or the effecting of any work done as part of the Project, (4) any defects (whether latent or patent) in the Project or any part thereof, (5) the maintenance, repair, replacement, restoration, rebuilding, demolition, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, (6) any act of negligence of the Institution or of any of its agents, contractors, servants, employees or licensees at the Project, (7) any act of negligence of any assignee or sublessee of the Institution at the Project, (8) any violation of or failure to comply by the Institution with any legal requirement applicable to the Project, including environmental laws, or any cost imposed upon any of the Indemnified Parties by any legal requirement applicable to the Project, or (9) any action or inaction of the Institution that may adversely affect the tax-exempt status of the Bonds or any refunding bonds (assuming for this purpose that the Bonds consist only of the Allocable Bonds). The Institution shall reimburse any such Indemnified Party for any reasonable legal or other expenses incurred by it in investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the Project. The indemnification required pursuant hereto shall be binding upon the Institution for any and all claims, demands, expenses, liabilities and taxes set forth herein. No Indemnified Party shall be liable for any damage or injury to the person or property of the Institution or its assigns, directors, officers, agents, contractors or employees, or persons under the control or supervision of the Institution or any other person who may be involved with the Project in any way, due to any action, inaction, or negligence of any person. This provision shall survive the expiration or earlier termination of this Grant Agreement.

SECTION 2.6: Litigation.

There is no action or proceeding pending, or to the best knowledge of the Institution, threatened by or against it by or before any court or administrative agency that might adversely affect the ability of the Institution to perform its obligations under this Grant Agreement.

SECTION 2.7: Compliance with Laws and Regulations.

To the best of its knowledge, the Institution is in compliance with all applicable statutes, regulations or ordinances of governmental agencies and authorities having jurisdiction over it and the Project, including without limitation, those of the United States of America, the State and any municipal or local government entity with jurisdiction over the Project, including but not limited to those relating to the procurement and any and all environmental laws.

The Institution agrees to comply with the Act, all State and federal laws, all rules and regulations, and any other requirements imposed by law, including but not limited to those relating to the procurement of contracts to effectuate the Project.

Except as set forth on Exhibit B attached hereto and made a part hereof, the Institution has obtained, and is in material compliance with respect to, all government approvals, permits, certificates, inspections, consents and franchises necessary to complete the Project, to conduct its business, and to own or lease and operate its properties, and all such government approvals, permits and certificates are in full force and effect.

ARTICLE III: TERM OF THE GRANT AGREEMENT

SECTION 3.1: Term.

The term of this Grant Agreement shall commence on the Effective Date and continue in effect until such time as all of the Bonds and any refunding bonds have been paid (the “Term”).

This Grant Agreement shall not terminate prior to the end of the Term (other than such termination as is provided for elsewhere herein) for any cause including, without limitation, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the failure of the Secretary or the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Grant Agreement.

ARTICLE IV: THE PROJECT

SECTION 4.1: Project Acquisition or Construction.

The Institution agrees to enter into contract(s) for the acquisition or construction of the Project no later than twelve (12) months after the Effective Date. Additional requirements with respect to carrying out the Project will be set forth in the Institution’s Tax Representation Certificate(s) (as defined in Section 5.1 hereof).

SECTION 4.2: Completion of Project.

Completion of the Project shall be evidenced by delivery to the Authority of a completion certificate (the “Completion Certificate”) in the form set forth in Exhibit E attached hereto, or in such other form as the Authority may require, certifying (a) the date of completion of the Project, (b) that the Institution has received and delivered to the Authority a copy of the permanent or temporary certificate of occupancy for the Project, if applicable, and (c) that the Institution has required in each construction contract with respect to the Project that wages paid to workers employed in the performance of such construction contract be paid, or has determined that such workers were paid, at a rate not less than the State prevailing wage rate, in compliance with N.J.S.A. 18A:72A-5.1 et seq.

SECTION 4.3: Title to Project.

With respect to the property or facility comprising the Project and in or on which the Project is to be constructed, located, affixed, and/or installed, the Institution represents, warrants, and covenants that it has either (i) good, indefeasible and marketable title to and fee simple ownership of such property or facility, or (ii) the legal and enforceable right to use and occupy such property or facility, and to construct, locate, affix, and/or install the Project therein or thereon, pursuant to a written agreement, the term of which extends or can be renewed at the Institution’s option for so long as the Project is located therein or thereon.

The Institution shall not sell, lease, abandon, or otherwise dispose of the Project prior to the expiration of the Term without the prior written approval of the Authority and the Secretary. In addition, the Institution acknowledges and agrees that, notwithstanding the receipt of any such approval, the Institution may be required to repay the Grant in full in the event of any sale, lease, abandonment, or other disposition of the Project.

SECTION 4.4: Default in Contractors’, Vendors’ or Suppliers’ Performance.

In the event of a default of any contractor, subcontractor, vendor or supplier under the terms of any contract made in connection with the Project, the Institution will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Institution against the contractor, subcontractor, vendor or supplier in default and against each surety for the performance of such contractor, subcontractor, vendor or supplier. The Institution agrees to advise the Authority, in writing, of the steps it intends to take in connection with any such default. The Authority, after notifying the Institution in writing, in good faith and in its own name, may but shall not be required under any

circumstances to, prosecute or defend any action or proceeding or take any other action which the Authority deems reasonably necessary, and in such event the Institution hereby agrees to cooperate fully with the Authority. Such action may be taken in the sole discretion of the Authority. Any amounts which are recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, net of expenses incurred by the Authority to obtain such recovery, shall be paid to the Institution, and applied to payment of the costs of the Project.

SECTION 4.5: Maintenance of the Project.

The Institution covenants that it shall at all times during and after the completion of the Project cause the same to be maintained, preserved and kept properly, with the appurtenances and every part and parcel thereof in good repair, working order and condition.

SECTION 4.6: Covenant Against Waste.

The Institution covenants not to cause, suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, the Project.

SECTION 4.7: Damage or Destruction.

The Institution agrees to immediately notify the Authority in the event of damage to or destruction of all or a portion of the Project resulting from fire or other casualty. The Institution agrees to promptly repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction and the Institution will apply the net proceeds of any insurance relating to such damage or destruction received by the Institution to the payment or reimbursement of the costs of such repair and restoration, except as expressly authorized by the Authority in its sole discretion upon the advice of its bond counsel.

SECTION 4.8: Insurance.

Prior to the execution of this Grant Agreement, the Institution shall provide evidence to the Authority that the Institution has procured the insurance required by this Section 4.8.

The Institution shall procure and maintain, or cause to be procured and maintained, sufficient coverage under its commercial general liability insurance policy and, if applicable, builder's risk insurance policy to cover not only its own liability but also any liability which might arise against the Indemnified Parties (as defined in Section 2.5(b)) to the extent such liability is insurable under a commercial general liability insurance policy or a builder's risk insurance policy. The Institution shall include or cause to be included the Indemnified Parties as additional insureds in any liability insurance coverage for the Project, including insurance obtained by the Institution's general contractor and subcontractors performing work on the Project.

In addition to procuring and maintaining the liability insurance specified above, the Institution agrees to procure and maintain, or to cause to be procured and maintained, to the extent reasonably obtainable, at the expense of the Institution, such insurance as is customarily maintained on facilities and equipment similar to the facilities and equipment comprising the Project. The Authority, the State, the Secretary, the Department of the Treasury, and the Bond Trustee shall be named as additional insureds on such insurance.

All insurance required by this Section 4.8 (collectively, the “Required Insurance”) shall be procured from financially sound and reputable insurers qualified to do business in the State with a minimum A-VII rating per AM BEST or insurers approved, in writing, by the Authority.

Upon the Authority’s request from time to time, the Institution shall provide evidence to the Authority that the Institution has procured the Required Insurance in accordance with this Section 4.8. In addition, pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution has procured and is maintaining the Required Insurance.

The Institution shall promptly notify the Authority and the Secretary in writing in the event of any change in the insurance coverage being maintained by the Institution.

Notwithstanding the foregoing, nothing herein shall be deemed to prohibit the Institution from participating in a program of self-insurance, a cooperative insurance purchasing program, or a similar insurance program, and such programs may, upon review by the Authority, be deemed to meet the requirements of this Section 4.8. The procurement of insurance shall not relieve the Institution from its obligations under Section 2.5 hereof.

SECTION 4.9: Mechanics’ Liens.

The Institution covenants to keep the Project, and the fixtures and equipment thereof, free and clear of mechanics’ liens and other liens of like nature, at all times during the Term of this Grant Agreement, and the Institution shall at all times duly protect the State, the Secretary, the Authority, the Department of the Treasury and their respective directors, officers, and employees against any and all attorney’s fees, costs and expenses which may accrue, grow out of or be incurred by reason of or on account of any such liens or claims.

SECTION 4.10: Modification of Project.

Pursuant to N.J.A.C. 9A:12-1.6(i), in the event that the Institution requires a modification to the Project, the Institution shall submit a formal written request to the Secretary, prior to the Institution taking any action to modify the Project, in order to allow the Secretary to evaluate the merits of the proposed modification against the objectives set forth at N.J.A.C. 9A:12-1.5(b). The Secretary may exercise discretion to allow the Institution to modify the Project if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved

project and if such modification does not constitute a material change. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the Grant Agreement, the Tax Representation Certificate(s), any other applicable Bond documents, and applicable State and federal law.

SECTION 4.11: No Use of Project for Religious Instruction or Worship.

The Institution covenants and agrees that the Project shall be used solely for the approved purposes of the Grant and as permitted under the Act. The Institution further covenants and agrees that at no time shall the Project, or any part thereof, be used or be allowed to be used for religious instruction or as a place for religious worship even after the Bonds or any refunding bonds are no longer outstanding.

SECTION 4.12: Additional Covenants.

(a) The Institution covenants, represents and agrees that the Institution is, and during the full Term of this Grant Agreement will be, in compliance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

(b) The use of the Project, the admission of students to the Institution, and the provision of services to students, are not, and shall at no time be, restricted on racial or religious grounds, nor shall there be a religious test for such use, admission, or provision of services.

(c) There is not, and shall at no time be, a requirement that individuals gaining admission to or receiving services from the Institution, or otherwise using the Project, receive instruction in the tenets of a particular faith, nor shall religious instruction be mandatory.

ARTICLE V: TAX COVENANTS

SECTION 5.1: Tax Status; Tax Representation Certificate.

The Institution covenants and represents that it has executed or will execute one or more Tax Representation Certificates (each, a “Tax Representation Certificate”) as to compliance with the Code and the Treasury Regulations promulgated thereunder or made applicable thereto (the “Treasury Regulations”) relating to the Grant, the Project and the Bonds (and any refunding bonds), in the form required by the Authority’s bond counsel. The provisions of each such Tax Representation Certificate shall be incorporated herein by reference and shall be binding upon the Institution. The Institution represents, and covenants that the representations and covenants of the Institution set forth in the Institution’s Tax Representation Certificate(s) are and will be true, correct and complete as of the date of issuance of the Bonds, and, in the case of any Tax Representation Certificate delivered in connection with refunding bonds, as of the date of issuance of the refunding bonds. The Institution understands that the statements, covenants and undertakings made in the Tax Representation Certificate(s) and this Grant Agreement shall be relied upon by the Authority and its bond counsel in connection with the issuance

of the Bonds and any refunding bonds, and that any misstatement or failure to comply with any such undertaking on the part of the Institution may result in adverse consequences affecting a significantly greater principal amount of Bonds (or refunding bonds) than the amount of the Grant Amount.

SECTION 5.2: No Change in Use of Grant Amount or Project.

The Institution acknowledges and agrees that the Grant Amount is or will be funded from Bonds issued or to be issued by the Authority pursuant to the Act, and that such Bonds have been or are expected to be issued on a tax-exempt basis. In order to ensure the continued compliance of the Project with applicable State law and policy, and to ensure the continued tax-exempt status of the Bonds and any bonds issued to refund the Bonds, the Institution shall use the Grant Amount and the Project as described in Section 1.1 hereof and in the Institution’s Tax Representation Certificate(s) and shall not change or permit a change in the use of the Grant Amount or the Project unless (i) the Authority approves such change in use of all or a portion of the Grant Amount and the Project, (ii) all other required approvals are obtained, including the approval of the Secretary, and (iii) if required, the Authority receives an opinion from nationally recognized bond counsel that such change in use will not adversely affect the tax-exempt status of the Bonds and any bonds issued to refund such Bonds. The Institution shall pay any and all fees incurred to obtain such opinion(s).

SECTION 5.3: No Arbitrage Bonds.

(a) The Institution does not anticipate any fundraising campaigns or the receipt of any charitable contributions or other sources of funding for the Project that would result in having such other sources of funds and the proceeds of the Allocable Bonds available for the same costs of the Project. Without limiting the foregoing, the Institution hereby covenants that it will make no use of the proceeds of the Allocable Bonds or the proceeds of any refunding bonds if such use would cause the Bonds or the refunding bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

(b) The Authority and the Institution covenant and agree that the Authority shall calculate or cause to be calculated the amount of any rebate payable with respect to the Allocable Bonds (the “Rebate Amount”) at the times and in the manner set forth in the Tax Representation Certificate and shall pay or direct the Bond Trustee to pay the Rebate Amount to the United States, in the percentage, at the times and in the manner set forth in the Tax Representation Certificate.

(c) Notwithstanding any other provision of this Grant Agreement, to the extent that funds and accounts held by the Bond Trustee are less than the amount required to be deposited by the Authority in the Rebate Fund for the Allocable Bonds (and any refunding bonds), the Institution will pay to the Authority the amount equal to the Rebate Amount for the Allocable Bonds.

SECTION 5.4: Use of Proceeds.

The Institution covenants and agrees that unless the Institution obtains advance written consent of the Authority, which consent shall be based upon the advice of bond counsel to the Authority, other than the Authority's costs of issuing the Allocable Bonds, none of the proceeds of the Allocable Bonds (and any refunding bonds) will be used directly or indirectly in any trade or business carried on by any person other than the Institution or a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code) and none of the proceeds of the Allocable Bonds (and any refunding bonds) will be used in an unrelated business activity of the Institution. None of the proceeds of the Allocable Bonds (and any refunding bonds) will be used directly or indirectly to make or finance loans to any person other than a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code). No portion of the proceeds will be used with respect to any output facility (other than a water facility) or used to acquire non-governmental output property (within the meaning of Section 141 of the Code).

SECTION 5.5: Covenant Not to Purchase Bonds.

The Institution covenants and agrees that neither it nor any party related to it, within the meaning of Treasury Regulation 1.150-1(b), pursuant to an arrangement, formal or informal, shall purchase bonds of the Authority issued to finance or refinance the Grant or the Project in an amount related to the amount of the principal payments to be made pursuant to this Grant Agreement.

SECTION 5.6: Written Procedures as to Post-Issuance Tax Compliance.

The Institution acknowledges and agrees that the Authority has adopted written post-issuance compliance procedures (the "Authority Written Procedures") to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. Unless the Institution has already adopted its own written post-issuance compliance procedures with respect to bond-financed facilities to monitor compliance with the applicable provisions of the Code and Treasury Regulations, then, within ninety (90) days after the Effective Date of this Grant Agreement or within ninety (90) days after the date of issuance of the Bonds, whichever is earlier, the Institution shall adopt written post-issuance compliance procedures (collectively, the "Institution Written Procedures" and, together with the Authority Written Procedures, the "Written Procedures") to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. The Institution shall provide a copy of the Institution Written Procedures to the Authority upon adoption thereof. The Institution agrees to comply with the Written Procedures and, at least once each year, the Institution shall review the use of the Institution's facilities that have been financed or refinanced with proceeds of the Allocable Bonds and/or proceeds of any other outstanding bonds of the Authority ("Other Authority Bonds") in order to determine whether the use of such facilities complies with all federal tax requirements applicable to the Allocable Bonds and the Other Authority

Bonds. Pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution is in compliance with the Written Procedures and this Section 5.6.

SECTION 5.7: Special Notice Events.

The Institution shall provide prompt written notice to the Authority of the occurrence of any of the acts or events listed on Exhibit D attached hereto and made a part hereof (each, a “Special Notice Event”). The Institution acknowledges and agrees that the occurrence of any of such acts or events may jeopardize the tax-exempt status of the Bonds (and any refunding bonds). The Institution will use its best efforts to provide advance notice of any such occurrence, but will in any event provide notice no later than thirty (30) days after the occurrence of any such Special Notice Event, whether the Institution is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Special Notice Event shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event shall have occurred, or otherwise. The Institution agrees that, in consultation with the Authority, and at the sole cost and expense of the Institution, the Institution shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, or it shall assist the Authority in the Authority’s taking of such actions, including without limitation such actions as may be required pursuant to Treasury Regulations Section 1.141-12 or a closing agreement with the Internal Revenue Service, and shall provide to the Authority an opinion of nationally recognized bond counsel as to such plan of remediation and whether or not the tax-exempt status of the Bonds will be preserved. Without limiting the foregoing, the Authority shall have the right, upon prior written notice to the Institution, to conduct its own investigation of any Special Notice Event and, at the sole cost and expense of the Institution, retain bond counsel to determine any and all actions required to remediate such Special Notice Event including but not limited to the delivery of an opinion of bond counsel.

SECTION 5.8: Records Retention.

The Institution covenants and agrees to create and maintain records with respect to the Grant and the Project which, in the judgment of the Authority, are sufficient to determine the compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations, including but not limited to records with respect to (i) the allocation and use of the proceeds of the Allocable Bonds, (ii) the ownership and use of all property financed with proceeds of the Allocable Bonds, (iii) the existence or creation of any “replacement proceeds” (as defined in the Institution’s Tax Representation Certificate), and (iv) any information necessary to establish any exception to the arbitrage rebate requirement (as defined in the Institution’s Tax Representation Certificate) with respect to the Allocable Bonds, as such records are further described in the Institution’s Tax Representation Certificate with respect to the Allocable Bonds. The Institution covenants to retain all of such records until the expiration of three (3) years after the later of (i) the last scheduled maturity date or earlier

retirement of the Bonds, and (ii) if any of the Bonds have been refunded, the last scheduled maturity date or earlier retirement of any refunding bonds. Such records of the Institution shall be provided to the Authority upon written request.

SECTION 5.9: Right to Obtain Bond Counsel Opinion.

The Authority and the Institution shall not be required to comply with any one or more requirements of this Article V to the extent that an opinion of nationally recognized bond counsel is obtained to the effect that failure to comply with such requirements, or compliance with other requirements in lieu thereof, will not impair the exclusion from gross income of interest on the Bonds for purposes of federal income taxation under Section 103 of the Code.

ARTICLE VI: EVENTS OF DEFAULT

SECTION 6.1: Events of Default.

The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree, or order of any court, or any order, rule or regulation of any administrative or governmental body) shall constitute an “Event of Default”:

- (a) Any representation or warranty, statement, report, financial statement or certificate made by the Institution in its application or in this Grant Agreement is false, misleading, or inaccurate in any material respect.
- (b) Failure by the Institution to observe and perform in any material respect any term, covenant, or condition imposed on it under this Grant Agreement and such failure shall have continued for thirty (30) days after the earlier of (i) delivery to the Institution of written notice thereof from the Authority, or (ii) Institution’s actual or constructive knowledge of such failure, however, if such failure is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) day period, but such diligent efforts are properly commenced within the cure period and the Institution is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional forty-five (45) days and in no case to extend beyond the expiration of the Term of this Grant Agreement.
- (c) Failure to make the payments required under Section 1.2, when due.

SECTION 6.2: Remedies.

- (a) Upon the occurrence of any Event of Default, following applicable notice and cure periods, the Authority shall have the right, at its sole and absolute discretion, upon thirty (30) days written notice to the Institution, to terminate this Grant Agreement, at which time any obligation of the Authority to make any further payments as contemplated by this Grant Agreement shall immediately terminate. The Authority shall also have any remedies at law or equity, including specific performance.
- (b) If, after thirty (30) days written notice is sent, the Institution has failed to make payments required under Section 1.2 hereof or if there are disallowed costs, or if there has been payment of a Grant Amount in excess of eligible Project costs, then the State Treasurer is authorized to withhold and/or intercept any State aid or appropriation payable to the Institution, in an amount sufficient to satisfy any default or failure of the Institution, including return of the Grant Amount to the Authority.
- (c) Upon the occurrence of any Event of Default, the Grant Amount is subject to forfeiture, provided that the Grant Amount shall not be forfeited if such non-compliance is curable within forty-five (45) days and the Institution is diligently pursuing such cure.
- (d) Upon the occurrence of an Event of Default, the amount of the Grant Amount that has been expended as of the date of such Event of Default for or on behalf of the Institution may, upon demand of the Authority, in consultation with the Secretary, the Attorney General and the Authority's bond counsel, be required to be repaid to the Authority by the Institution. In the event repayment is required, the Institution will receive a credit for the portion of any previous payments made by the Institution to the Authority under Section 1.2 hereof attributable to the principal amount of the Allocable Bonds, but shall not be entitled to a credit for those payments attributable to interest on the Allocable Bonds or attributable to any Fees. The Authority shall determine whether repayment of the Grant Amount is required, in consultation with the Secretary, the Attorney General and its bond counsel, based on the facts and circumstances related to the Event of Default and whether there exists the need to redeem or defease Allocable Bonds to ensure the continued tax-exempt status of the Bonds.
- (e) No remedy conferred herein upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Grant Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any

such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section 6.2, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

- (f) Other than the provisions of Section 1.2, absent an Event of Default, there is no obligation or expectation that any repayments will be made by the Institution to the Authority with respect to the Grant Amount.

ARTICLE VII: MISCELLANEOUS

SECTION 7.1: No Additional Waiver Implied by One Waiver.

In the event any agreement, covenant, warranty, or representation contained in this Grant Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7.2: Severability.

In case any one or more of the provisions of this Grant Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Grant Agreement, but this Grant Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

SECTION 7.3: Successors and Assigns.

This Grant Agreement shall inure to the benefit of and shall be binding upon the Institution, the Authority and their respective successors and assigns.

SECTION 7.4: Governing Law.

This Grant Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to its choice of law rules thereof. The Institution hereby consents to the jurisdiction of the Superior Court of the County of Mercer, New Jersey and agrees that any lawsuits of any nature pertaining to this Grant Agreement shall be brought in that Court in the first instance.

SECTION 7.5: Non-Waiver.

It is understood and agreed that nothing contained in this Grant Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right not explicitly waived in this Grant Agreement.

SECTION 7.6: Torts Claim and Contractual Liability Acts

The liability of the Secretary, the Authority, the Department of the Treasury and their respective directors, officers and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., is not applicable by its terms to the Authority, the Institution hereby agrees that such statute (except for N.J.S.A. 59:13-9) shall be applicable to all claims against the Authority under this Grant Agreement.

SECTION 7.7: Headings.

The Section headings in this Grant Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Grant Agreement.

SECTION 7.8: Notices.

All notices required to be given or authorized to be given by the Parties pursuant to this Grant Agreement shall be in writing and shall be sent to the main offices of the respective Parties by registered or certified mail or by email with confirmation of receipt.

SECTION 7.9: Amendments.

This Agreement shall not be amended or modified in any manner without the written consent of the Secretary and the State Treasurer. Any amendments or modifications shall be in writing and signed by each of the Parties. Material changes to this Agreement will not be allowed.

SECTION 7.10: Rights Cumulative.

All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

SECTION 7.11: Third Party Beneficiary.

The Parties agree that the State is intended to be and shall be a third party beneficiary of this Agreement.

SECTION 7.12: Additional Representations and Covenants.

Upon or prior to the issuance of the Bonds, a schedule reflecting additional representations, undertakings and covenants applicable to the Project and the Grant may be attached hereto as a condition to this Agreement. Any such additional provisions shall be incorporated herein and shall be binding upon the Institution.

SECTION 7.13: Electronic Signatures

Pursuant to N.J.S.A. 12A:12-1 et seq., the “Uniform Electronic Transactions Act,” electronic signatures to a contract shall be binding upon agreement of all parties. The Parties hereto agree that this Grant Agreement, and all documents, certificates, opinions and requisitions delivered pursuant to the terms hereof, may be executed with electronic signatures.

SECTION 7.14: Counterparts.

This Grant Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives, each acting in their official capacities, have caused this Grant Agreement to be executed and delivered as of the Effective Date.

[NAME OF INSTITUTION]

**NEW JERSEY EDUCATIONAL
FACILITIES AUTHORITY**

By: _____
Name:
Title:

By: _____
Name:
Title:

List of Exhibits:

- Exhibit A:** Description of Project
- Exhibit B:** Compliance Exceptions
- Exhibit C:** Form of Requisition
- Exhibit D:** Special Notice Events
- Exhibit E:** Completion Certificate

List of Schedules:

Schedule I: Institutional Debt Service Schedule

EXHIBIT A

DESCRIPTION OF PROJECT

[Project Description to be attached]

* The Project financed by the Bonds only includes components of the Project that can be financed under the Act and does not include those items that are described, but which are being financed by other grants or leases from the Authority or the State and/or other funding sources. To the extent the Project includes components that cannot be financed under the Act, the Institution represents that amounts advanced under this Grant Agreement will only be used for eligible components and that the Institution has sufficient funds from other sources to finance the balance of the Project. The portions of the Project that are financed with the Bonds will be described in the Institution's Tax Representation Certificate.

EXHIBIT B

COMPLIANCE EXCEPTIONS

- No compliance exceptions.**
- Compliance exceptions as described below:**

EXHIBIT C

FORM OF REQUISITION

EXHIBIT D

SPECIAL NOTICE EVENTS

EXHIBIT E

FORM OF COMPLETION CERTIFICATE

SCHEDULE I
INSTITUTIONAL DEBT SERVICE SCHEDULE

**RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES
AUTHORITY APPROVING FORMS OF LEASE AGREEMENTS TO BE
ENTERED INTO IN CONNECTION WITH THE AUTHORITY'S HIGHER
EDUCATION EQUIPMENT LEASING FUND PROGRAM**

Adopted: February 28, 2023

- WHEREAS:** The New Jersey Educational Facilities Authority (the “Authority”) is a public body corporate and politic of the State of New Jersey (the “State”) established pursuant to the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented), N.J.S.A. 18A:72A-1 et seq. (the “Act”); and
- WHEREAS:** The Authority is authorized pursuant to the New Jersey Higher Education Equipment Leasing Fund Act, N.J.S.A. 18A:72A-40 et seq. (the “ELF Act”) to issue bonds (“ELF Bonds”) to finance the purchase of higher education equipment for lease to New Jersey’s public and private institutions of higher education (“Institutions”); and
- WHEREAS:** The Secretary of Higher Education (the “Secretary”) promulgated regulations to implement the ELF Act, set forth at N.J.A.C. 9A:14-1.1 to -1.8; and
- WHEREAS:** In accordance with the ELF Act, the Authority intends to issue ELF Bonds to finance costs of the purchase of higher education equipment to be leased to the Institutions (each, an “ELF Lease”) pursuant to the ELF Act; and
- WHEREAS:** Pursuant to N.J.A.C. 9A:14-1.3, Institutions may apply to the Secretary for ELF Leases, pursuant to the ELF Act; and
- WHEREAS:** Pursuant to N.J.A.C. 9A:14-1.4 and -1.5, the Secretary shall review the applications for ELF Leases, shall approve or disapprove each ELF Lease, shall establish the amount of the ELF Lease, and shall send written certification of the approval and amount of each approved ELF Lease and a copy of the Institution’s application to the Authority; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-44, the Authority may enter into lease agreements with the Institutions approved for an ELF Lease (each, an “ELF Lease Agreement”), which agreements shall set forth the lease terms in accordance with the provisions of the ELF Act and other applicable law; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-42, the Authority shall include in the ELF Lease Agreement such lease provisions as may be necessary to ensure that the Institution shall pay an amount equal to 25% of the debt service on the ELF Bonds allocable to finance the purchase of higher education equipment at that Institution; and

WHEREAS: Pursuant to N.J.S.A. 18A:72A-45, the Authority shall not enter into an ELF Lease Agreement with an Institution unless the Secretary has approved the purchase of the higher education equipment by the Institution and has provided a written certification of such approval, including the amount approved, to the Authority; and

WHEREAS: Pursuant to N.J.S.A. 18A:72A-45.1, the Authority shall not enter an ELF Lease Agreement with an Institution without the review and approval of the Joint Budget Oversight Committee of the New Jersey Legislature (“JBOC”); and

WHEREAS: Pursuant to N.J.A.C. 9A:14-1.5(c), the Authority shall submit to JBOC for review a copy of each proposed ELF Lease Agreement or lease information in connection with the ELF Leases preliminarily approved by the Secretary, as well as a copy of the proposed form of ELF Lease Agreement for all ELF Leases; and

WHEREAS: Pursuant to N.J.S.A. 18A:72A-45.1 and N.J.A.C. 9A:14-1.5(c), JBOC shall approve or disapprove each ELF Lease within 10 working days of receipt of the lease information or lease agreement from the Authority, or the ELF Lease shall be deemed approved by JBOC and the Secretary; and

WHEREAS: The Authority now wishes to approve the forms only of the ELF Lease Agreements to be entered into with Institutions in connection with higher education equipment purchases to be approved by the Secretary and JBOC pursuant to the ELF Act.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY AS FOLLOWS:

Section 1. The recitals set forth above are incorporated herein by reference as if set forth at length herein. For the purposes hereof, “Authorized Authority Representatives” shall mean the Chair, the Vice Chair, the Secretary, any Assistant Secretary, the Executive Director, the Deputy Executive Director or the Director of Compliance Management of the Authority and any such officers designated as “acting” or “interim”.

Section 2. The ELF Lease Agreements to be entered into with Institutions that are New Jersey public institutions of higher education shall be substantially in the form presented to this meeting (a copy of which shall be filed with the records of the Authority), and such form is hereby approved, provided that the Authorized Authority Representatives are hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate (including, without limitation, the inclusion of additional representations, warranties and/or covenants on the part of the Institutions, and any other provision that may be necessary or convenient).

Section 3. The ELF Lease Agreements to be entered into with Institutions that are New Jersey private institutions of higher education shall be substantially in the form presented to this meeting (a copy of which shall be filed with the records of the Authority),

and such form is hereby approved, provided that the Authorized Authority Representatives are hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate (including, without limitation, the inclusion of additional representations, warranties and/or covenants on the part of the Institutions, and any other provision that may be necessary or convenient).

Section 4. The execution and delivery of the ELF Lease Agreements shall be authorized by subsequent resolution of the Authority following approval of the ELF Lease Agreements by the Secretary and JBOC pursuant to N.J.S.A. 18A:72A-45.1 and N.J.A.C. 9A:14-1.5(c).

Section 5. This Resolution shall take effect in accordance with the provisions of the Act.

___ Mr. Rodriguez ___ moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by ___ Mr. Hutchinson ___ and upon roll call the following members voted:

AYE: Joshua Hodes
Ridgeley Hutchinson
Louis Rodriguez
Brian Bridges
Elizabeth Maher Muoio (represented by Ryan Feeney)

NAY: None

ABSTAIN: None

ABSENT: None

The Chair thereupon declared said motion carried and said resolution adopted.

LEASE AGREEMENT

Between the

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY,
as Lessor

and

[NAME OF INSTITUTION],
as Lessee

Dated as of _____ 1, 2023

HIGHER EDUCATION EQUIPMENT LEASING FUND PROGRAM

Lease Amount: \$ _____
Project ID#: _____

TABLE OF CONTENTS

[TO BE UPDATED]

Exhibit A –	Description of the Project
Exhibit B –	Basic Rent Payment Schedule
Exhibit C –	Special Notice Events
Exhibit D –	Form of Requisition
Exhibit E –	Form of Completion Certificate

ELF 2023 – FORM OF LEASE AGREEMENT – PRIVATE INSTITUTIONS

THIS LEASE AGREEMENT, dated as of _____ 1, 2023 (the “Effective Date”) by and between the New Jersey Educational Facilities Authority, a public body corporate and politic of the State of New Jersey (the “State”), as lessor (hereinafter referred to as the “Authority”) and [NAME OF INSTITUTION], a private institution of higher education as defined in N.J.S.A. 18A:72A-3, as lessee (hereinafter referred to as the “Institution” and together with the Authority, the “Parties”).

WITNESSETH:

WHEREAS, pursuant to the provisions of the Higher Education Equipment Leasing Fund Act, N.J.S.A. 18A:72A-40 to -48, as amended, which amended the New Jersey Educational Facilities Authority Law, N.J.S.A. 18A:72A-1 et seq., as amended and supplemented (the “Act”), a higher education equipment leasing fund was established within the Authority to finance the purchase of higher education equipment at public and private institutions of higher education within the State; and

WHEREAS, the Authority is authorized, pursuant to the Act, to issue bonds to finance the purchase of such higher education equipment for lease to public and private institutions of higher education within the State provided that the total outstanding principal amount of such bonds, exclusive of refunding bonds, shall not exceed \$100,000,000 and the term of any bond issued shall not exceed 10 years; and

WHEREAS, on August 10, 1994, the Authority adopted its Higher Education Equipment Leasing Fund Program General Bond Resolution (as heretofore amended and supplemented, the “Bond Resolution”) in order to provide for the issuance of Bonds (as defined in the Bond Resolution) for the purposes specified in the Act; and

WHEREAS, pursuant to the Act, the Authority entered into a Contract With Respect to Higher Education Equipment Leasing Fund Program dated as of August 17, 1994 (the “Original Contract”), with the Treasurer of the State (the “Treasurer”), which Original Contract was amended and restated by the Amended and Restated Contract dated as of September 1, 2001 (as so amended, the “State Contract”), to provide for the payment, subject to available annual appropriations by the New Jersey Legislature (the “Legislature”), of debt service on any Bonds, including Additional Bonds (as defined in the Bond Resolution), issued pursuant to the Bond Resolution; and

WHEREAS, in order to provide funds to pay the costs of acquiring and installing higher education equipment, the Authority intends to issue one or more series of tax-exempt Revenue Bonds, Higher Education Equipment Leasing Fund Program Issue (collectively, the “2023 Bonds”), as one or more series of Additional Bonds, to be issued pursuant to and secured by the Bond Resolution, as amended and supplemented by a _____ Supplemental Higher Education Equipment Leasing Fund Program Resolution adopted by the Authority on _____, 2023 (the “2023 Supplemental Resolution”); and

WHEREAS, the payment of debt service on the 2023 Bonds will be provided by the Treasurer, subject to available annual appropriations by the Legislature, pursuant to the State Contract; and

WHEREAS, the Institution has found and determined that it is necessary, desirable and to the benefit and best interests of the Institution, that there be acquired and installed certain educational facilities consisting of or relating to higher education equipment as more fully described in Exhibit A hereto and as approved by the Secretary of Higher Education (the “Secretary”), said facilities and related facilities being herein called the “Project”; and

WHEREAS, pursuant to the Act and the terms hereof, the Authority has determined to lease the Project to the Institution for the term set forth herein provided that the Institution agrees to pay an amount equal to the sum of (i) the Basic Rent (as defined herein), (ii) the Institution’s Allocable Share (as defined herein) of the related Program (as defined herein) expenses, and (iii) the Institution’s Annual Administrative Fee of the Authority (as defined herein); and

WHEREAS, the Authority and the Institution desire to provide for the terms of the leasing of such Project pursuant to the Program;

NOW, THEREFORE, the Parties hereto mutually agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions.

The terms which are set forth in this Section 1.1 shall, unless the context clearly requires otherwise, have the meanings which are set forth below. Words which are used as defined terms herein but which are not defined herein shall have the meanings which are assigned to such terms in the Bond Resolution.

“Act” shall mean the New Jersey Educational Facilities Authority Law, N.J.S.A. 18A:72A-1 et seq., as amended and supplemented.

“Additional Rent” shall mean all amounts payable by the Institution to the Authority pursuant to Section 4.3 hereof including, but not limited to, the Annual Administrative Fee of the Authority, professional fees incurred for any arbitrage calculation, any amounts in excess of Basic Rent necessary to amortize debt service on the 2023 Bonds, and all direct and indirect costs and expenses incurred by the Authority and the Trustee (as defined herein) related to the enforcement of this Agreement (as defined herein), including reasonable attorneys’ fees related thereto.

“Agreement” shall mean this lease agreement between the Authority and the Institution dated as of _____ 1, 2023, and any and all modifications, alterations, amendments and supplements hereto which are made in accordance with the provisions of this Agreement and the provisions of the Bond Resolution.

“Allocable Bonds” shall mean the portion of the 2023 Bonds issued to finance the Lease Amount (as defined herein), which shall initially be as shown on Exhibit B hereto.

“Allocable Share” shall mean a fraction, the numerator of which is the aggregate principal amount of Allocable Bonds then Outstanding and the denominator of which is the principal amount of the 2023 Bonds then Outstanding, which shall initially be as shown on Exhibit B hereto.

“Annual Administrative Fee of the Authority” shall mean the annual fee for the general administrative services of the Authority, which shall be payable by the Institution as a portion of its Additional Rent on each [November] 1, commencing [November] 1, 202[4], in an amount equal to eighty (80) basis points of par value of the Allocable Bonds, paid equally over a ten (10) year period or over the period of the Project Lease Term, whichever is shorter.

“Authority” shall mean the New Jersey Educational Facilities Authority, a body corporate and politic with corporate succession, constituting a political subdivision of the State, created by the Act.

“Authority Officer” means the Chair, Vice Chair, Executive Director, Deputy Executive Director, Director of Project Management, Director of Compliance Management, Secretary, any Assistant Secretary, or the Assistant Treasurer of the Authority and any such officers designated as “acting” or “interim,” and, when used with reference to an act or a document, also means any other person who shall be authorized by resolution of the Authority to perform such act or to execute such document.

“Authorized Institution Representative” shall mean any person or persons who shall be authorized to act on behalf of the Institution by a written certificate, duly executed on behalf of the Institution, which sets forth the specimen signature of each such person.

“Basic Rent” shall mean the sum of money representing principal and interest for the Project necessary to pay 25% of the Debt Service Requirement on the 2023 Bonds allocated to the Institution’s Project, payable by the Institution on each Lease Payment Date, as set forth in Exhibit B annexed hereto and incorporated by this reference herein, as such Exhibit B may be amended from time to time in accordance with this Agreement.

“Bond Resolution” shall mean the resolution of the Authority entitled “Higher Education Equipment Leasing Fund Program General Bond Resolution,” adopted August 10, 1994, as amended and supplemented.

“Bond Year” shall mean a period of twelve (12) consecutive months beginning on [November] 1 in any calendar year and ending on [October 31] of the next succeeding calendar year.

“Cost” or “Costs of a Project” means and shall be deemed to include, together with any other proper item of cost which is not specifically mentioned herein, whether incurred prior to or after the date of adoption of the Bond Resolution, (a) costs and expenses of the Institution incurred for labor and/or materials and payments to contractors, subcontractors, vendors, suppliers and materialmen in connection with the acquisition and installation of any part of any Project; (b) the cost of contract bonds and of insurance of any kind for any component of the Project; (c) the costs

and expenses of the Institution for estimates and plans and specifications, if any, for any component of the Project; (d) compensation and expenses of the Trustee, Paying Agent, Registrar, and/or other fiduciaries, financial advisory, legal, accounting, financial and printing expenses, fees and all other expenses incurred in connection with the issuance of the 2023 Bonds; (e) all other costs which the Authority or the Institution shall be required to pay under the terms of any contract or contracts for the acquisition or installation of the Project; (f) any sums which are required to reimburse the Institution or the Authority for advances made by either or any of them for any of the above items, or for any other costs which are properly incurred and for work done by either or both of them, which are properly chargeable to the Project; (g) deposits into the Debt Service Fund for payment of interest on the Bonds and deposits in any other fund or account under the Bond Resolution, all as shall be provided in the Bond Resolution; (h) the payment of any notes or similar evidences of indebtedness of the Authority which have been issued to temporarily finance the payment of any item or items of cost of the Project (including any interest and redemption premiums thereon); (i) the administrative expenses of the Authority incurred in connection with the financing of the Project; and (j) such other expenses which are not specified herein as may be necessary or incidental to the construction, acquisition and installation of any Project, the financing thereof and the placing of the same in use and operation. Notwithstanding anything to the contrary foregoing, the Lease Amount shall not be used to reimburse expenditures incurred prior to the Reimbursement Eligibility Date. As used herein, the term “incurred” as applied to any expenditure shall mean the earlier to occur of (i) the date services were provided or goods were delivered, or (ii) the date that the Institution expended funds to pay (or prepay) for the expenditure. Only expenditures incurred on or after the Reimbursement Eligibility Date may be reimbursed. All such reimbursements shall be subject to approval by the Authority and, upon the request of the Authority, review by its bond counsel. No financing costs or interest expense of any interim debt shall be reimbursed nor shall Costs of a Project financed by taxable interim debt secured by the Project be reimbursed; further no liens in respect of any such interim debt shall be permitted to exist at the time of issuance of the 2023 Bonds.

“Debt Service Fund” shall have the meaning set forth in the Bond Resolution.

“Debt Service Requirement” shall have the meaning set forth in the Bond Resolution.

“Equipment” or “Item(s) of Equipment” shall mean the capital equipment described in this Agreement and purchased and acquired with the proceeds of the 2023 Bonds which shall be comprised of “Higher Education Equipment” as defined in the Act.

“Lease Amount” shall mean the amount shown on the cover page hereof.

“Lease Payment Date” shall mean each [May] 1 and [November] 1, commencing [November][May] 1, 202[4]. In the event a Lease Payment Date is not a Business Day, the Basic Rent shall be paid by the Institution on the next succeeding Business Day.

“Outstanding” shall have the meaning assigned to such term in Article I of the Bond Resolution.

“Program” shall mean the Higher Education Equipment Leasing Fund Program of the Authority involving the acquisition and installation of higher education equipment for lease to private and public institutions of higher education in the State.

“Project” shall mean, collectively, each Item of Equipment set forth on Exhibit A hereto as such exhibit may be amended by the Parties to this Agreement.

“Project Lease Term” shall mean the duration of the leasehold estate created by this Agreement as specified in Section 2.2 hereof.

“Reimbursement Eligibility Date” shall mean _____, 2023.

“Rentals” shall mean the sum of Basic Rent and Additional Rent, set forth in Article IV hereof, which is payable by the Institution in connection with the lease of the Project.

“Requisition” shall mean the certificate of requisition, as required by Section 404 of the Bond Resolution, in the form attached hereto as Exhibit D, as such form may be revised from time to time by the Authority.

“State” shall mean the State of New Jersey.

“Treasurer” shall mean the Treasurer of the State of New Jersey.

“Trustee” shall mean the bank, trust company, national banking association or other banking institution which shall be appointed by the Authority pursuant to the terms of the Bond Resolution or any successor thereof to act as trustee for the holders of the 2023 Bonds.

“2023 Bonds Equipment Leasing Fund Program Basic Rent Account” or “Basic Rent Account” shall have the meaning set for in Section 4.6 hereof.

SECTION 1.2 Interpretation.

In this Agreement, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word “including” shall be deemed to be followed by the words “without limitation.” All references to Sections, Appendices, and Exhibits shall be deemed to be references to Sections, Appendices, and Exhibits to this Agreement, unless the context shall otherwise require. Except as otherwise expressly provided in this Agreement, all terms of an accounting or financial nature shall be construed in accordance with Generally Accepted Accounting Principles, as in effect from time to time.

SECTION 1.3 Incorporation of Recitals.

The recitals in the Background section of this Agreement are incorporated herein by reference as if set forth in full herein and shall be binding on the Parties.

ARTICLE II PROVISIONS RELATING TO LEASE OF PROJECT

SECTION 2.1 Lease of Project.

The Authority, as lessor, hereby leases to the Institution, as lessee, the Project described in Exhibit A attached hereto and by this reference incorporated herein as if set forth at length, and the Institution hereby agrees to take and lease such Project from the Authority, on the terms and conditions which are set forth in this Agreement.

SECTION 2.2 Duration of Project Lease Term.

The Project Lease Term shall commence on the date of issuance of the 2023 Bonds, and, provided that all liabilities under this Agreement have been discharged or arrangements satisfactory to the Authority have been made for the discharge of all liabilities under this Agreement, shall terminate on the day immediately following the last date shown on Exhibit B for the payment of Basic Rent.

Notwithstanding anything to the contrary foregoing, the lease of the Project in the Lease Amount is expressly conditioned upon the issuance of the 2023 Bonds if, when, and as issued, in an amount sufficient to fund the Lease Amount, and also upon the Institution's execution and delivery of all documents, certificates, opinions and other items as may be required by the Authority in connection with the issuance of the 2023 Bonds and the leasing of the Project. The issuance of the 2023 Bonds is subject to the approval of the Authority's Board and the funding of the Lease Amount is subject to final review by the Authority's bond counsel as to the eligibility of the Project for financing with tax-exempt bonds.

ARTICLE III ACQUISITION OF PROJECT AND ISSUANCE OF 2023 BONDS

SECTION 3.1 Acquisition of Project.

The Institution agrees to acquire the Project or cause the same to be acquired. The Institution agrees that it will use its best efforts to cause the Project to be completed as soon as may be practicable, but if for any reason such completion is delayed there shall be no diminution in or postponement of the amounts which are due and payable by the Institution under the terms of this Agreement.

The Institution shall be responsible for the letting of contracts to acquire and complete the Project. Contracts in connection with the Project shall be let in accordance with procurement laws applicable to the Institution, including, where applicable, competitive bidding laws, and shall comply with the prevailing wage requirements as determined by the Commissioner of Labor and Workforce Development pursuant to N.J.S.A. 18A:72A-5.1 et seq.

During the period of this Agreement, the Authority shall hold title to the Project. To the extent the Institution has acquired any portion of the Project prior to the start of the Project Lease Term, title to said portion is hereby conveyed by the Institution to the Authority as of the start of the Project Lease Term.

Upon delivery of each Item of Equipment to the Institution, the Institution shall cause an Authorized Institution Representative to inspect the same and either (i) if such Item of Equipment is found to be in good condition and in accordance with the specifications therefor, to accept such Item of Equipment, to complete and execute a Requisition in the form set forth in Exhibit D attached hereto, or in such other form as the Authority may require, for payment of such Item of Equipment pursuant to the terms of the Bond Resolution, and to deliver such executed Requisition to the Authority, which Requisition for payment (as approved by an Authority Officer) shall be forwarded by the Authority to the Trustee for payment, or (ii) if the Institution, acting in good faith, should find that such Item of Equipment is not in good condition or is not in accordance with the specifications therefor, the Institution shall return the same to the manufacturer or supplier thereof. Upon presentation of the Requisition required by the terms of the Bond Resolution, the Trustee will pay the Cost of such Item of Equipment pursuant to the terms of the Bond Resolution. The Institution shall not alter, retype, reformat, or otherwise modify or revise the approved form of Requisition. The Authority will not accept any Requisition that does not conform to the Authority's approved form.

SECTION 3.2 Use of the Project.

The Institution covenants and agrees that the Project shall be used by the Institution as higher education equipment as required by the Act and which, in the opinion of the Institution, is necessary, desirable and to the benefit and best interests of the Institution.

The Institution further covenants, represents and agrees as follows: (i) the Institution is and during the term of this Agreement will at all times be in compliance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., (ii) the use of the Project, the admission of students to the Institution, and the provision of services to students, are not, and shall at no time be, restricted on racial or religious grounds, nor shall there be a religious test for such use, admission, or provision of services, (iii) there is not, and shall at no time be, a requirement that individuals gaining admission to or receiving services from the Institution, or otherwise using the Project, receive instruction in the tenets of a particular faith, nor shall religious instruction be mandatory, (iv) no portion of the proceeds of the 2023 Bonds will be used to finance a prayer room or other place used primarily for religious worship, instruction or expression, and (v) at no time shall the Project, or any part thereof, be used or be allowed to be used for religious instruction or as a place for religious worship even after the 2023 Bonds are no longer outstanding.

SECTION 3.3 Costs of the Project.

The Authority and the Institution agree that for the purpose of financing the Costs of the Project, the proceeds from the sale of the 2023 Bonds attributable to the Institution will be sufficient, together with certain moneys to be made available for the Project by the Institution, to finance the Costs of the Project.

SECTION 3.4 Completion Date.

The completion date of the Project shall be evidenced by delivery to the Authority of a completion certificate (the "Completion Certificate") in the form set forth in Exhibit E attached

hereto, or in such other form as the Authority may require, executed by an Authorized Institution Representative, which certificate shall be filed in the offices of the Authority.

SECTION 3.5 Default in Contractors’, Vendors’ or Suppliers’ Performance.

In the event of a default of any contractor, subcontractor, vendor or supplier under the terms of any contract made in connection with the Project, the Institution will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Institution against the contractor, subcontractor, vendor or supplier in default and against each surety for the performance of such contractor, subcontractor, vendor or supplier. The Institution will advise the Authority, in writing, of the steps it intends to take in connection with any such default. The Authority, after notifying the Institution in writing, in good faith and in its own name, may prosecute or defend any action or proceeding or take any other action which the Authority deems reasonably necessary, and in such event the Institution hereby agrees to cooperate fully with the Authority. Any amounts which are recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, net of expenses incurred by the Authority to obtain such recovery, shall be paid to the Institution, and applied to payment of the Costs of the Project, in accordance with the terms of the Bond Resolution.

SECTION 3.6 Sale, Assignment, Subleasing, Substitution, or Modification

(a) Neither this Agreement nor the interest of the Institution in any Item of Equipment may be sold, assigned or subleased by the Institution.

(b) The Institution may not, without the prior written consent of the Authority, elect to substitute one or more other items of equipment for Items of Equipment approved in connection with the execution of this Agreement. If approved by the Authority, the Cost of any equipment being substituted shall not exceed the aggregate of the estimated Cost of such Items of Equipment (unless the Institution pays such extra moneys) and provided the estimated useful life of the equipment being substituted is equal to or greater than the estimated useful life of the Items of Equipment for which such substitution or addition is being made. In the event of substitution or addition as provided herein, the Institution and the Authority shall, if necessary, execute appropriate amendments to the Exhibits hereto to reflect such substitution or addition. Any equipment being substituted shall not be a material change from the Items of Equipment approved by the Secretary.

(c) Pursuant to N.J.A.C. 9A:14-1.6(d), in the event that the Institution requires a modification to the Project, the Institution shall submit a formal written request to the Secretary, prior to the Institution taking any action to modify the Project, in order to allow the Secretary to evaluate the merits of the proposed modification against the objectives set forth at N.J.A.C. 9A:14-1.4(b). The Secretary may exercise discretion to allow the Institution to modify the Project if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved project and if such modification does not constitute a material change. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of this Agreement, the Tax Representation Certificate(s) (as defined herein), any other applicable Bond documents, and applicable State and federal law.

ARTICLE IV RENTALS AND OTHER PAYMENTS

SECTION 4.1 Nature of the Obligation.

The Institution agrees that its obligation to make payments required under this Agreement is a general obligation of the Institution, payable from any legally available funds of the Institution.

The obligation of the Institution to pay all Rentals and to pay all other amounts which are provided for in this Agreement and to perform its obligations under this Agreement shall be absolute and unconditional, and such Rentals and other amounts shall be payable without any rights of set-off, recoupment or counterclaim it might have against the Authority, the State, the Trustee or any other person and whether or not the Project is used by the Institution or available for use by the Institution.

This Agreement shall not be terminated (other than such termination as is provided for hereunder) for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the failure of the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

SECTION 4.2 Basic Rent.

(a) The Institution agrees to pay on each Lease Payment Date, as Basic Rent (which shall be calculated on the date of issuance of the 2023 Bonds) for the Project from legally available funds of the Institution, the amounts set forth in Exhibit B hereto.

(b) On each Lease Payment Date, the Trustee shall remit Basic Rent received from the Institution to the Treasurer.

SECTION 4.3 Additional Rent.

(a) The Institution agrees to pay as Additional Rent for the Project from legally available funds of the Institution an amount equal to the sum of the following items: (i) the Annual Administrative Fee of the Authority; and (ii) beginning with the Bond Year during which the 2023 Bonds are delivered and for each Bond Year thereafter, an amount equal to the sum of the following two items: (x) any expenditures of the Authority attributable to the Institution for insurance, fees and expenses of auditing, and fees and expenses, including reasonable legal fees, of the Trustee, any Paying Agent, fiduciary or other depository, all as required by the Bond Resolution and not otherwise paid or provided for by the Institution; and (y) all other expenditures reasonably and necessarily incurred by the Authority by reason of its ownership, financing and leasing of the Project, including expenses incurred by the Authority to compel full and punctual performance of all of the provisions of this Agreement in accordance with the terms hereof. To the extent any of the foregoing expenses are applicable to all institutions receiving financing from the proceeds of the 2023 Bonds, the portion thereof attributable to the Institution shall be deemed to be the Allocable Share thereof.

(b) Any expenditures of the Authority made pursuant to Section 4.3(a)(ii) shall be certified by the Authority to the Institution in writing as soon as practicable and shall be paid or caused to be paid by the Institution in accordance with the provisions of this Agreement.

(c) All Additional Rent payable hereunder (other than payments required under Section 6.12 hereof, which shall be due immediately upon demand) shall be payable by the Institution to the Authority on [November] 1 of each Bond Year.

SECTION 4.4 To Whom Rentals are Payable.

(a) Payments of Basic Rent shall be made by the Institution on a semi-annual basis to the Trustee for the account of the Authority. Upon receipt by the Trustee, such amounts shall be deposited in the Basic Rent Account established with the Trustee and applied as provided in Section 4.2(b) hereof.

(b) Payments of Additional Rent shall be made by the Institution on an annual basis (or when due, in the case of payments required under Section 6.12 hereof) to the Trustee for the account of the Authority. Upon receipt (and unless otherwise directed by the Authority), the Trustee shall retain therefrom the Institution's Allocable Share of the Trustee's annual fee, and shall promptly remit the balance of such Additional Rent to the Authority.

(c) The Institution agrees that it will pay to the Trustee, in accordance with the instructions from the Authority, all Basic Rent and Additional Rent which is due and payable by the Institution to the Authority pursuant to the terms of this Agreement.

SECTION 4.5 Medium of Payment.

The Institution covenants and agrees that it will pay or cause to be paid when due and payable hereunder the Rentals and every installment thereof in such coin or currency as, at the time of payment, shall be legal tender for the payment of debts due to the United States of America.

SECTION 4.6 Special Fund.

To secure payment of the Basic Rent hereunder, the Authority has caused to be created a "2023 Bonds Equipment Leasing Fund Program Basic Rent Account" (the "Basic Rent Account") to be held by the Trustee for the account of each Institution that is financing a Project with proceeds of the 2023 Bonds. The Institution covenants and agrees that it will deposit or cause to be deposited the Basic Rent due on or prior to each Lease Payment Date, from any legally available funds of the Institution, into the Basic Rent Account.

SECTION 4.7 Notice of Rentals.

For the purpose of enabling the Institution to make or cause to be made the payments required by this Agreement in due time and manner, the Authority shall furnish or cause to be furnished to the Institution and the Trustee statements of the purpose and amount of such payments. Any failure of the Authority to furnish such statements shall not excuse nonpayment of Rentals payable hereunder at the time and in the manner provided by this Agreement; provided, however, that the Authority shall not declare an Event of Default under this Agreement until a statement has

been furnished by the Authority and the Institution has failed to pay within ten (10) days after the receipt of such statement. Notwithstanding any other provision hereof, failure of the Authority to furnish such statements shall not excuse nonpayment of Basic Rent.

SECTION 4.8 Disclaimer of Warranties and Indemnification of Authority, Secretary, State, the Department of the Treasury and Trustee.

(a) The Institution acknowledges and agrees that (i) neither the Authority nor the Secretary makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; and (ii) in no event shall the Authority, the State, the Secretary, the Department of the Treasury, the Trustee, and their respective assigns, members, officers, directors, employees, agents, contractors, and counsel (collectively, the “Indemnified Parties”) be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement; and (iii) to the fullest extent permitted by law, the Institution shall indemnify and hold the Indemnified Parties harmless against, and the Institution shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the Authority and the Secretary may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Institution, the Institution’s ownership of the Project, or the acquisition, construction or installation of the Project.

(b) To the fullest extent permitted by law, both during the Project Lease Term and thereafter, the Institution shall protect, exonerate, indemnify and hold the Indemnified Parties harmless from and against, and the Institution shall pay any and all, liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, which any of the Indemnified Parties may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or both, or upon or arising out of contracts entered into by the Institution or the Authority or arising out of the Authority’s ownership of the Project or the leasing thereof to the Institution, or out of the acquisition of the Project pursuant to the terms of this Agreement, or arising out of the use and operation of the Project by the Institution, or arising from the financing of the Project. It is mutually agreed by the Institution and the Authority, that after commencement of the Project Lease Term, as provided in Section 2.2 hereof, no Indemnified Party shall be liable in any event for any action performed under this Agreement, and that the Institution shall save the Indemnified Parties harmless from any claim or suit of whatever nature and against any and all losses incurred in or about the defense of any such claims, actions or proceedings brought thereon.

(c) The Institution, at its own cost and expense, shall defend any and all such claims, suits and actions which may be brought or asserted against the Indemnified Parties, unless by reason of conflict of interest determined by the written opinion of counsel to any Indemnified Party, it is necessary for such party to employ separate counsel to be retained by such party, in which case the reasonable fees and expenses of such separate counsel shall nevertheless be borne by the Institution; but this provision shall not be deemed to relieve any insurance company which

has issued a policy of insurance of its obligation to defend the Institution, the Authority and any other insured party who is named in such policy of insurance in connection with claims, suits or actions covered by such policy. The obligations of the Institution pursuant to Sections 4.8(a) and 4.8(b) hereof shall survive the Project Lease Term and the final maturity of the 2023 Bonds. In addition, the Institution shall release the Indemnified Parties from, agrees that the Indemnified Parties shall not be liable for, and agrees to hold the Indemnified Parties harmless against any losses incurred because of any action taken by an Indemnified Party in good faith with respect to this Agreement and the Project.

(d) The Authority hereby agrees as follows:

(i) The Authority shall give the Institution prompt notice, in writing, of the filing of each such claim and the institution of each such suit or action with respect to the Project;

(ii) The Authority shall not, without the prior written consent of the Institution, adjust, settle or compromise any such claim, suit or action with respect to the Project; and

(iii) The Authority shall permit the Institution to assume full control of the adjustment, settlement, compromise or defense of each such claim, suit or action.

SECTION 4.9 Transfer of Title to Project.

Provided that the Institution has made payment of all Rentals required by this Agreement throughout the Project Lease Term and no Event of Default shall have occurred and be continuing, then upon receipt by the Authority of notice from the Trustee that the final Rental payment has been received and that no Allocable Bonds remain outstanding, title to the Project shall be deemed to have been, and is hereby, transferred to the Institution. In such event, this Agreement shall terminate and all of the rights, duties and obligations of the Parties hereto shall cease as of the date of such notice, other than the provisions of Sections 4.8 and 6.11, and such other provisions of this Agreement (including certain provisions of Section 3.2) that are intended by their terms to survive termination of this Agreement, all of which shall survive termination of this Agreement.

SECTION 4.10 No Disposition of Project.

The Institution shall not sell, lease, abandon, or otherwise dispose of the Project prior to the expiration of the Project Lease Term without the prior written approval of the Authority and the Secretary. In addition, the Institution acknowledges and agrees that, notwithstanding the receipt of any such approval, the Institution may be required to repay the Lease Amount in full in the event of any sale, lease, abandonment, or other disposition of the Project.

**ARTICLE V MAINTENANCE AND REPAIRS; DAMAGE OR DESTRUCTION;
INSURANCE; NET LEASE**

SECTION 5.1 Maintenance and Repairs of Project.

During the Project Lease Term, the Institution covenants that it shall at all times after the completion of the Project cause the same to be maintained, preserved and kept properly, with the appurtenances and every part and parcel thereof in good repair, working order and condition.

SECTION 5.2 Damage or Destruction.

The Institution agrees to immediately notify the Authority and the Trustee in the case of damage to or destruction of all or a portion of the Project resulting from fire or other casualty. The Institution agrees to promptly repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction and the Institution will apply the net proceeds of any insurance relating to such damage received by the Institution to the payment or reimbursement of the costs of such repair and restoration, except as expressly authorized by the Authority in its sole discretion upon the advice of bond counsel.

SECTION 5.3 Insurance.

The Institution agrees to procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable, at the expense of the Institution, insurance that is customarily maintained on equipment similar to the Equipment comprising the Project. The Authority, the Secretary, the State, the Department of the Treasury, and the Trustee shall each be named as an additional insured on such insurance. The insurance required hereunder shall be procured from financially sound and reputable insurers qualified to do business in the State with a minimum A-VII rating per AM BEST or insurers approved, in writing, by the Authority. Upon the Authority's request from time to time, the Institution shall provide evidence to the Authority that the Institution has procured such insurance in accordance with this Section 5.3. In addition, the Institution shall annually confirm to the Authority in writing that the Institution has procured and is maintaining such insurance. The Institution shall promptly notify the Authority and the Secretary in writing in the event of any change in the insurance coverage being maintained by the Institution. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit the Institution from participating in a program of self-insurance, a cooperative insurance purchasing program, or a similar insurance program, and such programs may, upon review by the Authority, be deemed to meet the requirements of this Section 5.3. The procurement of insurance shall not relieve the Institution from its obligations under Section 4.8.

SECTION 5.4 Net Lease.

This Agreement shall be deemed to be and is construed to be a "net lease," and the Institution shall pay absolutely net during the Project Lease Term, the Rentals and all other payments which are required to be made under the terms of this Agreement, free of all deductions, and without abatement, diminution and setoff.

It is mutually agreed by the Parties hereto that this is a net lease and notwithstanding any language herein to the contrary, it is intended, and the Institution expressly covenants and agrees, that all Rentals and other payments herein required to be made by the Institution to the Authority shall be net payments to the Authority, meaning that the Authority is not and shall not be required to expend any money or do any acts or take any steps affecting or respecting the maintenance, preservation, repair, restoration, reconstruction, or protection of the Project or any part thereof.

ARTICLE VI REPRESENTATIONS AND COVENANTS

SECTION 6.1 Institution's Right to Possession.

Except as otherwise provided herein, the Institution shall be entitled to sole possession of the Project during the Project Lease Term.

SECTION 6.2 Quiet Enjoyment.

The Authority covenants and agrees with the Institution that during the term of this Agreement and as long as the Institution pays the Rentals and the other payments which are required to be made under the terms of this Agreement and observes and performs all the terms, covenants, and conditions to be observed and performed by the Institution, the Institution may peaceably and quietly have, hold and enjoy the Project.

SECTION 6.3 Compliance with Laws and Regulations.

The Institution will, at its own cost and expense, promptly comply with all laws, rules, regulations and other governmental requirements which may be applicable to the Institution and the Project or the use or manner of use of the Project. The Institution will also observe and comply with the requirements of all policies and arrangements of insurance at any time in force with respect to the Project.

SECTION 6.4 Covenant Against Waste.

The Institution covenants not to do or suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, the Project.

SECTION 6.5 Right of Inspection.

The Institution covenants and agrees to permit the Authority and the authorized agents and representatives of the Authority to inspect the Project at any time during usual business hours.

SECTION 6.6 Assignments.

The Institution shall not assign this Agreement or any interest herein or sublet the Project or any part thereof.

SECTION 6.7 Mechanic Liens.

The Institution covenants to keep the Project, and the fixtures and equipment thereof, at all times during the term of this Agreement, free and clear of mechanics' liens and other liens of like nature, and the Institution shall at all times duly protect the Authority against any and all attorney's fees, costs and expenses which may accrue, grow out of or be incurred by reason of or on account of any such liens or claims.

SECTION 6.8 Reporting; Inspection; Disclosure; Annual Reporting.

(a) Annual Financial Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the later of the expiration of the Project Lease Term (as defined in Section 1.1 hereof), the full disbursement of the Lease Amount, or the submission by the Institution of the Completion Certificate (the "Reporting Term"), the Institution shall provide the following to the Authority: copies of the Institution's annual financial statements, auditor's reports, and IRS Form 990 for the prior fiscal year, prepared in compliance with applicable State and federal law and policy, as may be amended from time to time, including but not limited to the provisions of any State policies applicable to the receipt of grants from the State.

(b) Annual Compliance Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Reporting Term (as defined in subparagraph (a) above), the Institution shall provide the following information and certifications to the Authority in response to the Authority's annual compliance questionnaire or in such other format as may be requested by the Authority:

(i) A detailed description of any use of the Project by any person or entity other than the Institution (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution's response;

(ii) A detailed description of the receipt by the Institution of any previously undisclosed contribution or other amount earmarked for the Project (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution's response;

(iii) If the Lease Amount has not yet been fully disbursed, (A) a detailed report of all expenditures for the Project during the prior calendar year and during the current calendar year up to the date of submission of the Institution's response (including the amount and purpose of each expenditure), and (B) a detailed description of the amounts or estimated amounts expected to be spent on the Project during the current calendar year (including the timing, amount, and purpose of each such expenditure);

(iv) If a Completion Certificate (as defined in Section 3.4 hereof) has not yet been submitted to the Authority, a statement regarding the status and progress of the Project, including the estimated percentage of completion of the Project;

(v) Written confirmation that the Institution has used all disbursements of the Lease Amount for approved Project costs, in the amounts and for the purposes stated on the related requisitions, such confirmation to be made as of the date of submission of the Institution's response, or, if the Institution cannot provide such confirmation, a detailed description and explanation of the use of any amounts of the Lease Amount for which the Institution cannot so confirm;

(vi) Written confirmation that the Institution is in compliance with the Written Procedures (as defined in Section 6.11 hereof), has conducted an annual review for compliance with federal tax requirements during the prior calendar year, and has determined that the Project and the use of the Lease Amount is in compliance with federal tax requirements;

(vii) Written confirmation that there have been no material changes to the Project or to the use of the Lease Amount during the prior calendar year or during the current calendar year up to the date of submission of the Institution's response;

(viii) Written confirmation that the Institution has procured and is maintaining the insurance required pursuant to Section 5.3 hereof; and

(ix) Such other information and certifications relating to the use of the Project and the use of the Lease Amount as may be reasonably requested by the Authority for the purpose of confirming the Institution's compliance with applicable State and federal law and policy.

(c) Reporting of Special Notice Events. The Institution shall provide prompt written notice to the Authority of the occurrence of any Special Notice Event, as described in Section 6.11.

(d) Inspection. The Institution agrees to permit inspection of the Project and the Institution's books and records pertaining thereto by the Authority and the Secretary upon written request during normal business hours.

(e) Disclosure. The Institution agrees that, whenever requested by the Authority, it shall provide and certify, in form satisfactory to the Authority, such information concerning the Institution and the Project, the operations and finances of the Institution and such other matters that the Authority considers to be necessary in order to enable the Authority to prepare and publish an official statement or other similar disclosure document relating to the sale of the 2023 Bonds or any refunding bonds or to enable the Authority to make any reports which are required by any law or governmental regulations in connection with the 2023 Bonds.

(f) Recordkeeping. The Institution shall retain until three (3) years after the retirement of the 2023 Bonds and any refunding bonds, adequate records with respect to the use of the Project and the expenditure of the Lease Amount, as described in Section 6.11.

SECTION 6.9 Limitation of Liability.

The Institution covenants that all actions heretofore taken by it in connection with the Project, including the making of contracts, and the direct actions hereafter taken by the Authority in connection with the Project in compliance with a direction or a request of any authorized officer of the Institution have been and will be in full compliance with the Bond Resolution, with this Agreement and with all pertinent laws applicable to the Institution or the Authority. The Institution acknowledges that any review of any such actions heretofore or hereafter taken by the Authority's staff or counsel has been or will be solely for the protection of the Authority to carry out the Project and shall not stop the Authority from enforcing the foregoing covenant.

The ownership of the Project shall not impose any other liability on the Authority, whether contractual or otherwise. Neither the completion of the Project nor the ownership of the Project by the Authority shall impose any liability on the Authority or the members, officers, employees, consultants or agents of the Authority. The Institution agrees to indemnify the Authority and all other Indemnified Parties and save them harmless against any liability intended to be precluded herein, to the extent set forth in Section 4.8 and to the extent permitted by law.

In the exercise of the powers of the Authority by its members, officers, employees, consultants and agents (other than the Institution) under the Bond Resolution and this Agreement, including (without limiting the foregoing) the carrying out of the Project, the application of moneys, the investment of funds and reletting the Project in the event of default by the Institution, the Authority and its members, officers, employees, consultants and agents shall not be accountable to the Institution for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred. The Authority and all such other parties shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

SECTION 6.10 Covenant as to Arbitrage.

The Authority and the Institution hereby covenant that they will make no use of the proceeds of the Allocable Bonds which would cause the 2023 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder or made applicable thereto (the "Treasury Regulations").

SECTION 6.11 Tax Covenants.

(a) Use of Proceeds. The Authority and the Institution covenant that they will take no action that would cause the Allocable Bonds to be "private activity bonds" within the meaning of Section 141 of the Code, determined by treating the Institution as if it were a governmental unit with respect to its activities which do not constitute unrelated trades or businesses, determined by applying Section 513(a) of the Code. None of the net proceeds of the Allocable Bonds have been or will be used directly or indirectly in any trade or business carried on by any person other than a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code).

(b) Additional Tax Covenants. The Institution acknowledges and agrees that the Authority has adopted written Post-Issuance Compliance Procedures (“Authority Written Procedures”) to monitor compliance of the 2023 Bonds with applicable provisions of the Code and Treasury Regulations. Within ninety (90) days of the execution of this Agreement, the Institution shall adopt written Post-Issuance Compliance Procedures (“Institution Written Procedures” and, together with the Authority Written Procedures, the “Written Procedures”), unless the Institution already has adopted Institution Written Procedures, to monitor compliance of the Allocable Bonds with applicable provisions of the Code and the Treasury Regulations. The Institution agrees to follow the Written Procedures and at least once a year review the use of the Allocable Bonds and any other outstanding bonds of the Authority that have financed facilities for the Institution (together with the 2023 Bonds, the “Authority’s Bonds”) in order to determine whether such bonds meet all federal tax law conditions applicable to such bonds and certify its findings in writing to the Authority. In addition, the Institution shall, with respect to any of the Authority’s Bonds, provide prompt written notice to the Authority of any of the acts or events listed on Exhibit C, attached and made a part hereof (a “Special Notice Event”). The Institution will use its best efforts to provide advance notice, but will in any event provide notice no later than thirty (30) days after the occurrence of such Special Notice Event, whether the Institution is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Special Notice Event shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event shall have occurred, or otherwise. The Institution agrees that, in consultation with the Authority, at the expense of the Institution, it shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, including without limitation such actions required under Section 1.141-12 of the Treasury Regulations or a closing agreement with the Internal Revenue Service and provide to the Authority an opinion of nationally recognized bond counsel outlining the plan of remediation and whether or not the tax-exempt status of the 2023 Bonds will be preserved. In the event the Authority becomes aware of a Special Notice Event, the Authority shall have the right, upon prior written notice to the Institution, to conduct its own investigation and, at the sole cost of expense of the Institution, retain nationally recognized bond counsel to determine any and all actions required to remediate such Special Notice Event.

(c) The Institution covenants to create and maintain records which, in the judgment of the Authority, are sufficient to determine the compliance of the 2023 Bonds with the requirements of Section 141 of the Code, including but not limited to (i) the allocation and use of the proceeds of the Allocable Bonds and (ii) the ownership and use of all the property financed with proceeds of the Allocable Bonds, as such records are further described in the Institution’s Tax Representation Certificate (as defined herein) with respect to the 2023 Bonds. The Institution covenants to retain all such records until the expiration of three (3) years after the later of the last scheduled maturity date or earlier retirement of the 2023 Bonds and any refunding bonds.

(d) The Institution covenants that it will take no action that would cause the 2023 Bonds to be federally guaranteed (within the meaning of Section 149(b) of the Code).

(e) The Institution covenants to comply with the provisions of the Code applicable to the 2023 Bonds and that it will not take any action or fail to take any action which

would cause the interest on the 2023 Bonds to be included in gross income for purposes of federal income taxation under Section 103 of the Code.

(f) In connection with this Agreement, the Institution covenants and represents that it has executed or will execute one or more Tax Representation Certificates (each, a “Tax Representation Certificate”) as to compliance with the Code and Treasury Regulations relating to the Project and the 2023 Bonds. The provisions of each such Tax Representation Certificate shall be incorporated herein by reference and shall be binding upon the Institution. The Institution represents, covenants and agrees that the representations and covenants of the Institution set forth in the Institution’s Tax Representation Certificate(s) are and will be, true, correct and complete, both as of the Effective Date and as of the date of issuance of the 2023 Bonds. The Institution understands that the statements, covenants and undertakings made in the Tax Representation Certificate(s) and this Agreement shall be relied upon by the Authority in connection with the issuance of the 2023 Bonds (as well as certain other obligations of the Authority or the State issued for higher education purposes), and that any misstatement or failure to comply with any such undertaking on the part of the Institution may result in adverse consequences affecting a significantly greater principal amount of the 2023 Bonds than the amount of the Lease Amount.

(g) The Institution acknowledges and agrees that the Lease Amount is or will be funded from the proceeds of the Authority’s 2023 Bonds issued or to be issued under N.J.S.A. 18A:72A-40 to -48, which 2023 Bonds have been or are expected to be issued on a tax-exempt basis. In order to ensure the tax-exempt status of the 2023 Bonds upon issuance and the continued tax-exempt status of the Bonds thereafter, the Institution shall use the Lease Amount only for the purpose and in the manner set forth in the Institution’s Tax Representation Certificate(s). In the event that the Institution wishes to use the Lease Amount in a way not consistent with the Institution’s Tax Representation Certificate(s), the Authority must receive an opinion from nationally recognized bond counsel that such use will not adversely affect the tax-exempt status of the 2023 Bonds and any bonds issued to refund the 2023 Bonds. The Institution shall pay any and all fees incurred to obtain such opinion(s).

SECTION 6.12 Rebate Requirement.

(a) The Authority and the Institution covenant and agree that the Authority shall calculate or cause to be calculated the Rebate Amount at the times and in the manner set forth in the Tax Representation Certificate and shall pay or direct the Trustee to pay the Rebate Amount to the United States of America, in the percentage, at the times and in the manner set forth in the Tax Representation Certificate.

(b) Notwithstanding any other provision of this Agreement, to the extent that funds and accounts held by the Trustee are less than the amount required to be deposited by the Authority in the Rebate Fund for the Allocable Bonds, the Institution will pay to the Authority the amount equal to the Rebate Amount.

SECTION 6.13 Agreement Not to Purchase 2023 Bonds.

The Institution agrees that neither it nor any person related to it, within the meaning of Section 144 of the Code, pursuant to an arrangement, formal or informal, shall purchase bonds of

the Authority issued to finance the Program in an amount related to the amount of the principal payments to be made pursuant to this Agreement.

SECTION 6.14 Right to Obtain Bond Counsel Opinion.

The Authority and the Institution shall not be required to comply with any one or more requirements of Sections 6.10, 6.11 and 6.12 hereof to the extent that an opinion of nationally recognized bond counsel is obtained to the effect that failure to comply with such requirements or compliance with other requirements in lieu of Sections 6.10, 6.11 and 6.12 hereof will not impair the exclusion from gross income of interest on the 2023 Bonds for purposes of federal income taxation under Section 103 of the Code.

SECTION 6.15 Additional Representations and Warranties.

The Institution hereby makes the following representations and warranties to the Authority as of the Effective Date:

(a) Existence and Standing. The Institution is a nonprofit corporation created under the laws of the State, and has the necessary power and authority to execute and deliver this Agreement and any other documents to which the Institution is a party, and to perform its obligations hereunder and thereunder. The Institution is exempt from federal income tax under Section 501(a) of the Code by virtue of its status as an organization described in Section 501(c)(3) of the Code. The Institution is not a private foundation.

(b) Authorization and Validity. The execution and delivery by the Institution of this Agreement and any other documents to which the Institution is a party have been duly authorized by proper proceedings of the Institution, and no further approval, authorization or consents are required by law or otherwise. This Agreement and such other documents constitute the legal, valid and binding obligations of the Institution enforceable in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, and by general equitable principles.

(c) Compliance with Laws and Contracts. Neither the execution and delivery by the Institution of this Agreement and any of the other documents to which the Institution is a party, nor the consummation of the transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Institution, the Institution's organization documents or the provisions of any indenture, instrument or agreement to which the Institution is a party or is subject, or by which it or its property is bound, or conflict with or constitute a default under or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement. To the best of its knowledge, the Institution is in compliance with all applicable statutes, regulations or ordinances of governmental agencies and authorities having jurisdiction over it and the Project, including without limitation, those of the United States of America, the State, and any municipal or local government entity with jurisdiction over the Project, including any and all environmental laws.

(d) Litigation. There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the Institution, threatened against or affecting the Institution (x) wherein an unfavorable decision, ruling or finding would materially adversely affect (i) the transactions contemplated by or the validity of this Agreement or any other documents to which the Institution is a party, (ii) the tax-exempt status of the Institution or of the interest on the 2023 Bonds, or (iii) the Institution's property, assets, operations or conditions, financial or otherwise, or its ability to perform its obligations hereunder or under such other documents; or (y) which in any way contests the existence, organization or powers of the Institution or the titles of the officers of the Institution to their respective offices, except as disclosed in the Official Statement relating to the 2023 Bonds.

(e) Eligibility; Application. The Institution represents and warrants that (i) it is a private institution of higher learning duly accredited; (ii) all of the statements and representations made in its application for the Lease Amount were, on the date made, are as of the Effective Date hereof, and shall continue to be, true and correct in all material respects.

SECTION 6.16 Additional Covenants.

During the term of this Agreement, and until the Institution has paid in full all of its obligations hereunder, the Institution hereby covenants and agrees as follows:

(a) Existence. The Institution shall maintain its existence as a nonprofit corporation operating as a private institution of higher education formed under the laws of the State, and shall not merge, consolidate, liquidate or sell substantially all of its assets.

(b) Compliance With Laws. The Institution shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject and which are material to the 2023 Bonds, this Agreement or any other documents to which the Institution is a party, or the operations, affairs, properties, condition (financial or otherwise) or prospects of the Institution; provided, however, that the Institution may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the Institution's power and authority to execute and deliver this Agreement and such other documents, and to perform its obligations and pay all amounts payable by its hereunder and thereunder.

ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

SECTION 7.1 Events of Default.

An "Event of Default" shall mean any one or more of the following events:

- (a) Failure by the Institution to pay, when due, the Basic Rent;
- (b) Failure by the Institution to pay when due any Additional Rent or other payments which are required to be made under the provisions of this Agreement, which failure shall continue for a period of thirty (30) days after written notice thereof has been given to the Institution, specifying such failure;

(c) Failure by the Institution to observe and perform any covenant, condition or agreement which is required to be observed or performed by it other than as referred to in subsections (a) and (b) of this Section 7.1, which failure shall continue for a period of ninety (90) days after written notice thereof has been given to the Institution, specifying such failure and requesting that it be remedied, unless the Authority shall agree in writing to an extension of such time prior to its expiration; provided however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Institution, or on its behalf, within the applicable period and is diligently pursued until the default is remedied; or

(d) The entering of an order or decree appointing a receiver for the Institution or the Project, or any part thereof, or of the revenues thereof with the consent or acquiescence of the Institution or the entering of such order or decree without the acquiescence or consent of the Institution and such order or decree shall not be vacated, discharged or stayed within ninety (90) days after its entry.

SECTION 7.2 Remedies.

Whenever any Event of Default shall have occurred and be continuing, any one or more of the following steps may be taken, provided that prior written notice of the Event of Default has been given to the Institution by the Authority:

(i) The Authority may take possession of the Project without terminating this Agreement, and may sublease the Project for the account of the Institution, holding the Institution liable for the difference, if any, in the Basic Rent and other amounts which are payable by the sublessee and the Rentals and other amounts which are due and payable by the Institution under the terms of this Agreement.

(ii) To the extent permitted by law, the Authority may terminate the Project Lease Term, exclude the Institution from possession of the Project and use its best efforts to lease the Project to another party (to the extent possible) for the account of the Institution, holding the Institution liable for all Rentals and other amounts which are due and payable under the terms of this Agreement and which are not paid by such other party.

(iii) To the extent permitted by law, the Authority may terminate the Project Lease Term, exclude the Institution from possession of the Project and sell the Project (to the extent possible), holding the Institution liable for payment of all Rentals and other amounts which are due under the terms of this Agreement and which are not paid from the Proceeds derived from such sale.

(iv) Declare all Rentals due or to become due to be immediately due and payable by the Institution, whereupon such Rentals shall be immediately due and payable.

(v) The Authority may take whatever action at law or in equity may appear to be necessary or desirable in order to collect the payments which are then due and payable and thereafter to become due and payable, or to enforce performance and observance of any obligation, agreement or covenant of the Institution under the terms of this Agreement.

Any amounts which are collected pursuant to action taken under this Section shall be applied as Basic Rent or Additional Rent and in accordance with the provisions of this Agreement.

SECTION 7.3 Additional Remedies.

To assure the continued operation and solvency of the Program, the Institution hereby agrees that if it fails or is unable to pay to the Authority in full when due any Rentals due hereunder, an amount sufficient to satisfy the deficiency with respect to the non-payment of Rentals shall be retained by the Treasurer from State aid or an appropriation payable to the Institution.

The amount retained by the Treasurer shall be deducted from the corresponding appropriation or apportionment of State aid payable to the Institution and shall not obligate the State to make, nor entitle the Institution to receive, any additional appropriation or apportionment.

SECTION 7.4 No Remedy Exclusive.

No remedy conferred herein upon or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

ARTICLE VIII MISCELLANEOUS

SECTION 8.1 No Additional Waiver Implied by One Waiver.

In the event any agreement, covenant, warranty, or representation contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 8.2 Severability.

In case any one or more of the provision of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

SECTION 8.3 Successors and Assigns.

This Agreement shall inure to the benefit of and shall be binding upon the Institution, the Authority and their respective successors and assigns.

SECTION 8.4 Torts Claim and Contractual Liability Acts

The liability of the Secretary, the Authority, the Department of the Treasury and their director, officers and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., is not applicable by its terms to the Authority, the Institution hereby agrees that such statute (except for N.J.S.A. 59:13-9) shall be applicable to all claims against the Authority under this Agreement.

SECTION 8.5 Notices.

All notices required to be given or authorized to be given by the Parties pursuant to this Agreement shall be in and shall be sent to the main offices of the respective Parties by registered or certified mail or by email with confirmation of receipt. All notices required to be given or authorized to be given to the Trustee by either of the Parties pursuant to this Agreement shall be in writing and shall be sent by registered or certified mail to the office designated by the Trustee for the receipt of such notices.

SECTION 8.6 Rights Cumulative.

All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

SECTION 8.7 Amendments and Modifications.

This Agreement shall not be amended or modified in any manner without the consent of the Treasurer, the Secretary, and the Parties hereto. Any amendments or modifications shall be in writing and signed by each of the Parties. Material changes to this Agreement will not be allowed.

SECTION 8.8 Counterparts.

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

SECTION 8.9 Headings.

The Article and Section headings in this Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 8.10 Third Party Beneficiary.

The Institution and the Authority agree that the State is intended to be and shall be a third party beneficiary of this Agreement.

SECTION 8.11 Non-Waiver.

It is understood and agreed that nothing contained in this Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right not explicitly waived in this Agreement.

SECTION 8.12 No Pledge.

This Agreement may not be assigned by the Institution, nor may it be pledged as collateral for any purpose.

SECTION 8.13 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to its choice of law rules thereof. The Institution hereby consents to the jurisdiction of the Superior Court of New Jersey in the County of Mercer and agrees that any lawsuits of any nature pertaining to this Agreement shall be brought in that Court in the first instance.

SECTION 8.14 Additional Covenants.

Upon or prior to the issuance of the 2023 Bonds, a schedule reflecting additional representations, undertakings and covenants applicable to the Institution may be attached hereto as a condition to this Agreement. Any such additional provisions shall be incorporated herein, and shall be binding upon the Institution.

SECTION 8.15 Electronic Signatures.

Pursuant to N.J.S.A. 12A:12-1 et seq., the “Uniform Electronic Transactions Act,” electronic signatures to a contract shall be binding upon agreement of all parties. The Parties hereto agree that this Agreement, and all documents, certificates, opinions and requisitions delivered pursuant to the terms hereof, may be executed with electronic signatures.

ELF 2023 – FORM OF LEASE AGREEMENT – PRIVATE INSTITUTIONS

IN WITNESS WHEREOF, the Institution has caused this instrument to be executed in its name by an Authorized Institution Representative and the Institution’s official seal to be attached hereto and the Authority has caused this instrument to be signed in its name by an Authority Officer and its corporate seal to be hereunto affixed, all as of the day and year first above written.

ATTEST:

[NAME OF INSTITUTION]

By: _____
Name:
Title:

By: _____
Name:
Title:

[SEAL]

ATTEST:

NEW JERSEY EDUCATIONAL
FACILITIES AUTHORITY

By: _____
Name:
Title:

By: _____
Name:
Title:

[SEAL]

**EXHIBIT A
DESCRIPTION OF PROJECT**

The Project financed by the 2023 Bonds only includes components of the Project that can be financed under the Higher Education Equipment Leasing Fund Act and does not include those items that are described, but which are being financed by other grants from the Authority or the State and/or other funding sources. To the extent the Project includes components that cannot be financed under the Higher Education Equipment Leasing Fund Act, the Institution represents that amounts advanced under this Agreement will only be used for eligible components and that the Institution has sufficient funds from other sources to finance the balance of the Project. The portions of the Project that are financed with the 2023 Bonds will be described in the Institution's Tax Representation Certificate.

EXHIBIT B
BASIC RENT PAYMENT SCHEDULE

EXHIBIT C
SPECIAL NOTICE EVENTS

EXHIBIT D
FORM OF REQUISITION

EXHIBIT E
FORM OF COMPLETION CERTIFICATE

LEASE AGREEMENT

Between the

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY,
as Lessor

and

[NAME OF INSTITUTION],
as Lessee

Dated as of _____ 1, 2023

HIGHER EDUCATION EQUIPMENT LEASING FUND PROGRAM

Lease Amount: \$ _____
Project ID#: _____

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[TO BE UPDATED]

Exhibit A –	Description of the Project
Exhibit B –	Basic Rent Payment Schedule
Exhibit C –	Special Notice Events
Exhibit D –	Form of Requisition
Exhibit E –	Form of Completion Certificate

THIS LEASE AGREEMENT, dated as of _____ 1, 2023 (the “Effective Date”) by and between the New Jersey Educational Facilities Authority, a public body corporate and politic of the State of New Jersey (the “State”), as lessor (hereinafter referred to as the “Authority”) and [NAME OF INSTITUTION], a public institution of higher education as defined in N.J.S.A. 18A:72A-3, as lessee (hereinafter referred to as the “Institution” and together with the Authority, the “Parties”).

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of the Higher Education Equipment Leasing Fund Act, N.J.S.A. 18A:72A-40 to -48, as amended, which amended the New Jersey Educational Facilities Authority Law, N.J.S.A. 18A:72A-1 et seq., as amended and supplemented (the “Act”), a higher education equipment leasing fund was established within the Authority to finance the purchase of higher education equipment at public and private institutions of higher education within the State; and

WHEREAS, the Authority is authorized, pursuant to the Act, to issue bonds to finance the purchase of such higher education equipment for lease to public and private institutions of higher education within the State provided that the total outstanding principal amount of such bonds, exclusive of refunding bonds, shall not exceed \$100,000,000 and the term of any bond issued shall not exceed 10 years; and

WHEREAS, on August 10, 1994, the Authority adopted its Higher Education Equipment Leasing Fund Program General Bond Resolution (as heretofore amended and supplemented, the “Bond Resolution”) in order to provide for the issuance of Bonds (as defined in the Bond Resolution) for the purposes specified in the Act; and

WHEREAS, pursuant to the Act, the Authority entered into a Contract With Respect to Higher Education Equipment Leasing Fund Program dated as of August 17, 1994 (the “Original Contract”), with the Treasurer of the State (the “Treasurer”), which Original Contract was amended and restated by the Amended and Restated Contract dated as of September 1, 2001 (as so amended, the “State Contract”), to provide for the payment, subject to available annual appropriations by the New Jersey Legislature (the “Legislature”), of debt service on any Bonds, including Additional Bonds (as defined in the Bond Resolution), issued pursuant to the Bond Resolution; and

WHEREAS, in order to provide funds to pay the costs of acquiring and installing higher education equipment, the Authority intends to issue one or more series of tax-exempt Revenue Bonds, Higher Education Equipment Leasing Fund Program Issue (collectively, the “2023 Bonds”), as one or more series of Additional Bonds, to be issued pursuant to and secured by the Bond Resolution, as amended and supplemented by a _____ Supplemental Higher Education Equipment Leasing Fund Program Resolution adopted by the Authority on _____, 2023 (the “2023 Supplemental Resolution”); and

WHEREAS, the payment of debt service on the 2023 Bonds will be provided by the Treasurer, subject to available annual appropriations by the Legislature, pursuant to the State Contract; and

WHEREAS, the Institution has found and determined that it is necessary, desirable and to the benefit and best interests of the Institution, that there be acquired and installed certain educational facilities consisting of or relating to higher education equipment as more fully described in Exhibit A hereto and as approved by the Secretary of Higher Education (the “Secretary”), said facilities and related facilities being herein called the “Project”; and

WHEREAS, pursuant to the Act and the terms hereof, the Authority has determined to lease the Project to the Institution for the term set forth herein provided that the Institution agrees to pay an amount equal to the sum of (i) the Basic Rent (as defined herein), (ii) the Institution’s Allocable Share (as defined herein) of the related Program (as defined herein) expenses, and (iii) the Institution’s Annual Administrative Fee of the Authority (as defined herein); and

WHEREAS, the Authority and the Institution desire to provide for the terms of the leasing of such Project pursuant to the Program;

NOW, THEREFORE, the Parties hereto mutually agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions.

The terms which are set forth in this Section 1.1 shall, unless the context clearly requires otherwise, have the meanings which are set forth below. Words which are used as defined terms herein but which are not defined herein shall have the meanings which are assigned to such terms in the Bond Resolution.

“Act” shall mean the New Jersey Educational Facilities Authority Law, N.J.S.A. 18A:72A-1 et seq., as amended and supplemented.

“Additional Rent” shall mean all amounts payable by the Institution to the Authority pursuant to Section 4.3 hereof including, but not limited to, the Annual Administrative Fee of the Authority, professional fees incurred for any arbitrage calculation, any amounts in excess of Basic Rent necessary to amortize debt service on the 2023 Bonds, and all direct and indirect costs and expenses incurred by the Authority and the Trustee (as defined herein) related to the enforcement of this Agreement (as defined herein), including reasonable attorneys’ fees related thereto.

“Agreement” shall mean this lease agreement between the Authority and the Institution dated as of _____ 1, 2023, and any and all modifications, alterations, amendments and supplements hereto which are made in accordance with the provisions of this Agreement and the provisions of the Bond Resolution.

“Allocable Bonds” shall mean the portion of the 2023 Bonds issued to finance the Lease Amount (as defined herein), which shall initially be as shown on Exhibit B hereto.

“Allocable Share” shall mean a fraction, the numerator of which is the aggregate principal amount of Allocable Bonds then Outstanding and the denominator of which is the principal amount of the 2023 Bonds then Outstanding, which shall initially be as shown on Exhibit B hereto.

“Annual Administrative Fee of the Authority” shall mean the annual fee for the general administrative services of the Authority, which shall be payable by the Institution as a portion of its Additional Rent on each [November] 1, commencing [November] 1, 202[4], in an amount equal to eighty (80) basis points of par value of the Allocable Bonds, paid equally over a ten (10) year period or over the period of the Project Lease Term, whichever is shorter.

“Authority” shall mean the New Jersey Educational Facilities Authority, a body corporate and politic with corporate succession, constituting a political subdivision of the State, created by the Act.

“Authority Officer” means the Chair, Vice Chair, Executive Director, Deputy Executive Director, Director of Project Management, Director of Compliance Management, Secretary, any Assistant Secretary, or the Assistant Treasurer of the Authority and any such officers designated as “acting” or “interim,” and, when used with reference to an act or a document, also means any other person who shall be authorized by resolution of the Authority to perform such act or to execute such document.

“Authorized Institution Representative” shall mean any person or persons who shall be authorized to act on behalf of the Institution by a written certificate, duly executed on behalf of the Institution, which sets forth the specimen signature of each such person.

“Basic Rent” shall mean the sum of money representing principal and interest for the Project necessary to pay 25% of the Debt Service Requirement on the 2023 Bonds allocated to the Institution’s Project, payable by the Institution on each Lease Payment Date, as set forth in Exhibit B annexed hereto and incorporated by this reference herein, as such Exhibit B may be amended from time to time in accordance with this Agreement.

“Bond Resolution” shall mean the resolution of the Authority entitled “Higher Education Equipment Leasing Fund Program General Bond Resolution,” adopted August 10, 1994, as amended and supplemented.

“Bond Year” shall mean a period of twelve (12) consecutive months beginning on [November] 1 in any calendar year and ending on [October 31] of the next succeeding calendar year.

“Cost” or “Costs of a Project” means and shall be deemed to include, together with any other proper item of cost which is not specifically mentioned herein, whether incurred prior to or after the date of adoption of the Bond Resolution, (a) costs and expenses of the Institution incurred for labor and/or materials and payments to contractors, subcontractors, vendors, suppliers and materialmen in connection with the acquisition and installation of any part of any Project; (b) the cost of contract bonds and of insurance of any kind for any component of the Project; (c) the costs

and expenses of the Institution for estimates and plans and specifications, if any, for any component of the Project; (d) compensation and expenses of the Trustee, Paying Agent, Registrar, and/or other fiduciaries, financial advisory, legal, accounting, financial and printing expenses, fees and all other expenses incurred in connection with the issuance of the 2023 Bonds; (e) all other costs which the Authority or the Institution shall be required to pay under the terms of any contract or contracts for the acquisition or installation of the Project; (f) any sums which are required to reimburse the Institution or the Authority for advances made by either or any of them for any of the above items, or for any other costs which are properly incurred and for work done by either or both of them, which are properly chargeable to the Project; (g) deposits into the Debt Service Fund for payment of interest on the Bonds and deposits in any other fund or account under the Bond Resolution, all as shall be provided in the Bond Resolution; (h) the payment of any notes or similar evidences of indebtedness of the Authority which have been issued to temporarily finance the payment of any item or items of cost of the Project (including any interest and redemption premiums thereon); (i) the administrative expenses of the Authority incurred in connection with the financing of the Project; and (j) such other expenses which are not specified herein as may be necessary or incidental to the construction, acquisition and installation of any Project, the financing thereof and the placing of the same in use and operation. Notwithstanding anything to the contrary foregoing, the Lease Amount shall not be used to reimburse expenditures incurred prior to the Reimbursement Eligibility Date. As used herein, the term “incurred” as applied to any expenditure shall mean the earlier to occur of (i) the date services were provided or goods were delivered, or (ii) the date that the Institution expended funds to pay (or prepay) for the expenditure. Only expenditures incurred on or after the Reimbursement Eligibility Date may be reimbursed. All such reimbursements shall be subject to approval by the Authority and, upon the request of the Authority, review by its bond counsel. No financing costs or interest expense of any interim debt shall be reimbursed nor shall Costs of a Project financed by taxable interim debt secured by the Project be reimbursed; further no liens in respect of any such interim debt shall be permitted to exist at the time of issuance of the 2023 Bonds.

“Debt Service Fund” shall have the meaning set forth in the Bond Resolution.

“Debt Service Requirement” shall have the meaning set forth in the Bond Resolution.

“Equipment” or “Item(s) of Equipment” shall mean the capital equipment described in this Agreement and purchased and acquired with the proceeds of the 2023 Bonds which shall be comprised of “Higher Education Equipment” as defined in the Act.

“Lease Amount” shall mean the amount shown on the cover page hereof.

“Lease Payment Date” shall mean each [May] 1 and [November] 1, commencing [November][May] 1, 202[4]. In the event a Lease Payment Date is not a Business Day, the Basic Rent shall be paid by the Institution on the next succeeding Business Day.

“Outstanding” shall have the meaning assigned to such term in Article I of the Bond Resolution.

“Program” shall mean the Higher Education Equipment Leasing Fund Program of the Authority involving the acquisition and installation of higher education equipment for lease to private and public institutions of higher education in the State.

“Project” shall mean, collectively, each Item of Equipment set forth on Exhibit A hereto as such exhibit may be amended by the Parties to this Agreement.

“Project Lease Term” shall mean the duration of the leasehold estate created by this Agreement as specified in Section 2.2 hereof.

“Reimbursement Eligibility Date” shall mean _____, 2023.

“Rentals” shall mean the sum of Basic Rent and Additional Rent, set forth in Article IV hereof, which is payable by the Institution in connection with the lease of the Project.

“Requisition” shall mean the certificate of requisition, as required by Section 404 of the Bond Resolution, in the form attached hereto as Exhibit D, as such form may be revised from time to time by the Authority.

“State” shall mean the State of New Jersey.

“Treasurer” shall mean the Treasurer of the State of New Jersey.

“Trustee” shall mean the bank, trust company, national banking association or other banking institution which shall be appointed by the Authority pursuant to the terms of the Bond Resolution or any successor thereof to act as trustee for the holders of the 2023 Bonds.

“2023 Bonds Equipment Leasing Fund Program Basic Rent Account” or “Basic Rent Account” shall have the meaning set for in Section 4.6 hereof.

SECTION 1.2 Interpretation.

In this Agreement, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word “including” shall be deemed to be followed by the words “without limitation.” All references to Sections, Appendices, and Exhibits shall be deemed to be references to Sections, Appendices, and Exhibits to this Agreement, unless the context shall otherwise require. Except as otherwise expressly provided in this Agreement, all terms of an accounting or financial nature shall be construed in accordance with Generally Accepted Accounting Principles, as in effect from time to time.

SECTION 1.3 Incorporation of Recitals.

The recitals in the Background section of this Agreement are incorporated herein by reference as if set forth in full herein and shall be binding on the Parties.

ARTICLE II PROVISIONS RELATING TO LEASE OF PROJECT

SECTION 2.1 Lease of Project.

The Authority, as lessor, hereby leases to the Institution, as lessee, the Project described in Exhibit A attached hereto and by this reference incorporated herein as if set forth at length, and the Institution hereby agrees to take and lease such Project from the Authority, on the terms and conditions which are set forth in this Agreement.

SECTION 2.2 Duration of Project Lease Term.

The Project Lease Term shall commence on the date of issuance of the 2023 Bonds, and, provided that all liabilities under this Agreement have been discharged or arrangements satisfactory to the Authority have been made for the discharge of all liabilities under this Agreement, shall terminate on the day immediately following the last date shown on Exhibit B for the payment of Basic Rent.

Notwithstanding anything to the contrary foregoing, the lease of the Project in the Lease Amount is expressly conditioned upon the issuance of the 2023 Bonds if, when, and as issued, in an amount sufficient to fund the Lease Amount, and also upon the Institution's execution and delivery of all documents, certificates, opinions and other items as may be required by the Authority in connection with the issuance of the 2023 Bonds and the leasing of the Project. The issuance of the 2023 Bonds is subject to the approval of the Authority's Board and the funding of the Lease Amount is subject to final review by the Authority's bond counsel as to the eligibility of the Project for financing with tax-exempt bonds.

ARTICLE III ACQUISITION OF PROJECT AND ISSUANCE OF 2023 BONDS

SECTION 3.1 Acquisition of Project.

The Institution agrees to acquire the Project or cause the same to be acquired. The Institution agrees that it will use its best efforts to cause the Project to be completed as soon as may be practicable, but if for any reason such completion is delayed there shall be no diminution in or postponement of the amounts which are due and payable by the Institution under the terms of this Agreement.

The Institution shall be responsible for the letting of contracts to acquire and complete the Project. Contracts in connection with the Project shall be let in accordance with procurement laws applicable to the Institution, including, where applicable, competitive bidding laws, and shall comply with the prevailing wage requirements as determined by the Commissioner of Labor and Workforce Development pursuant to N.J.S.A. 18A:72A-5.1 et seq.

During the period of this Agreement, the Authority shall hold title to the Project. To the extent the Institution has acquired any portion of the Project prior to the start of the Project Lease Term, title to said portion is hereby conveyed by the Institution to the Authority as of the start of the Project Lease Term.

Upon delivery of each Item of Equipment to the Institution, the Institution shall cause an Authorized Institution Representative to inspect the same and either (i) if such Item of Equipment is found to be in good condition and in accordance with the specifications therefor, to accept such Item of Equipment, to complete and execute a Requisition in the form set forth in Exhibit D attached hereto, or in such other form as the Authority may require, for payment of such Item of Equipment pursuant to the terms of the Bond Resolution, and to deliver such executed Requisition to the Authority, which Requisition for payment (as approved by an Authority Officer) shall be forwarded by the Authority to the Trustee for payment, or (ii) if the Institution, acting in good faith, should find that such Item of Equipment is not in good condition or is not in accordance with the specifications therefor, the Institution shall return the same to the manufacturer or supplier thereof. Upon presentation of the Requisition required by the terms of the Bond Resolution, the Trustee will pay the Cost of such Item of Equipment pursuant to the terms of the Bond Resolution. The Institution shall not alter, retype, reformat, or otherwise modify or revise the approved form of Requisition. The Authority will not accept any Requisition that does not conform to the Authority's approved form.

SECTION 3.2 Use of the Project.

The Institution covenants and agrees that the Project shall be used by the Institution as higher education equipment as required by the Act and which, in the opinion of the Institution, is necessary, desirable and to the benefit and best interests of the Institution.

The Institution further covenants, represents and agrees as follows: (i) the Institution is and during the term of this Agreement will at all times be in compliance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., (ii) the use of the Project, the admission of students to the Institution, and the provision of services to students, are not, and shall at no time be, restricted on racial or religious grounds, nor shall there be a religious test for such use, admission, or provision of services, (iii) there is not, and shall at no time be, a requirement that individuals gaining admission to or receiving services from the Institution, or otherwise using the Project, receive instruction in the tenets of a particular faith, nor shall religious instruction be mandatory, (iv) no portion of the proceeds of the 2023 Bonds will be used to finance a prayer room or other place used primarily for religious worship, instruction or expression, and (v) at no time shall the Project, or any part thereof, be used or be allowed to be used for religious instruction or as a place for religious worship even after the 2023 Bonds are no longer outstanding.

SECTION 3.3 Costs of the Project.

The Authority and the Institution agree that for the purpose of financing the Costs of the Project, the proceeds from the sale of the 2023 Bonds attributable to the Institution will be sufficient, together with certain moneys to be made available for the Project by the Institution, to finance the Costs of the Project.

SECTION 3.4 Completion Date.

The completion date of the Project shall be evidenced by delivery to the Authority of a completion certificate (the "Completion Certificate") in the form set forth in Exhibit E attached

hereto, or in such other form as the Authority may require, executed by an Authorized Institution Representative, which certificate shall be filed in the offices of the Authority.

SECTION 3.5 Default in Contractors', Vendors' or Suppliers' Performance.

In the event of a default of any contractor, subcontractor, vendor or supplier under the terms of any contract made in connection with the Project, the Institution will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Institution against the contractor, subcontractor, vendor or supplier in default and against each surety for the performance of such contractor, subcontractor, vendor or supplier. The Institution will advise the Authority, in writing, of the steps it intends to take in connection with any such default. The Authority, after notifying the Institution in writing, in good faith and in its own name, may prosecute or defend any action or proceeding or take any other action which the Authority deems reasonably necessary, and in such event the Institution hereby agrees to cooperate fully with the Authority. Any amounts which are recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, net of expenses incurred by the Authority to obtain such recovery, shall be paid to the Institution, and applied to payment of the Costs of the Project, in accordance with the terms of the Bond Resolution.

SECTION 3.6 Sale, Assignment, Subleasing, Substitution, or Modification

(a) Neither this Agreement nor the interest of the Institution in any Item of Equipment may be sold, assigned or subleased by the Institution.

(b) The Institution may not, without the prior written consent of the Authority, elect to substitute one or more other items of equipment for Items of Equipment approved in connection with the execution of this Agreement. If approved by the Authority, the Cost of any equipment being substituted shall not exceed the aggregate of the estimated Cost of such Items of Equipment (unless the Institution pays such extra moneys) and provided the estimated useful life of the equipment being substituted is equal to or greater than the estimated useful life of the Items of Equipment for which such substitution or addition is being made. In the event of substitution or addition as provided herein, the Institution and the Authority shall, if necessary, execute appropriate amendments to the Exhibits hereto to reflect such substitution or addition. Any equipment being substituted shall not be a material change from the Items of Equipment approved by the Secretary.

(c) Pursuant to N.J.A.C. 9A:14-1.6(d), in the event that the Institution requires a modification to the Project, the Institution shall submit a formal written request to the Secretary, prior to the Institution taking any action to modify the Project, in order to allow the Secretary to evaluate the merits of the proposed modification against the objectives set forth at N.J.A.C. 9A:14-1.4(b). The Secretary may exercise discretion to allow the Institution to modify the Project if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved project and if such modification does not constitute a material change. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of this Agreement, the Tax Representation Certificate(s) (as defined herein), any other applicable Bond documents, and applicable State and federal law.

ARTICLE IV RENTALS AND OTHER PAYMENTS

SECTION 4.1 Nature of the Obligation.

The Institution agrees that its obligation to make payments required under this Agreement is a general obligation of the Institution, payable from any legally available funds of the Institution.

The obligation of the Institution to pay all Rentals and to pay all other amounts which are provided for in this Agreement and to perform its obligations under this Agreement shall be absolute and unconditional, and such Rentals and other amounts shall be payable without any rights of set-off, recoupment or counterclaim it might have against the Authority, the State, the Trustee or any other person and whether or not the Project is used by the Institution or available for use by the Institution.

This Agreement shall not be terminated (other than such termination as is provided for hereunder) for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the failure of the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

SECTION 4.2 Basic Rent.

(a) The Institution agrees to pay on each Lease Payment Date, as Basic Rent (which shall be calculated on the date of issuance of the 2023 Bonds) for the Project from legally available funds of the Institution, the amounts set forth in Exhibit B hereto.

(b) On each Lease Payment Date, the Trustee shall remit Basic Rent received from the Institution to the Treasurer.

SECTION 4.3 Additional Rent.

(a) The Institution agrees to pay as Additional Rent for the Project from legally available funds of the Institution an amount equal to the sum of the following items: (i) the Annual Administrative Fee of the Authority; and (ii) beginning with the Bond Year during which the 2023 Bonds are delivered and for each Bond Year thereafter, an amount equal to the sum of the following two items: (x) any expenditures of the Authority attributable to the Institution for insurance, fees and expenses of auditing, and fees and expenses, including reasonable legal fees, of the Trustee, any Paying Agent, fiduciary or other depository, all as required by the Bond Resolution and not otherwise paid or provided for by the Institution; and (y) all other expenditures reasonably and necessarily incurred by the Authority by reason of its ownership, financing and leasing of the Project, including expenses incurred by the Authority to compel full and punctual performance of all of the provisions of this Agreement in accordance with the terms hereof. To the extent any of the foregoing expenses are applicable to all institutions receiving financing from the proceeds of the 2023 Bonds, the portion thereof attributable to the Institution shall be deemed to be the Allocable Share thereof.

(b) Any expenditures of the Authority made pursuant to Section 4.3(a)(ii) shall be certified by the Authority to the Institution in writing as soon as practicable and shall be paid or caused to be paid by the Institution in accordance with the provisions of this Agreement.

(c) All Additional Rent payable hereunder (other than payments required under Section 6.12 hereof, which shall be due immediately upon demand) shall be payable by the Institution to the Authority on [November] 1 of each Bond Year.

SECTION 4.4 To Whom Rentals are Payable.

(a) Payments of Basic Rent shall be made by the Institution on a semi-annual basis to the Trustee for the account of the Authority. Upon receipt by the Trustee, such amounts shall be deposited in the Basic Rent Account established with the Trustee and applied as provided in Section 4.2(b) hereof.

(b) Payments of Additional Rent shall be made by the Institution on an annual basis (or when due, in the case of payments required under Section 6.12 hereof) to the Trustee for the account of the Authority. Upon receipt (and unless otherwise directed by the Authority), the Trustee shall retain therefrom the Institution's Allocable Share of the Trustee's annual fee, and shall promptly remit the balance of such Additional Rent to the Authority.

(c) The Institution agrees that it will pay to the Trustee, in accordance with the instructions from the Authority, all Basic Rent and Additional Rent which is due and payable by the Institution to the Authority pursuant to the terms of this Agreement.

SECTION 4.5 Medium of Payment.

The Institution covenants and agrees that it will pay or cause to be paid when due and payable hereunder the Rentals and every installment thereof in such coin or currency as, at the time of payment, shall be legal tender for the payment of debts due to the United States of America.

SECTION 4.6 Special Fund.

To secure payment of the Basic Rent hereunder, the Authority has caused to be created a "2023 Bonds Equipment Leasing Fund Program Basic Rent Account" (the "Basic Rent Account") to be held by the Trustee for the account of each Institution that is financing a Project with proceeds of the 2023 Bonds. The Institution covenants and agrees that it will deposit or cause to be deposited the Basic Rent due on or prior to each Lease Payment Date, from any legally available funds of the Institution, into the Basic Rent Account.

SECTION 4.7 Notice of Rentals.

For the purpose of enabling the Institution to make or cause to be made the payments required by this Agreement in due time and manner, the Authority shall furnish or cause to be furnished to the Institution and the Trustee statements of the purpose and amount of such payments. Any failure of the Authority to furnish such statements shall not excuse nonpayment of Rentals payable hereunder at the time and in the manner provided by this Agreement; provided, however, that the Authority shall not declare an Event of Default under this Agreement until a statement has

been furnished by the Authority and the Institution has failed to pay within ten (10) days after the receipt of such statement. Notwithstanding any other provision hereof, failure of the Authority to furnish such statements shall not excuse nonpayment of Basic Rent.

SECTION 4.8 Disclaimer of Warranties and Indemnification of Authority, Secretary, State, the Department of the Treasury and Trustee.

(a) The Institution acknowledges and agrees that (i) neither the Authority nor the Secretary makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; and (ii) in no event shall the Authority, the State, the Secretary, the Department of the Treasury, the Trustee, and their respective assigns, members, officers, directors, employees, agents, contractors, and counsel (collectively, the “Indemnified Parties”) be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement; and (iii) to the fullest extent permitted by law, the Institution shall indemnify and hold the Indemnified Parties harmless against, and the Institution shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the Authority and the Secretary may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Institution, the Institution’s ownership of the Project, or the acquisition, construction or installation of the Project.

(b) To the fullest extent permitted by law, both during the Project Lease Term and thereafter, the Institution shall protect, exonerate, indemnify and hold the Indemnified Parties harmless from and against, and the Institution shall pay any and all, liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, which any of the Indemnified Parties may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or both, or upon or arising out of contracts entered into by the Institution or the Authority or arising out of the Authority’s ownership of the Project or the leasing thereof to the Institution, or out of the acquisition of the Project pursuant to the terms of this Agreement, or arising out of the use and operation of the Project by the Institution, or arising from the financing of the Project. It is mutually agreed by the Institution and the Authority, that after commencement of the Project Lease Term, as provided in Section 2.2 hereof, no Indemnified Party shall be liable in any event for any action performed under this Agreement, and that the Institution shall save the Indemnified Parties harmless from any claim or suit of whatever nature and against any and all losses incurred in or about the defense of any such claims, actions or proceedings brought thereon.

(c) The Institution, at its own cost and expense, shall defend any and all such claims, suits and actions which may be brought or asserted against the Indemnified Parties, unless by reason of conflict of interest determined by the written opinion of counsel to any Indemnified Party, it is necessary for such party to employ separate counsel to be retained by such party, in which case the reasonable fees and expenses of such separate counsel shall nevertheless be borne by the Institution; but this provision shall not be deemed to relieve any insurance company which

has issued a policy of insurance of its obligation to defend the Institution, the Authority and any other insured party who is named in such policy of insurance in connection with claims, suits or actions covered by such policy. The obligations of the Institution pursuant to Sections 4.8(a) and 4.8(b) hereof shall survive the Project Lease Term and the final maturity of the 2023 Bonds. In addition, the Institution shall release the Indemnified Parties from, agrees that the Indemnified Parties shall not be liable for, and agrees to hold the Indemnified Parties harmless against any losses incurred because of any action taken by an Indemnified Party in good faith with respect to this Agreement and the Project.

(d) The Authority hereby agrees as follows:

(i) The Authority shall give the Institution prompt notice, in writing, of the filing of each such claim and the institution of each such suit or action with respect to the Project;

(ii) The Authority shall not, without the prior written consent of the Institution, adjust, settle or compromise any such claim, suit or action with respect to the Project; and

(iii) The Authority shall permit the Institution to assume full control of the adjustment, settlement, compromise or defense of each such claim, suit or action.

SECTION 4.9 Transfer of Title to Project.

Provided that the Institution has made payment of all Rentals required by this Agreement throughout the Project Lease Term and no Event of Default shall have occurred and be continuing, then upon receipt by the Authority of notice from the Trustee that the final Rental payment has been received and that no Allocable Bonds remain outstanding, title to the Project shall be deemed to have been, and is hereby, transferred to the Institution. In such event, this Agreement shall terminate and all of the rights, duties and obligations of the Parties hereto shall cease as of the date of such notice, other than the provisions of Sections 4.8 and 6.11, and such other provisions of this Agreement (including certain provisions of Section 3.2) that are intended by their terms to survive termination of this Agreement, all of which shall survive termination of this Agreement.

SECTION 4.10 No Disposition of Project.

The Institution shall not sell, lease, abandon, or otherwise dispose of the Project prior to the expiration of the Project Lease Term without the prior written approval of the Authority and the Secretary. In addition, the Institution acknowledges and agrees that, notwithstanding the receipt of any such approval, the Institution may be required to repay the Lease Amount in full in the event of any sale, lease, abandonment, or other disposition of the Project.

**ARTICLE V MAINTENANCE AND REPAIRS; DAMAGE OR DESTRUCTION;
INSURANCE; NET LEASE**

SECTION 5.1 Maintenance and Repairs of Project.

During the Project Lease Term, the Institution covenants that it shall at all times after the completion of the Project cause the same to be maintained, preserved and kept properly, with the appurtenances and every part and parcel thereof in good repair, working order and condition.

SECTION 5.2 Damage or Destruction.

The Institution agrees to immediately notify the Authority and the Trustee in the case of damage to or destruction of all or a portion of the Project resulting from fire or other casualty. The Institution agrees to promptly repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction and the Institution will apply the net proceeds of any insurance relating to such damage received by the Institution to the payment or reimbursement of the costs of such repair and restoration, except as expressly authorized by the Authority in its sole discretion upon the advice of bond counsel.

SECTION 5.3 Insurance.

The Institution agrees to procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable, at the expense of the Institution, insurance that is customarily maintained on equipment similar to the Equipment comprising the Project. The Authority, the Secretary, the State, the Department of the Treasury, and the Trustee shall each be named as an additional insured on such insurance. The insurance required hereunder shall be procured from financially sound and reputable insurers qualified to do business in the State with a minimum A-VII rating per AM BEST or insurers approved, in writing, by the Authority. Upon the Authority's request from time to time, the Institution shall provide evidence to the Authority that the Institution has procured such insurance in accordance with this Section 5.3. In addition, the Institution shall annually confirm to the Authority in writing that the Institution has procured and is maintaining such insurance. The Institution shall promptly notify the Authority and the Secretary in writing in the event of any change in the insurance coverage being maintained by the Institution. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit the Institution from participating in a program of self-insurance, a cooperative insurance purchasing program, or a similar insurance program, and such programs may, upon review by the Authority, be deemed to meet the requirements of this Section 5.3. The procurement of insurance shall not relieve the Institution from its obligations under Section 4.8.

SECTION 5.4 Net Lease.

This Agreement shall be deemed to be and is construed to be a "net lease," and the Institution shall pay absolutely net during the Project Lease Term, the Rentals and all other payments which are required to be made under the terms of this Agreement, free of all deductions, and without abatement, diminution and setoff.

It is mutually agreed by the Parties hereto that this is a net lease and notwithstanding any language herein to the contrary, it is intended, and the Institution expressly covenants and agrees, that all Rentals and other payments herein required to be made by the Institution to the Authority shall be net payments to the Authority, meaning that the Authority is not and shall not be required to expend any money or do any acts or take any steps affecting or respecting the maintenance, preservation, repair, restoration, reconstruction, or protection of the Project or any part thereof.

ARTICLE VI REPRESENTATIONS AND COVENANTS

SECTION 6.1 Institution's Right to Possession.

Except as otherwise provided herein, the Institution shall be entitled to sole possession of the Project during the Project Lease Term.

SECTION 6.2 Quiet Enjoyment.

The Authority covenants and agrees with the Institution that during the term of this Agreement and as long as the Institution pays the Rentals and the other payments which are required to be made under the terms of this Agreement and observes and performs all the terms, covenants, and conditions to be observed and performed by the Institution, the Institution may peaceably and quietly have, hold and enjoy the Project.

SECTION 6.3 Compliance with Laws and Regulations.

The Institution will, at its own cost and expense, promptly comply with all laws, rules, regulations and other governmental requirements which may be applicable to the Institution and the Project or the use or manner of use of the Project. The Institution will also observe and comply with the requirements of all policies and arrangements of insurance at any time in force with respect to the Project.

SECTION 6.4 Covenant Against Waste.

The Institution covenants not to do or suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, the Project.

SECTION 6.5 Right of Inspection.

The Institution covenants and agrees to permit the Authority and the authorized agents and representatives of the Authority to inspect the Project at any time during usual business hours.

SECTION 6.6 Assignments.

The Institution shall not assign this Agreement or any interest herein or sublet the Project or any part thereof.

SECTION 6.7 Mechanic Liens.

The Institution covenants to keep the Project, and the fixtures and equipment thereof, at all times during the term of this Agreement, free and clear of mechanics' liens and other liens of like nature, and the Institution shall at all times duly protect the Authority against any and all attorney's fees, costs and expenses which may accrue, grow out of or be incurred by reason of or on account of any such liens or claims.

SECTION 6.8 Reporting; Inspection; Disclosure; Annual Reporting.

(a) Annual Financial Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the later of the expiration of the Project Lease Term (as defined in Section 1.1 hereof), the full disbursement of the Lease Amount, or the submission by the Institution of the Completion Certificate (the "Reporting Term"), the Institution shall provide the following to the Authority: copies of the Institution's annual financial statements and auditor's reports for the prior fiscal year, prepared in compliance with applicable State policy, as may be amended from time to time, including but not limited to the provisions of any State policies applicable to the receipt of grants from the State.

(b) Annual Compliance Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Reporting Term (as defined in subparagraph (a) above), the Institution shall provide the following information and certifications to the Authority in response to the Authority's annual compliance questionnaire or in such other format as may be requested by the Authority:

(i) A detailed description of any use of the Project by any person or entity other than the Institution (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution's response;

(ii) A detailed description of the receipt by the Institution of any previously undisclosed contribution or other amount earmarked for the Project (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution's response;

(iii) If the Lease Amount has not yet been fully disbursed, (A) a detailed report of all expenditures for the Project during the prior calendar year and during the current calendar year up to the date of submission of the Institution's response (including the amount and purpose of each expenditure), and (B) a detailed description of the amounts or estimated amounts expected to be spent on the Project during the current calendar year (including the timing, amount, and purpose of each such expenditure);

(iv) If a Completion Certificate (as defined in Section 3.4 hereof) has not yet been submitted to the Authority, a statement regarding the status and progress of the Project, including the estimated percentage of completion of the Project;

(v) Written confirmation that the Institution has used all disbursements of the Lease Amount for approved Project costs, in the amounts and for the purposes stated on the related requisitions, such confirmation to be made as of the date of submission of the Institution's response, or, if the Institution cannot provide such confirmation, a detailed description and explanation of the use of any amounts of the Lease Amount for which the Institution cannot so confirm;

(vi) Written confirmation that the Institution is in compliance with the Written Procedures (as defined in Section 6.11 hereof), has conducted an annual review for compliance with federal tax requirements during the prior calendar year, and has determined that the Project and the use of the Lease Amount is in compliance with federal tax requirements;

(vii) Written confirmation that there have been no material changes to the Project or to the use of the Lease Amount during the prior calendar year or during the current calendar year up to the date of submission of the Institution's response;

(viii) Written confirmation that the Institution has procured and is maintaining the insurance required pursuant to Section 5.3 hereof; and

(ix) Such other information and certifications relating to the use of the Project and the use of the Lease Amount as may be reasonably requested by the Authority for the purpose of confirming the Institution's compliance with applicable State and federal law and policy.

(c) Reporting of Special Notice Events. The Institution shall provide prompt written notice to the Authority of the occurrence of any Special Notice Event, as described in Section 6.11.

(d) Inspection. The Institution agrees to permit inspection of the Project and the Institution's books and records pertaining thereto by the Authority and the Secretary upon written request during normal business hours.

(e) Disclosure. The Institution agrees that, whenever requested by the Authority, it shall provide and certify, in form satisfactory to the Authority, such information concerning the Institution and the Project, the operations and finances of the Institution and such other matters that the Authority considers to be necessary in order to enable the Authority to prepare and publish an official statement or other similar disclosure document relating to the sale of the 2023 Bonds or any refunding bonds or to enable the Authority to make any reports which are required by any law or governmental regulations in connection with the 2023 Bonds.

(f) Recordkeeping. The Institution shall retain until three (3) years after the retirement of the 2023 Bonds and any refunding bonds, adequate records with respect to the use of the Project and the expenditure of the Lease Amount, as described in Section 6.11.

SECTION 6.9 Limitation of Liability.

The Institution covenants that all actions heretofore taken by it in connection with the Project, including the making of contracts, and the direct actions hereafter taken by the Authority in connection with the Project in compliance with a direction or a request of any authorized officer of the Institution have been and will be in full compliance with the Bond Resolution, with this Agreement and with all pertinent laws applicable to the Institution or the Authority. The Institution acknowledges that any review of any such actions heretofore or hereafter taken by the Authority's staff or counsel has been or will be solely for the protection of the Authority to carry out the Project and shall not stop the Authority from enforcing the foregoing covenant.

The ownership of the Project shall not impose any other liability on the Authority, whether contractual or otherwise. Neither the completion of the Project nor the ownership of the Project by the Authority shall impose any liability on the Authority or the members, officers, employees, consultants or agents of the Authority. The Institution agrees to indemnify the Authority and all other Indemnified Parties and save them harmless against any liability intended to be precluded herein, to the extent set forth in Section 4.8 and to the extent permitted by law.

In the exercise of the powers of the Authority by its members, officers, employees, consultants and agents (other than the Institution) under the Bond Resolution and this Agreement, including (without limiting the foregoing) the carrying out of the Project, the application of moneys, the investment of funds and reletting the Project in the event of default by the Institution, the Authority and its members, officers, employees, consultants and agents shall not be accountable to the Institution for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred. The Authority and all such other parties shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

SECTION 6.10 Covenant as to Arbitrage.

The Authority and the Institution hereby covenant that they will make no use of the proceeds of the Allocable Bonds which would cause the 2023 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder or made applicable thereto (the "Treasury Regulations").

SECTION 6.11 Tax Covenants.

(a) Use of Proceeds. The Authority and the Institution covenant that they will take no action that would cause the Allocable Bonds to be "private activity bonds" within the meaning of Section 141 of the Code. Accordingly, unless otherwise approved in writing by the Authority, (i) none of the proceeds of the Allocable Bonds have been or will be used directly or indirectly in any trade or business carried on by any person other than a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code) and (ii) none of the net proceeds of the Allocable Bonds have been or will be used directly or indirectly in any trade or business carried on by any person other than a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code) for any use unrelated to

any governmental use of such proceeds or used or to be used in any “disproportionate related business use” (as defined in Section 141 of the Code). The Institution acknowledges that these limitations are more stringent than the rules provided under Section 141 of the Code, which the Authority has elected to apply on an aggregate basis for the 2023 Bonds.

(b) Additional Tax Covenants. The Institution acknowledges and agrees that the Authority has adopted written Post-Issuance Compliance Procedures (“Authority Written Procedures”) to monitor compliance of the 2023 Bonds with applicable provisions of the Code and Treasury Regulations. Within ninety (90) days of the execution of this Agreement, the Institution shall adopt written Post-Issuance Compliance Procedures (“Institution Written Procedures” and, together with the Authority Written Procedures, the “Written Procedures”), unless the Institution already has adopted Institution Written Procedures, to monitor compliance of the Allocable Bonds with applicable provisions of the Code and the Treasury Regulations. The Institution agrees to follow the Written Procedures and at least once a year review the use of the Allocable Bonds and any other outstanding bonds of the Authority that have financed facilities for the Institution (together with the 2023 Bonds, the “Authority’s Bonds”) in order to determine whether such bonds meet all federal tax law conditions applicable to such bonds and certify its findings in writing to the Authority. In addition, the Institution shall, with respect to any of the Authority’s Bonds, provide prompt written notice to the Authority of any of the acts or events listed on Exhibit C, attached and made a part hereof (a “Special Notice Event”). The Institution will use its best efforts to provide advance notice, but will in any event provide notice no later than thirty (30) days after the occurrence of such Special Notice Event, whether the Institution is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Special Notice Event shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event shall have occurred, or otherwise. The Institution agrees that, in consultation with the Authority, at the expense of the Institution, it shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, including without limitation such actions required under Section 1.141-12 of the Treasury Regulations or a closing agreement with the Internal Revenue Service and provide to the Authority an opinion of nationally recognized bond counsel outlining the plan of remediation and whether or not the tax-exempt status of the 2023 Bonds will be preserved. In the event the Authority becomes aware of a Special Notice Event, the Authority shall have the right, upon prior written notice to the Institution, to conduct its own investigation and, at the sole cost of expense of the Institution, retain nationally recognized bond counsel to determine any and all actions required to remediate such Special Notice Event.

(c) The Institution covenants to create and maintain records which, in the judgment of the Authority, are sufficient to determine the compliance of the 2023 Bonds with the requirements of Section 141 of the Code, including but not limited to (i) the allocation and use of the proceeds of the Allocable Bonds and (ii) the ownership and use of all the property financed with proceeds of the Allocable Bonds, as such records are further described in the Institution’s Tax Representation Certificate (as defined herein) with respect to the 2023 Bonds. The Institution covenants to retain all such records until the expiration of three (3) years after the later of the last scheduled maturity date or earlier retirement of the 2023 Bonds and any refunding bonds.

(d) The Institution covenants that it will take no action that would cause the 2023 Bonds to be federally guaranteed (within the meaning of Section 149(b) of the Code).

(e) The Institution covenants to comply with the provisions of the Code applicable to the 2023 Bonds and that it will not take any action or fail to take any action which would cause the interest on the 2023 Bonds to be included in gross income for purposes of federal income taxation under Section 103 of the Code.

(f) In connection with this Agreement, the Institution covenants and represents that it has executed or will execute one or more Tax Representation Certificates (each, a “Tax Representation Certificate”) as to compliance with the Code and Treasury Regulations relating to the Project and the 2023 Bonds. The provisions of each such Tax Representation Certificate shall be incorporated herein by reference and shall be binding upon the Institution. The Institution represents, covenants and agrees that the representations and covenants of the Institution set forth in the Institution’s Tax Representation Certificate(s) are and will be, true, correct and complete, both as of the Effective Date and as of the date of issuance of the 2023 Bonds. The Institution understands that the statements, covenants and undertakings made in the Tax Representation Certificate(s) and this Agreement shall be relied upon by the Authority in connection with the issuance of the 2023 Bonds (as well as certain other obligations of the Authority or the State issued for higher education purposes), and that any misstatement or failure to comply with any such undertaking on the part of the Institution may result in adverse consequences affecting a significantly greater principal amount of the 2023 Bonds than the amount of the Lease Amount.

(g) The Institution acknowledges and agrees that the Lease Amount is or will be funded from the proceeds of the Authority’s 2023 Bonds issued or to be issued under N.J.S.A. 18A:72A-40 to -48, which 2023 Bonds have been or are expected to be issued on a tax-exempt basis. In order to ensure the tax-exempt status of the 2023 Bonds upon issuance and the continued tax-exempt status of the Bonds thereafter, the Institution shall use the Lease Amount only for the purpose and in the manner set forth in the Institution’s Tax Representation Certificate(s). In the event that the Institution wishes to use the Lease Amount in a way not consistent with the Institution’s Tax Representation Certificate(s), the Authority must receive an opinion from nationally recognized bond counsel that such use will not adversely affect the tax-exempt status of the 2023 Bonds and any bonds issued to refund the 2023 Bonds. The Institution shall pay any and all fees incurred to obtain such opinion(s).

SECTION 6.12 Rebate Requirement.

(a) The Authority and the Institution covenant and agree that the Authority shall calculate or cause to be calculated the Rebate Amount at the times and in the manner set forth in the Tax Representation Certificate and shall pay or direct the Trustee to pay the Rebate Amount to the United States of America, in the percentage, at the times and in the manner set forth in the Tax Representation Certificate.

(b) Notwithstanding any other provision of this Agreement, to the extent that funds and accounts held by the Trustee are less than the amount required to be deposited by the Authority in the Rebate Fund for the Allocable Bonds, the Institution will pay to the Authority the amount equal to the Rebate Amount.

SECTION 6.13 Agreement Not to Purchase 2023 Bonds.

The Institution agrees that neither it nor any person related to it, within the meaning of Section 144 of the Code, pursuant to an arrangement, formal or informal, shall purchase bonds of the Authority issued to finance the Program in an amount related to the amount of the principal payments to be made pursuant to this Agreement.

SECTION 6.14 Right to Obtain Bond Counsel Opinion.

The Authority and the Institution shall not be required to comply with any one or more requirements of Sections 6.10, 6.11 and 6.12 hereof to the extent that an opinion of nationally recognized bond counsel is obtained to the effect that failure to comply with such requirements or compliance with other requirements in lieu of Sections 6.10, 6.11 and 6.12 hereof will not impair the exclusion from gross income of interest on the 2023 Bonds for purposes of federal income taxation under Section 103 of the Code.

SECTION 6.15 Additional Representations and Warranties.

The Institution hereby makes the following representations and warranties to the Authority as of the Effective Date:

(a) Existence and Standing. The Institution is a body corporate and politic created under the laws of the State, and has the necessary power and authority to execute and deliver this Agreement and any other documents to which the Institution is a party, and to perform its obligations hereunder and thereunder.

(b) Authorization and Validity. The execution and delivery by the Institution of this Agreement and any other documents to which the Institution is a party have been duly authorized by proper proceedings of the Institution, and no further approval, authorization or consents are required by law or otherwise. This Agreement and such other documents constitute the legal, valid and binding obligations of the Institution enforceable in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, and by general equitable principles.

(c) Compliance with Laws and Contracts. Neither the execution and delivery by the Institution of this Agreement and any of the other documents to which the Institution is a party, nor the consummation of the transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Institution, the Institution's organization documents or the provisions of any indenture, instrument or agreement to which the Institution is a party or is subject, or by which it or its property is bound, or conflict with or constitute a default under or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement. To the best of its knowledge, the Institution is in compliance with all applicable statutes, regulations or ordinances of governmental agencies and authorities having jurisdiction over it and the Project, including without limitation, those of the United States of America, the State, and any municipal or local government entity with jurisdiction over the Project, including any and all environmental laws.

(d) Litigation. There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the Institution, threatened against or affecting the Institution (x) wherein an unfavorable decision, ruling or finding would materially adversely affect (i) the transactions contemplated by or the validity of this Agreement or any other documents to which the Institution is a party, (ii) the tax-exempt status of the Institution or of the interest on the 2023 Bonds, or (iii) the Institution's property, assets, operations or conditions, financial or otherwise, or its ability to perform its obligations hereunder or under such other documents; or (y) which in any way contests the existence, organization or powers of the Institution or the titles of the officers of the Institution to their respective offices, except as disclosed in the Official Statement relating to the 2023 Bonds.

(e) Eligibility; Application. The Institution represents and warrants that (i) it is a public institution of higher learning duly accredited; (ii) all of the statements and representations made in its application for the Lease Amount were on the date made, are as of the Effective Date hereof, and shall continue to be, true and correct in all material respects.

SECTION 6.16 Additional Covenants.

During the term of this Agreement, and until the Institution has paid in full all of its obligations hereunder, the Institution hereby covenants and agrees as follows:

(a) Existence. The Institution shall maintain its existence as a body corporate and politic operating as a public institution of higher education formed under the laws of the State, and shall not merge, consolidate, liquidate or sell substantially all of its assets.

(b) Compliance With Laws. The Institution shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject and which are material to the 2023 Bonds, this Agreement or any other documents to which the Institution is a party, or the operations, affairs, properties, condition (financial or otherwise) or prospects of the Institution; provided, however, that the Institution may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the Institution's power and authority to execute and deliver this Agreement and such other documents, and to perform its obligations and pay all amounts payable by its hereunder and thereunder.

ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

SECTION 7.1 Events of Default.

An "Event of Default" shall mean any one or more of the following events:

- (a) Failure by the Institution to pay, when due, the Basic Rent;
- (b) Failure by the Institution to pay when due any Additional Rent or other payments which are required to be made under the provisions of this Agreement, which failure shall continue for a period of thirty (30) days after written notice thereof has been given to the Institution, specifying such failure;

(c) Failure by the Institution to observe and perform any covenant, condition or agreement which is required to be observed or performed by it other than as referred to in subsections (a) and (b) of this Section 7.1, which failure shall continue for a period of ninety (90) days after written notice thereof has been given to the Institution, specifying such failure and requesting that it be remedied, unless the Authority shall agree in writing to an extension of such time prior to its expiration; provided however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Institution, or on its behalf, within the applicable period and is diligently pursued until the default is remedied; or

(d) The entering of an order or decree appointing a receiver for the Institution or the Project, or any part thereof, or of the revenues thereof with the consent or acquiescence of the Institution or the entering of such order or decree without the acquiescence or consent of the Institution and such order or decree shall not be vacated, discharged or stayed within ninety (90) days after its entry.

SECTION 7.2 Remedies.

Whenever any Event of Default shall have occurred and be continuing, any one or more of the following steps may be taken, provided that prior written notice of the Event of Default has been given to the Institution by the Authority:

(i) The Authority may take possession of the Project without terminating this Agreement, and may sublease the Project for the account of the Institution, holding the Institution liable for the difference, if any, in the Basic Rent and other amounts which are payable by the sublessee and the Rentals and other amounts which are due and payable by the Institution under the terms of this Agreement.

(ii) To the extent permitted by law, the Authority may terminate the Project Lease Term, exclude the Institution from possession of the Project and use its best efforts to lease the Project to another party (to the extent possible) for the account of the Institution, holding the Institution liable for all Rentals and other amounts which are due and payable under the terms of this Agreement and which are not paid by such other party.

(iii) To the extent permitted by law, the Authority may terminate the Project Lease Term, exclude the Institution from possession of the Project and sell the Project (to the extent possible), holding the Institution liable for payment of all Rentals and other amounts which are due under the terms of this Agreement and which are not paid from the Proceeds derived from such sale.

(iv) Declare all Rentals due or to become due to be immediately due and payable by the Institution, whereupon such Rentals shall be immediately due and payable.

(v) The Authority may take whatever action at law or in equity may appear to be necessary or desirable in order to collect the payments which are then due and payable and thereafter to become due and payable, or to enforce performance and observance of any obligation, agreement or covenant of the Institution under the terms of this Agreement.

Any amounts which are collected pursuant to action taken under this Section shall be applied as Basic Rent or Additional Rent and in accordance with the provisions of this Agreement.

SECTION 7.3 Additional Remedies.

To assure the continued operation and solvency of the Program, the Institution hereby agrees that if it fails or is unable to pay to the Authority in full when due any Rentals due hereunder, an amount sufficient to satisfy the deficiency with respect to the non-payment of Rentals shall be retained by the Treasurer from State aid or an appropriation payable to the Institution.

The amount retained by the Treasurer shall be deducted from the corresponding appropriation or apportionment of State aid payable to the Institution and shall not obligate the State to make, nor entitle the Institution to receive, any additional appropriation or apportionment.

SECTION 7.4 No Remedy Exclusive.

No remedy conferred herein upon or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

ARTICLE VIII MISCELLANEOUS

SECTION 8.1 No Additional Waiver Implied by One Waiver.

In the event any agreement, covenant, warranty, or representation contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 8.2 Severability.

In case any one or more of the provision of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

SECTION 8.3 Successors and Assigns.

This Agreement shall inure to the benefit of and shall be binding upon the Institution, the Authority and their respective successors and assigns.

SECTION 8.4 Torts Claim and Contractual Liability Acts

The liability of the Secretary, the Authority, the Department of the Treasury and their director, officers and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., is not applicable by its terms to the Authority, the Institution hereby agrees that such statute (except for N.J.S.A. 59:13-9) shall be applicable to all claims against the Authority under this Agreement.

SECTION 8.5 Notices.

All notices required to be given or authorized to be given by the Parties pursuant to this Agreement shall be in and shall be sent to the main offices of the respective Parties by registered or certified mail or by email with confirmation of receipt. All notices required to be given or authorized to be given to the Trustee by either of the Parties pursuant to this Agreement shall be in writing and shall be sent by registered or certified mail to the office designated by the Trustee for the receipt of such notices.

SECTION 8.6 Rights Cumulative.

All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

SECTION 8.7 Amendments and Modifications.

This Agreement shall not be amended or modified in any manner without the consent of the Treasurer, the Secretary, and the Parties hereto. Any amendments or modifications shall be in writing and signed by each of the Parties. Material changes to this Agreement will not be allowed.

SECTION 8.8 Counterparts.

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

SECTION 8.9 Headings.

The Article and Section headings in this Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 8.10 Third Party Beneficiary.

The Institution and the Authority agree that the State is intended to be and shall be a third party beneficiary of this Agreement.

SECTION 8.11 Non-Waiver.

It is understood and agreed that nothing contained in this Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right not explicitly waived in this Agreement.

SECTION 8.12 No Pledge.

This Agreement may not be assigned by the Institution, nor may it be pledged as collateral for any purpose.

SECTION 8.13 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to its choice of law rules thereof. The Institution hereby consents to the jurisdiction of the Superior Court of New Jersey in the County of Mercer and agrees that any lawsuits of any nature pertaining to this Agreement shall be brought in that Court in the first instance.

SECTION 8.14 Additional Covenants.

Upon or prior to the issuance of the 2023 Bonds, a schedule reflecting additional representations, undertakings and covenants applicable to the Institution may be attached hereto as a condition to this Agreement. Any such additional provisions shall be incorporated herein, and shall be binding upon the Institution.

SECTION 8.15 Electronic Signatures.

Pursuant to N.J.S.A. 12A:12-1 et seq., the “Uniform Electronic Transactions Act,” electronic signatures to a contract shall be binding upon agreement of all parties. The Parties hereto agree that this Agreement, and all documents, certificates, opinions and requisitions delivered pursuant to the terms hereof, may be executed with electronic signatures.

ELF 2023 – FORM OF LEASE AGREEMENT – PUBLIC INSTITUTIONS (GENERAL FORM)

IN WITNESS WHEREOF, the Institution has caused this instrument to be executed in its name by an Authorized Institution Representative and the Institution’s official seal to be attached hereto and the Authority has caused this instrument to be signed in its name by an Authority Officer and its corporate seal to be hereunto affixed, all as of the day and year first above written.

ATTEST:

[NAME OF INSTITUTION]

By: _____
Name:
Title:

By: _____
Name:
Title:

[SEAL]

ATTEST:

NEW JERSEY EDUCATIONAL
FACILITIES AUTHORITY

By: _____
Name:
Title:

By: _____
Name:
Title:

[SEAL]

**EXHIBIT A
DESCRIPTION OF PROJECT**

The Project financed by the 2023 Bonds only includes components of the Project that can be financed under the Higher Education Equipment Leasing Fund Act and does not include those items that are described, but which are being financed by other grants from the Authority or the State and/or other funding sources. To the extent the Project includes components that cannot be financed under the Higher Education Equipment Leasing Fund Act, the Institution represents that amounts advanced under this Agreement will only be used for eligible components and that the Institution has sufficient funds from other sources to finance the balance of the Project. The portions of the Project that are financed with the 2023 Bonds will be described in the Institution's Tax Representation Certificate.

EXHIBIT B
BASIC RENT PAYMENT SCHEDULE

EXHIBIT C
SPECIAL NOTICE EVENTS

EXHIBIT D
FORM OF REQUISITION

EXHIBIT E
FORM OF COMPLETION CERTIFICATE

**RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES
AUTHORITY APPROVING FORMS OF GRANT AGREEMENTS TO BE
ENTERED INTO IN CONNECTION WITH THE AUTHORITY'S HIGHER
EDUCATION TECHNOLOGY INFRASTRUCTURE FUND PROGRAM**

Adopted: February 28, 2023

- WHEREAS:** The New Jersey Educational Facilities Authority (the “Authority”) is a public body corporate and politic of the State of New Jersey (the “State”) established pursuant to the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented), N.J.S.A. 18A:72A-1 et seq. (the “Act”); and
- WHEREAS:** The Authority is authorized pursuant to the New Jersey Higher Education Technology Infrastructure Fund Act, N.J.S.A. 18A:72A-59 et seq. (the “HETI Act”) to issue bonds (“HETI Bonds”) to finance the cost, or a portion of the cost, to develop technology infrastructure within and among New Jersey’s institutions of higher education (“Institutions”) in order to provide access effectively and efficiently to information, educational opportunities, and workforce training, or to enhance the connectivity of Institutions to libraries and elementary and secondary schools; and
- WHEREAS:** The Secretary of Higher Education (the “Secretary”) promulgated regulations to implement the HETI Act, set forth at N.J.A.C. 9A:13-1.1 to -1.8; and
- WHEREAS:** In accordance with the HETI Act, the Authority intends to issue HETI Bonds to finance grants (each, a “HETI Grant”) to be made to Institutions to pay all or a portion of the costs of projects approved for funding pursuant to the HETI Act; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-64, Institutions may apply for HETI Grants, and the Secretary shall review the applications, shall approve or disapprove each grant, shall establish the amount of each approved grant, and shall send a written certification of the approval and amount of each approved grant to the Authority; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-64.1, the Authority shall not provide grant funding pursuant to the HETI Act without the review and approval of the Joint Budget Oversight Committee of the New Jersey Legislature (“JBOC”); and
- WHEREAS:** Pursuant to N.J.A.C. 9A:13-1.6(c), the Authority shall submit to JBOC for review a copy of the proposed form of grant agreement (the “HETI Grant Agreement”) in connection with the HETI Grants approved by the Secretary; and
- WHEREAS:** Pursuant to N.J.S.A. 18A:72A-64.1 and N.J.A.C. 9A:13-1.6(c), JBOC shall approve or disapprove each HETI Grant within 10 working days of receipt of the

grant information from the Authority, or the HETI Grant shall be deemed approved by JBOC and the Secretary; and

WHEREAS: Pursuant to N.J.S.A. 18A:72A-66, the Authority may enter into a HETI Grant Agreement with an Institution approved for a HETI Grant, which agreement shall set forth the terms of the award of the HETI Grant in accordance with the provisions of the HETI Act and other applicable law; and

WHEREAS: Pursuant to N.J.S.A. 18A:72A-66, the Authority shall include in the HETI Grant Agreement such provisions as may be necessary to ensure that the Institution shall provide a matching amount at least equal to the amount of the HETI Grant, in accordance with the HETI Act; and

WHEREAS: The Authority now wishes to approve the forms only of the HETI Grant Agreements to be entered into with Institutions in connection with HETI Grants to be approved by the Secretary and JBOC pursuant to the HETI Act.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY AS FOLLOWS:

Section 1. The recitals set forth above are incorporated herein by reference as if set forth at length herein. For the purposes hereof, “Authorized Authority Representatives” shall mean the Chair, the Vice Chair, the Secretary, any Assistant Secretary, the Executive Director, the Deputy Executive Director or the Director of Compliance Management of the Authority and any such officers designated as “acting” or “interim”.

Section 2. The HETI Grant Agreements to be entered into with Institutions that are New Jersey public institutions of higher education shall be substantially in the form presented to this meeting (a copy of which shall be filed with the records of the Authority), and such form is hereby approved, provided that the Authorized Authority Representatives are hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate (including, without limitation, the inclusion of additional representations, warranties and/or covenants on the part of the Institutions, and any other provision that may be necessary or convenient).

Section 3. The HETI Grant Agreements to be entered into with Institutions that are New Jersey private institutions of higher education shall be substantially in the form presented to this meeting (a copy of which shall be filed with the records of the Authority), and such form is hereby approved, provided that the Authorized Authority Representatives are hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate (including, without limitation, the inclusion of additional representations, warranties and/or covenants on the part of the Institutions, and any other provision that may be necessary or

convenient).

Section 4. The execution and delivery of the HETI Grant Agreements shall be authorized by subsequent resolution of the Authority following approval of the HETI Grants by JBOC and the Secretary pursuant to N.J.S.A. 18A:72A-64.1 and N.J.A.C. 9A:13-1.6(c).

Section 5. This Resolution shall take effect in accordance with the provisions of the Act.

____ Mr. Feeney ____ moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by ____ Mr. Rodriguez __ and upon roll call the following members voted:

AYE: Joshua Hodes
Ridgeley Hutchinson
Louis Rodriguez
Brian Bridges
Elizabeth Maher Muoio (represented by Ryan Feeney)

NAY: None

ABSTAIN: None

ABSENT: None

The Chair thereupon declared said motion carried and said resolution adopted.

GRANT AGREEMENT

Between the

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY,
as Grantor

and

[NAME OF INSTITUTION],
as Grantee

Dated as of _____ 1, 2023

HIGHER EDUCATION TECHNOLOGY INFRASTRUCTURE FUND

Grant Amount: \$ _____

Project ID#: _____

New Jersey Educational Facilities Authority

HIGHER EDUCATION TECHNOLOGY INFRASTRUCTURE FUND

GRANT AGREEMENT

[Institution]

THIS GRANT AGREEMENT, is executed as of _____ 1, 2023 (the “Effective Date”) by and between the New Jersey Educational Facilities Authority (the “Authority”), a public body corporate and politic of the State of New Jersey (the “State”) and [NAME OF INSTITUTION] (the “Institution”), a private institution of higher education as defined in N.J.S.A. 18A:72A-3 (collectively, “the Parties”), pursuant to the provisions of the Higher Education Technology Infrastructure Fund Act, N.J.S.A. 18A:72A-59 to -71, as amended (the “Act”), for the purpose of developing technology infrastructure, including video, voice and data telecommunications equipment and linkages, including transport services and network interconnections (“Technology Infrastructure”) and related costs for the State's private nonprofit institutions of higher education.

ARTICLE I: THE GRANT

SECTION 1.1: Grant Amount.

(a) The Institution is hereby awarded a grant (the “Grant”) in the amount of _____ dollars (\$ _____) (the “Grant Amount”) to be used to finance costs of the project described in the attached Exhibit A (the “Project”), as approved by the Secretary of Higher Education (the “Secretary”). A description of the Project as so approved is attached hereto and incorporated herein by reference. The Grant Amount will be funded with the proceeds of one or more series of tax-exempt revenue bonds issued or to be issued by the Authority pursuant to the Act (the “Bonds”); provided, however, that the payment of the Grant Amount is expressly conditioned upon the issuance of the Bonds, if, when, and as issued, in an amount sufficient to fund the Grant Amount, and also upon the Institution’s execution and delivery of all documents, certificates, opinions and other items as may be required by the Authority in connection with the issuance of the Bonds and the making of the Grant. The issuance of the Bonds is subject to the approval of the Authority’s Board and the funding of the Grant Amount is subject to final review by the Authority’s bond counsel as to the eligibility of the Project for financing with tax-exempt Bonds.

(b) The term “Allocable Bonds,” when used herein, shall mean that portion of the principal amount of the Bonds that is allocable to the financing of the Grant (i.e., the amount of Bonds issued to finance the Grant Amount and a proportionate share of the costs of issuance of the Bonds and the Authority’s administrative costs associated with the approval process for the projects financed by the Bonds).

SECTION 1.2: Institution’s Financing Requirements.

In exchange for receipt of the Grant Amount, the Institution agrees to provide matching funds in an amount at least equal to the Grant Amount (the “Matching Funds”) to be used solely for the costs of the Project, and agrees that the Matching Funds will be spent for the same purposes as the Grant Amount. The Institution acknowledges and agrees that: (a) the Matching Funds must be generated from institutional sources, other grants, borrowing through the Authority, or other sources as permitted in the Grant approval process; (b) notwithstanding anything herein to the contrary, grants from State government sources may not be used to satisfy the Matching Funds requirement; (c) funds expended by the Institution for the Project prior to _____, 2023 (the “Reimbursement Eligibility Date”), if any, may not be used to satisfy the Matching Funds requirement; and (d) if the Institution fails to expend the required Matching Funds, the Secretary may terminate this Grant Agreement, whereupon no further disbursement of the Grant Amount will be provided to the Institution for the Project.

The obligation of the Institution to provide Matching Funds and to perform its obligations under this Grant Agreement shall be absolute and unconditional, and such Matching Funds shall be required without any rights of set off, recoupment or counterclaim it might have against the Secretary, the State, the Authority, or any other person, whether or not the Project is used by the Institution or available for use by the Institution.

SECTION 1.3: Reduction or Cancellation of Grant Amount.

The Institution acknowledges and agrees that the Secretary may reduce or cancel the Grant Amount if the Institution fails to commit the Grant Amount within eighteen (18) months of the allocations made by the Secretary unless (a) the request for approval to modify the Grant has been received by the Secretary within 18 months of the allocation; (b) the facility in which the Project will be housed is under construction or renovation; (c) delays are the result of federal, State, or local governmental approvals, or regulatory requirements not attributable to the Institution; (d) other compelling and documentable reasons exist as determined by the Secretary; or (e) delays are the result of the availability of funding under this Grant Agreement. The Grant Amount will be considered committed when this Grant Agreement has been entered into between the Institution and the Authority.

SECTION 1.4: Eligibility of Expenditures.

The Institution agrees that the Grant Amount may not be used to reimburse expenditures incurred by the Institution prior to the Reimbursement Eligibility Date. As used herein, the term “incurred” as applied to any expenditure shall mean the earlier to occur of (i) the date services were provided or goods were delivered, or (ii) the date that the Institution expended funds to pay (or prepay) for the expenditure. Only expenditures incurred on or after the Reimbursement Eligibility Date may be reimbursed. All such reimbursements shall be subject to approval by the Authority and, upon the request of the Authority, review by its bond counsel. No financing costs or interest expense of any

interim debt shall be reimbursed, and no liens in respect of any interim debt shall be permitted to exist at the time of issuance of the Bonds.

SECTION 1.5: Sufficient Funding.

The Institution represents and warrants that it has or reasonably expects to have sufficient funding to complete the Project, including the Matching Funds. The Institution also acknowledges that any Project costs exceeding the costs of the Project approved by the Secretary shall be the responsibility of the Institution.

SECTION 1.6: Use of Grant Amount; Disbursement Pursuant to Requisitions.

The Institution has committed, by resolution of its governing board, to support the annual operating costs of and maintenance requirements of the Project.

All costs to be funded or reimbursed from the Grant Amount shall be subject to the State prevailing wage requirements of N.J.S.A. 18A:72A-5.1 et seq.

The Authority shall disburse, or cause the trustee for the Bonds (the “Bond Trustee”) to disburse, from time to time, the Grant Amount to the Institution, but only upon receipt and approval of requisitions submitted to and approved by the Authority. Each requisition shall be executed by an authorized representative of the Institution and shall be in the form set forth in Exhibit C attached hereto, or in such other form as the Authority may require. The Institution shall not alter, retype, reformat, or otherwise modify or revise the approved form of requisition. The Authority will not accept any requisition that does not conform to the Authority’s approved form.

The Institution acknowledges and agrees that disbursement of the Grant Amount is contingent upon receipt by the Authority of evidence satisfactory to the Authority that after the disbursement, the aggregate of the Grant Amount disbursed is no greater than the aggregate amount of Matching Funds expended.

The Institution shall submit requisitions promptly and shall comply with any time constraints for the submission of requisitions that the Authority or the Secretary may impose.

SECTION 1.7: No Assignment; No Pledge.

This Grant Agreement may not be assigned by the Institution, nor may it be pledged as collateral for any purpose.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1: Existence.

The Institution is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State, and has the necessary power and authority to

execute and deliver this Grant Agreement and any other documents to which the Institution is a party, and to perform its obligations hereunder and thereunder.

SECTION 2.2: Eligible Institution; Accuracy of Grant Application.

(a) The Institution represents and warrants that it is a duly accredited “private institution of higher education” as defined in N.J.S.A. 18A:72A-3, meaning that it is an independent college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education which is equivalent to the education provided by the State’s public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid.

(b) The Institution represents and warrants that all of the statements and representations made in its application for the Grant were on the date made, are on the Effective Date hereof, and shall continue to be, true and correct in all material respects.

SECTION 2.3: Authorization and Validity.

The execution, delivery and performance of this Grant Agreement by the Institution shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or a breach of any provision contained in its certificate of formation or authorizing legislation (as applicable), or contained in any agreement, instrument, document, bond indenture, law, rule, regulation, order, decree, writ, judgment, injunction, or award to which it is now a party or by which it or any of its assets is bound.

The execution and delivery by the Institution of this Grant Agreement and any other documents to which the Institution is a party related to the execution and delivery of this Grant Agreement (including, without limitation, the application for the Grant submitted to the Secretary, resolutions adopted by the Institution, and any Tax Representation Certificates, as defined below (collectively, the “Other Grant Documents”)) have been or will be as of their date of execution, duly authorized by proper proceedings of the Institution, and no further approval, authorization or consents are required by law or otherwise. This Grant Agreement and the Other Grant Documents constitute or shall, upon their execution and delivery, constitute the legal, valid and binding obligations of the Institution enforceable in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, and by general equitable principles.

SECTION 2.4: Reporting; Inspection; Disclosure; Recordkeeping.

(a) Annual Financial Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term (as defined in Section 3.1 hereof) of this Grant Agreement, the Institution shall provide the following to the Authority: copies of the Institution’s annual financial statements, auditor’s reports, and IRS Form

990 for the prior fiscal year, prepared in compliance with applicable State and federal law and policy, as may be amended from time to time, including but not limited to the provisions of any State policies applicable to the receipt of grants from the State.

(b) Annual Compliance Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term of this Grant Agreement, the Institution shall provide the following information and certifications to the Authority in response to the Authority’s annual compliance questionnaire or in such other format as may be requested by the Authority:

(i) A detailed description of any use of the Project by any person or entity other than the Institution (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(ii) A detailed description of the receipt by the Institution of any previously undisclosed contribution or other amount earmarked for the Project (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(iii) If the Grant Amount has not yet been fully disbursed, (A) a detailed report of all expenditures for the Project during the prior calendar year and during the current calendar year up to the date of submission of the Institution’s response (including the amount and purpose of each expenditure), and (B) a detailed description of the amounts or estimated amounts expected to be spent on the Project during the current calendar year (including the timing, amount, and purpose of each such expenditure);

(iv) If a Completion Certificate (as defined in Section 4.2 hereof) has not yet been submitted to the Authority, a statement regarding the status and progress of the Project, including the estimated percentage of completion of the Project;

(v) Written confirmation that the Institution has used all disbursements of the Grant Amount for approved Project costs, in the amounts and for the purposes stated on the related requisitions, such confirmation to be made as of the date of submission of the Institution’s response, or, if the Institution cannot provide such confirmation, a detailed description and explanation of the use of any amounts of the Grant Amount for which the Institution cannot so confirm;

(vi) Written confirmation that the Institution is in compliance with the Written Procedures (as defined in Section 5.6 hereof), has conducted an annual review for compliance with federal tax requirements during the prior calendar year, and has determined that the Project and the use of the Grant Amount are in compliance with federal tax requirements;

(vii) Written confirmation that there have been no material changes to the Project or to the use of the Grant during the prior calendar year or during the current calendar year up to the date of submission of the Institution’s response;

(viii) Written confirmation that the Institution has procured and is maintaining the Required Insurance (as defined in Section 4.8 hereof); and

(ix) Such other information and certifications relating to the use of the Project and the use of the Grant Amount as may be reasonably requested by the Authority for the purpose of confirming the Institution’s compliance with applicable State and federal law and policy.

(c) Reporting of Special Notice Events. The Institution shall provide prompt written notice to the Authority of the occurrence of any Special Notice Event, as described in Section 5.7.

(d) Inspection. The Institution agrees to permit inspection of the Project and the Institution’s books and records pertaining thereto by the Authority and the Secretary upon written request during normal business hours.

(e) Disclosure. The Institution agrees that, whenever requested by the Authority, it shall provide and certify, in form satisfactory to the Authority, such information concerning the Institution and the Project, the operations and finances of the Institution and such other matters that the Authority considers to be necessary in order to enable the Authority to prepare and publish an official statement or other similar disclosure document relating to the sale of the Bonds or any refunding bonds or to enable the Authority to make any reports which are required by any law or governmental regulations in connection with the Bonds.

(f) Recordkeeping. The Institution shall retain until three (3) years after the retirement of the Bonds and any refunding bonds, adequate records with respect to the use of the Project and the expenditure of the proceeds of the Grant, as described in Section 5.8.

SECTION 2.5: Disclaimer of Warranties; Indemnification.

(a) The Institution acknowledges and agrees that (i) neither the Authority nor the Secretary makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or the Secretary or their respective agents be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Grant Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Grant Agreement; and (iii) the Institution shall indemnify and hold the Authority and the Secretary harmless against, and the Institution shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the Authority and the Secretary may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or

upon or arising out of contracts entered into by the Institution, the Institution’s ownership of the Project, or the acquisition, construction or installation of the Project.

(b) The Institution shall at all times protect and hold the State, the Secretary, the Department of the Treasury, the Authority, the Bond Trustee and each of their assigns, directors, officers, agents, contractors and employees (collectively, the “Indemnified Parties”) harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, attorneys’ fees) and liabilities for losses, damage and injury, resulting from or arising out of: (1) any claim for the non-delivery of the Grant Amount in the event that the Bonds are not issued (2) the financing of the costs of the Project, (3) the ownership, planning, design, acquisition, site preparation, transportation, construction, renovation, equipping, installation, maintenance, repair, replacement or completion of the Project or any part thereof or the effecting of any work done as part of the Project, (4) any defects (whether latent or patent) in the Project or any part thereof, (5) the maintenance, repair, replacement, restoration, rebuilding, demolition, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, (6) any act of negligence of the Institution or of any of its agents, contractors, servants, employees or licensees at the Project, (7) any act of negligence of any assignee or sublessee of the Institution at the Project, (8) any violation of or failure to comply by the Institution with any legal requirement applicable to the Project, including environmental laws, or any cost imposed upon any of the Indemnified Parties by any legal requirement applicable to the Project, or (9) any action or inaction of the Institution that may adversely affect the tax-exempt status of the Bonds or any refunding bonds (assuming for this purpose that the Bonds consist only of the Allocable Bonds). The Institution shall reimburse any such Indemnified Party for any reasonable legal or other expenses incurred by it in investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the Project. The indemnification required pursuant hereto shall be binding upon the Institution for any and all claims, demands, expenses, liabilities and taxes set forth herein. No Indemnified Party shall be liable for any damage or injury to the person or property of the Institution or its assigns, directors, officers, agents, contractors or employees, or persons under the control or supervision of the Institution or any other person who may be involved with the Project in any way, due to any action, inaction, or negligence of any person. This provision shall survive the expiration or earlier termination of this Grant Agreement.

SECTION 2.6: Litigation.

There is no action or proceeding pending, or to the best knowledge of the Institution, threatened by or against it by or before any court or administrative agency that might adversely affect the ability of the Institution to perform its obligations under this Grant Agreement.

SECTION 2.7: Compliance with Laws and Regulations.

To the best of its knowledge, the Institution is in compliance with all applicable statutes, regulations or ordinances of governmental agencies and authorities having

jurisdiction over it and the Project, including without limitation, those of the United States of America, the State and any municipal or local government entity with jurisdiction over the Project, including but not limited to those relating to the procurement and any and all environmental laws.

The Institution agrees to comply with the Act, all State and federal laws, all rules and regulations, and any other requirements imposed by law, including but not limited to those relating to the procurement of contracts to effectuate the Project.

Except as set forth on Exhibit B attached hereto and made a part hereof, the Institution has obtained, and is in material compliance with respect to, all government approvals, permits, certificates, inspections, consents and franchises necessary to complete the Project, to conduct its business, and to own or lease and operate its properties, and all such government approvals, permits and certificates are in full force and effect.

ARTICLE III: TERM OF THE GRANT AGREEMENT

SECTION 3.1: Term.

The term of this Grant Agreement shall commence on the Effective Date and continue in effect until such time as all of the Bonds and any refunding bonds have been paid (the “Term”).

This Grant Agreement shall not terminate prior to the end of the Term (other than such termination as is provided for elsewhere herein) for any cause including, without limitation, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the failure of the Secretary or the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Grant Agreement.

ARTICLE IV: THE PROJECT

SECTION 4.1: Project Acquisition or Construction.

The Institution agrees to enter into contract(s) for the acquisition or commencement of the Project no later than twelve (12) months after the Effective Date. Additional requirements with respect to carrying out the Project will be set forth in the Tax Representation Certificate(s) (as defined in Section 5.1 hereof).

SECTION 4.2: Completion of Project.

Completion of the Project shall be evidenced by delivery to the Authority of a completion certificate (the “Completion Certificate”) in the form set forth in Exhibit E attached hereto, or in such other form as the Authority may require, certifying (a) the date of completion of the Project; (b) that the Institution has received and delivered to the Authority a copy of the permanent or temporary certificate of occupancy for the Project, if applicable; and (c) that the Institution has required in each construction contract with

respect to the Project that wages paid to workers employed in the performance of such construction contract be paid, or has determined that such workers were paid, at a rate not less than the State prevailing wage rate, in compliance with N.J.S.A. 18A:72A-5.1 et seq.

SECTION 4.3: Title to Project.

With respect to the property or facility comprising the Project and in or on which the Project is to be constructed, located, affixed, and/or installed, the Institution represents, warrants, and covenants that it has either (i) good, indefeasible and marketable title to and fee simple ownership of such property or facility, or (ii) the legal and enforceable right to use and occupy such property or facility, and to construct, locate, affix, and/or install the Project therein or thereon, pursuant to a written agreement, the term of which extends or can be renewed at the Institution’s option for so long as the Project is located therein or thereon.

The Institution shall not sell, lease, abandon, or otherwise dispose of the Project prior to the expiration of the Term without the prior written approval of the Authority and the Secretary. In addition, the Institution acknowledges and agrees that, notwithstanding the receipt of any such approval, the Institution may be required to repay the Grant in full in the event of any sale, lease, abandonment, or other disposition of the Project.

SECTION 4.4: Default in Contractors’, Vendors’ or Suppliers’ Performance.

In the event of a default of any contractor, subcontractor, vendor or supplier under the terms of any contract made in connection with the Project, the Institution will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Institution against the contractor, subcontractor, vendor or supplier in default and against each surety for the performance of such contractor, subcontractor, vendor or supplier. The Institution agrees to advise the Authority, in writing, of the steps it intends to take in connection with any such default. The Authority, after notifying the Institution in writing, in good faith and in its own name, may but shall not be required under any circumstances to, prosecute or defend any action or proceeding or take any other action which the Authority deems reasonably necessary, and in such event the Institution hereby agrees to cooperate fully with the Authority. Such action may be taken in the sole discretion of the Authority. Any amounts which are recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, net of expenses incurred by the Authority to obtain such recovery, shall be paid to the Institution, and applied to payment of the costs of the Project.

SECTION 4.5: Maintenance of the Project.

The Institution covenants that it shall at all times during and after the completion of the Project cause the same to be maintained, preserved and kept properly, with the appurtenances and every part and parcel thereof in good repair, working order and condition.

SECTION 4.6: Covenant Against Waste.

The Institution covenants not to cause, suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, the Project.

SECTION 4.7: Damage or Destruction.

The Institution agrees to immediately notify the Authority in the event of damage to or destruction of all or a portion of the Project resulting from fire or other casualty. The Institution agrees to promptly repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction and the Institution will apply the net proceeds of any insurance relating to such damage or destruction received by the Institution to the payment or reimbursement of the costs of such repair and restoration, except as expressly authorized by the Authority in its sole discretion upon the advice of its bond counsel.

SECTION 4.8: Insurance.

Prior to the execution of this Grant Agreement, the Institution shall provide evidence to the Authority that the Institution has procured the insurance required by this Section 4.8.

The Institution shall procure and maintain, or cause to be procured and maintained, sufficient coverage under its commercial general liability insurance policy and, if applicable, builder's risk insurance policy to cover not only its own liability but also any liability which might arise against the Indemnified Parties (as defined in Section 2.5(b)) to the extent such liability is insurable under a commercial general liability insurance policy or a builder's risk insurance policy. The Institution shall include or cause to be included the Indemnified Parties as additional insureds in any liability insurance coverage for the Project, including insurance obtained by the Institution's general contractor and subcontractors performing work on the Project.

In addition to procuring and maintaining the liability insurance specified above, the Institution agrees to procure and maintain, or to cause to be procured and maintained, to the extent reasonably obtainable, at the expense of the Institution, such insurance as is customarily maintained on facilities and equipment similar to the facilities and equipment comprising the Project. The Authority, the State, the Secretary, the Department of the Treasury and the Bond Trustee shall be named as additional insureds on such insurance.

All insurance required by this Section 4.8 (collectively, the "Required Insurance") shall be procured from financially sound and reputable insurers qualified to do business in the State with a minimum A-VII rating per AM BEST or insurers approved, in writing, by the Authority.

Upon the Authority's request from time to time, the Institution shall provide evidence to the Authority that the Institution has procured the Required Insurance in accordance with this Section 4.8. In addition, pursuant to Section 2.4 hereof, the

Institution shall annually confirm to the Authority in writing that the Institution has procured and is maintaining the Required Insurance.

The Institution shall promptly notify the Authority and the Secretary in writing in the event of any change in the insurance coverage being maintained by the Institution.

Notwithstanding the foregoing, nothing herein shall be deemed to prohibit the Institution from participating in a program of self-insurance, a cooperative insurance purchasing program, or a similar insurance program, and such programs may, upon review by the Authority, be deemed to meet the requirements of this Section 4.8. The procurement of insurance shall not relieve the Institution from its obligations under Section 2.5 hereof.

SECTION 4.9: Mechanics' Liens.

The Institution covenants to keep the Project, and the fixtures and equipment thereof, free and clear of mechanics' liens and other liens of like nature at all times during the Term of this Grant Agreement, and the Institution shall at all times duly protect the State, the Authority, the Secretary, the Department of the Treasury and their respective directors, officers, and employees against any and all attorney's fees, costs and expenses which may accrue, grow out of or be incurred by reason of or on account of any such liens or claims.

SECTION 4.10: Modification of Project.

Pursuant to N.J.A.C. 9A:13-1.7(c), in the event that the Institution requires a modification to the Project, the Institution shall submit a formal written request to the Secretary, prior to the Institution taking any action to modify the Project, in order to allow the Secretary to evaluate the merits of the proposed modification against the purpose of the Act and the objectives set forth at N.J.A.C. 9A:13-1.5(b). The Secretary may exercise discretion to allow the Institution to modify the Project, if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved Project, and if such modification does not constitute a material change. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the Grant Agreement, the Tax Representation Certificate, any other applicable Bond documents, and applicable State and federal law.

SECTION 4.11: No Use of Project for Religious Instruction or Worship.

The Institution covenants and agrees that the Project shall be used solely for the approved purposes of the Grant and as permitted under the Act. The Institution further covenants and agrees that at no time shall the Project, or any part thereof, be used or be allowed to be used for religious instruction or as a place for religious worship even after the Bonds or any refunding bonds are no longer outstanding.

SECTION 4.12: Additional Covenants.

(a) The Institution covenants, represents and agrees that the Institution is and during the Term of this Grant Agreement will be in compliance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

(b) The use of the Project, the admission of students to the Institution, and the provision of services to students, are not, and shall at no time be, restricted on racial or religious grounds, nor shall there be a religious test for such use, admission, or provision of services.

(c) There is not, and shall at no time be, a requirement that individuals gaining admission to or receiving services from the Institution, or otherwise using the Project, receive instruction in the tenets of a particular faith, nor shall religious instruction be mandatory.

ARTICLE V: TAX COVENANTS

SECTION 5.1: Tax Status; Tax Representation Certificate.

(a) The Institution represents that it is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code” or the “Code”) that is not a private foundation. The Institution covenants that, for as long as the Bonds and any refunding bonds are outstanding, it will take all actions necessary to remain an organization described in Section 501(c)(3) of the Code that is not a private foundation.

(b) The Institution covenants and represents that it has executed or will execute one or more Tax Representation Certificates (each, a “Tax Representation Certificate”) as to compliance with the Code and the Treasury Regulations promulgated thereunder or made applicable thereto (the “Treasury Regulations”) relating to the Grant, the Project and the Bonds (and any refunding bonds), in the form required by the Authority’s bond counsel. The provisions of each such Tax Representation Certificate shall be incorporated herein by reference and shall be binding upon the Institution. The Institution represents, and covenants that the representations and covenants of the Institution set forth in the Institution’s Tax Representation Certificate(s) are and will be true, correct and complete as of the date of issuance of the Bonds, and, in the case of any Tax Representation Certificate delivered in connection with refunding bonds, as of the date of issuance of the refunding bonds. The Institution understands that the statements, covenants and undertakings made in the Tax Representation Certificate(s) and this Grant Agreement shall be relied upon by the Authority and its bond counsel in connection with the issuance of the Bonds and any refunding bonds, and that any misstatement or failure to comply with any such undertaking on the part of the Institution may result in adverse consequences affecting a significantly greater principal amount of Bonds (or refunding bonds) than the amount of the Grant Amount.

SECTION 5.2: No Change in Use of Grant Amount or Project.

The Institution acknowledges and agrees that the Grant Amount is or will be funded from Bonds issued or to be issued by the Authority pursuant to the Act, and that such Bonds have been or are expected to be issued on a tax-exempt basis. In order to ensure the continued compliance of the Project with applicable State law and policy, and to ensure the continued tax-exempt status of the Bonds and any bonds issued to refund the Bonds, the Institution shall use the Grant Amount and the Project as described in Section 1.1 hereof and in the Institution’s Tax Representation Certificate(s) and shall not change or permit a change in the use of the Grant Amount or the Project unless (i) the Authority approves such change in use of all or a portion of the Grant Amount and the Project, (ii) all other required approvals are obtained, including the approval of the Secretary, and (iii) if required, the Authority receives an opinion from nationally recognized bond counsel that such change in use will not adversely affect the tax-exempt status of the Bonds and any bonds issued to refund such Bonds. The Institution shall pay any and all fees incurred to obtain such opinion(s).

SECTION 5.3: No Arbitrage Bonds.

The Institution does not anticipate any fundraising campaigns or the receipt of any charitable contributions or other sources of funding for the Project that would result in having such other sources of funds and the proceeds of the Allocable Bonds available for the same costs of the Project. Without limiting the foregoing, the Institution hereby covenants that it will make no use of the proceeds of the Allocable Bonds or the proceeds of any refunding bonds if such use would cause the Bonds or the refunding bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

SECTION 5.4: Certain Uses of Proceeds of the Grant Not Permitted.

The Institution covenants and agrees that, unless the Institution obtains the prior written consent of the Authority, which consent shall be based upon the advice of bond counsel to the Authority, the Institution shall not, directly or indirectly, (i) use or allow any portion of the Project or any amount of the Grant to be used by any person or entity, other than the Institution, that is not a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code); (ii) use any amount of the Grant to make or finance loans to any person; or (iii) use or allow the Project or the Grant to be used with respect to any output facility or to acquire non-governmental output property (within the meaning of Section 141 of the Code).

SECTION 5.5: Covenant Not to Purchase Bonds.

The Institution covenants and agrees that neither it nor any party related to it, within the meaning of Treasury Regulation 1.150-1(b), pursuant to an arrangement, formal or informal, shall purchase bonds of the Authority issued to finance or refinance the Grant or the Project.

SECTION 5.6: Written Procedures as to Post-Issuance Tax Compliance.

The Institution acknowledges and agrees that the Authority has adopted written post-issuance compliance procedures (the “Authority Written Procedures”) to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. Unless the Institution has already adopted its own written post-issuance compliance procedures with respect to bond-financed facilities to monitor compliance with the applicable provisions of the Code and Treasury Regulations, then, within ninety (90) days after the Effective Date of this Grant Agreement or within ninety (90) days after the date of issuance of the Bonds (whichever is earlier), the Institution shall adopt written post-issuance compliance procedures (collectively, the “Institution Written Procedures” and, together with the Authority Written Procedures, the “Written Procedures”) to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. The Institution shall provide a copy of the Institution Written Procedures to the Authority upon adoption thereof. The Institution agrees to comply with the Written Procedures and, at least once each year, the Institution shall review the use of the Institution’s facilities that have been financed or refinanced with proceeds of the Allocable Bonds and/or proceeds of any other outstanding bonds of the Authority (“Other Authority Bonds”), in order to determine whether the use of such facilities complies with all federal tax requirements applicable to the Allocable Bonds and the Other Authority Bonds. Pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution is in compliance with the Written Procedures and this Section 5.6.

SECTION 5.7: Special Notice Events.

The Institution shall provide prompt written notice to the Authority of the occurrence of any of the acts or events listed on Exhibit D attached hereto and made a part hereof (each, a “Special Notice Event”). The Institution acknowledges and agrees that the occurrence of any of such acts or events may jeopardize the tax-exempt status of the Bonds (and any refunding bonds). The Institution will use its best efforts to provide advance notice of any such occurrence, but will in any event provide notice no later than thirty (30) days after the occurrence of any such Special Notice Event, whether the Institution is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Special Notice Event shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event shall have occurred, or otherwise. The Institution agrees that, in consultation with the Authority, and at the sole cost and expense of the Institution, the Institution shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, or it shall assist the Authority in the Authority’s taking of such actions, including without limitation such actions as may be required pursuant to Treasury Regulations Section 1.141-12 or a closing agreement with the Internal Revenue Service, and shall provide to the Authority an opinion of nationally recognized bond

counsel as to such plan of remediation and whether or not the tax-exempt status of the Bonds will be preserved. Without limiting the foregoing, the Authority shall have the right, upon prior written notice to the Institution, to conduct its own investigation of any Special Notice Event and, at the sole cost and expense of the Institution, retain bond counsel to determine any and all actions required to remediate such Special Notice Event including but not limited to the delivery of an opinion of bond counsel.

SECTION 5.8: Records Retention.

The Institution covenants and agrees to create and maintain records with respect to the Grant and the Project which, in the judgment of the Authority, are sufficient to determine the compliance of the Allocable Bonds (and any refunding bonds) with the requirements of the applicable provisions of the Code and Treasury Regulations, including but not limited records with respect to (i) the allocation and use of the proceeds of the Allocable Bonds, (ii) the ownership and use of all property financed with proceeds of the Allocable Bonds, (iii) the existence or creation of any “replacement proceeds” (as defined in the Institution’s Tax Representation Certificate) as such records are further described in the Institution’s Tax Representation Certificate with respect to the Allocable Bonds, and (iv) the information necessary to establish any exception to the arbitrage rebate requirement (as defined in the Institution’s Tax Representation Certificate) with respect to the Allocable Bonds, as such records are further described in the Institution’s Tax Representation Certificate. The Institution covenants to retain all such records until the expiration of three (3) years after the later of (i) the last scheduled maturity date or earlier retirement of the Bonds, and (ii) if any of the Bonds have been refunded, the last scheduled maturity date or earlier retirement of any refunding bonds. Such records of the Institution shall be provided to the Authority upon written request.

SECTION 5.9: Right to Obtain Bond Counsel Opinion.

The Authority and the Institution shall not be required to comply with any one or more requirements of this Article V to the extent that an opinion of nationally recognized bond counsel is obtained to the effect that failure to comply with such requirements, or compliance with other requirements in lieu thereof, will not impair the exclusion from gross income of interest on the Bonds for purposes of federal income taxation under Section 103 of the Code.

ARTICLE VI: EVENTS OF DEFAULT

SECTION 6.1: Events of Default.

The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree, or order of any court, or any order, rule or regulation of any administrative or governmental body) shall constitute an “Event of Default”:

- (a) Any representation or warranty, statement, report, financial statement or

certificate made by the Institution in its application or in this Grant Agreement is false, misleading, or inaccurate in any material respect.

- (b) Failure by the Institution to observe and perform in any material respect any term, covenant, or condition imposed on it under this Grant Agreement and such failure shall have continued for thirty (30) days after the earlier of (i) delivery to the Institution of written notice thereof from the Authority, or (ii) the Institution's actual or constructive knowledge of such failure, however, if such failure is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) day period, but such diligent efforts are properly commenced within the cure period and the Institution is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional forty-five (45) days and in no case to extend beyond the expiration of the Term of this Grant Agreement.

SECTION 6.2: Remedies.

- (a) Upon the occurrence of any Event of Default, following applicable notice and cure periods, the Authority shall have the right, at its sole and absolute discretion, upon thirty (30) days written notice to the Institution, to terminate this Grant Agreement, at which time any obligation of the Authority to make any further payments as contemplated by this Grant Agreement shall immediately terminate. The Authority shall also have any remedies at law or equity, including specific performance.
- (b) If, after thirty (30) days written notice is sent, the Institution has failed to comply with any of the terms of this Grant Agreement, or if there are disallowed costs, or the failure to meet the Matching Funds requirement, or the payment of a Grant Amount in excess of eligible Project costs, then the State Treasurer is authorized to withhold and/or intercept any State aid or appropriation payable to the Institution, in an amount sufficient to satisfy any default or failure of the Institution, including return of the Grant Amount to the Authority.
- (c) Upon the occurrence of any Event of Default, the Grant Amount is subject to forfeiture, provided that the Grant Amount shall not be forfeited if such non-compliance is curable within forty-five (45) days and the Institution is diligently pursuing such cure.
- (d) Upon the occurrence of an Event of Default, the amount of the Grant Amount that has been expended as of the date of such Event of Default for or on behalf of the Institution may, upon demand of the Authority, in consultation with the Secretary, the Attorney General and the Authority's bond counsel, be required to be repaid to the Authority by the Institution. The Authority shall determine whether repayment of the Grant Amount is required, in consultation with the Secretary, the Attorney General and its bond counsel, based on the facts and circumstances related to the Event of Default and whether there exists the need to redeem or

debase Allocable Bonds to ensure the continued tax-exempt status of the Bonds.

- (e) No remedy conferred herein upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Grant Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section 6.2, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.
- (f) Absent an Event of Default, there is no obligation or expectation that any repayments will be made by the Institution to the Authority with respect to the Grant Amount.

ARTICLE VII: MISCELLANEOUS

SECTION 7.1: No Additional Waiver Implied by One Waiver.

In the event any agreement, covenant, warranty, or representation contained in this Grant Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7.2: Severability.

In case any one or more of the provisions of this Grant Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Grant Agreement, but this Grant Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

SECTION 7.3: Successors and Assigns.

This Grant Agreement shall inure to the benefit of and shall be binding upon the Institution, the Authority and their respective successors and assigns.

SECTION 7.4: Governing Law.

This Grant Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to its choice of law rules thereof. The Institution hereby consents to the jurisdiction of the Superior Court of the County of Mercer, New Jersey and agrees that any lawsuits of any nature pertaining to this Grant Agreement shall be brought in that Court in the first instance.

SECTION 7.5: Non-Waiver.

It is understood and agreed that nothing contained in this Grant Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right not explicitly waived in this Grant Agreement.

SECTION 7.6: Torts Claim and Contractual Liability Acts.

The liability of the Secretary, the Authority, the Department of the Treasury and their respective directors, officers and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., is not applicable by its terms to the Authority, the Institution hereby agrees that such statute (except for N.J.S.A. 59:13-9) shall be applicable to all claims against the Authority under this Grant Agreement.

SECTION 7.7: Headings.

The Section headings in this Grant Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Grant Agreement.

SECTION 7.8: Notices.

All notices required to be given or authorized to be given by the Parties pursuant to this Grant Agreement shall be in writing and shall be sent to the main offices of the respective Parties by registered or certified mail or by email with confirmation of receipt.

SECTION 7.9: Amendments.

This Agreement shall not be amended or modified in any manner without the written consent of the Secretary and the State Treasurer. Any amendments or modifications shall be in writing and signed by each of the Parties. Material changes to this Agreement will not be allowed.

SECTION 7.10: Rights Cumulative.

All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

SECTION 7.11: Third Party Beneficiary.

The Parties agree that the State is intended to be and shall be a third party beneficiary of this Agreement.

SECTION 7.12: Additional Representations and Covenants.

Upon or prior to the issuance of the Bonds, a schedule reflecting additional representations, undertakings and covenants applicable to the Project and the Grant may be attached hereto as a condition to this Agreement. Any such additional provisions shall be incorporated herein and shall be binding upon the Institution.

SECTION 7.13: Electronic Signatures.

Pursuant to N.J.S.A. 12A:12-1 et seq., the “Uniform Electronic Transactions Act,” electronic signatures to a contract shall be binding upon agreement of all parties. The Parties hereto agree that this Grant Agreement, and all documents, certificates, opinions and requisitions delivered pursuant to the terms hereof, may be executed with electronic signatures.

SECTION 7.14: Counterparts.

This Grant Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives, each acting in their official capacities, have caused this Grant Agreement to be executed and delivered as of the Effective Date.

[NAME OF INSTITUTION]

**NEW JERSEY EDUCATIONAL
FACILITIES AUTHORITY**

By: _____
Name:
Title:

By: _____
Name:
Title:

List of Exhibits:

- Exhibit A:** Description of Project
- Exhibit B:** Compliance Exceptions
- Exhibit C:** Form of Requisition
- Exhibit D:** Special Notice Events
- Exhibit E:** Completion Certificate

EXHIBIT A
DESCRIPTION OF PROJECT

[Project Description]

* The Project financed by the Bonds only includes components of the Project that can be financed under the Act and does not include those items that are described, but which are being financed by other grants or leases from the Authority or the State and/or other funding sources. To the extent the Project includes components that cannot be financed under the Act, the Institution represents that amounts advanced under this Grant Agreement will only be used for eligible components and that the Institution has sufficient funds from other sources to finance the balance of the Project. The portions of the Project that are financed with the Bonds will be described in the Institution's Tax Representation Certificate.

EXHIBIT B

COMPLIANCE EXCEPTIONS

- No compliance exceptions.**
- Compliance exceptions as described below:**

EXHIBIT C

FORM OF REQUISITION

EXHIBIT D

SPECIAL NOTICE EVENTS

EXHIBIT E

FORM OF COMPLETION CERTIFICATE

GRANT AGREEMENT

Between the

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY,
as Grantor

and

[NAME OF INSTITUTION],
as Grantee

Dated as of _____ 1, 2023

HIGHER EDUCATION TECHNOLOGY INFRASTRUCTURE FUND

Grant Amount: \$ _____

Project ID#: _____

New Jersey Educational Facilities Authority

HIGHER EDUCATION TECHNOLOGY INFRASTRUCTURE FUND

GRANT AGREEMENT

[Institution]

THIS GRANT AGREEMENT, is executed as of _____ 1, 2023 (the “Effective Date”) by and between the New Jersey Educational Facilities Authority (the “Authority”), a public body corporate and politic of the State of New Jersey (the “State”) and [NAME OF INSTITUTION] (the “Institution”), a public institution of higher education as defined in N.J.S.A. 18A:72A-3 (collectively, “the Parties”), pursuant to the provisions of the Higher Education Technology Infrastructure Fund Act, N.J.S.A. 18A:72A-59 to -71, as amended (the “Act”), for the purpose of developing technology infrastructure, including video, voice and data telecommunications equipment and linkages, including transport services and network interconnections (“Technology Infrastructure”) and related costs for the State's public institutions of higher education.

ARTICLE I: THE GRANT

SECTION 1.1: Grant Amount.

(a) The Institution is hereby awarded a grant (the “Grant”) in the amount of _____ dollars (\$_____) (the “Grant Amount”) to be used to finance costs of the project described in the attached Exhibit A (the “Project”), as approved by the Secretary of Higher Education (the “Secretary”). A description of the Project as so approved is attached hereto and incorporated herein by reference. The Grant Amount will be funded with the proceeds of one or more series of tax-exempt revenue bonds issued or to be issued by the Authority pursuant to the Act (the “Bonds”); provided, however, that the payment of the Grant Amount is expressly conditioned upon the issuance of the Bonds, if, when, and as issued, in an amount sufficient to fund the Grant Amount, and also upon the Institution’s execution and delivery of all documents, certificates, opinions and other items as may be required by the Authority in connection with the issuance of the Bonds and the making of the Grant. The issuance of the Bonds is subject to the approval of the Authority’s Board and the funding of the Grant Amount is subject to final review by the Authority’s bond counsel as to the eligibility of the Project for financing with tax-exempt Bonds.

(b) The term “Allocable Bonds,” when used herein, shall mean that portion of the principal amount of the Bonds that is allocable to the financing of the Grant (i.e., the amount of Bonds issued to finance the Grant Amount and a proportionate share of the costs of issuance of the Bonds and the Authority’s administrative costs associated with the approval process for the projects financed by the Bonds).

SECTION 1.2: Institution’s Financing Requirements.

In exchange for receipt of the Grant Amount, the Institution agrees to provide matching funds in an amount at least equal to the Grant Amount (the “Matching Funds”) to be used solely for the costs of the Project, and agrees that the Matching Funds will be spent for the same purposes as the Grant Amount. The Institution acknowledges and agrees that: (a) the Matching Funds must be generated from institutional sources, other grants, borrowing through the Authority, or other sources as permitted in the Grant approval process; (b) notwithstanding anything herein to the contrary, grants from State government sources may not be used to satisfy the Matching Funds requirement; (c) funds expended by the Institution for the Project prior to _____, 2023 (the “Reimbursement Eligibility Date”), if any, may not be used to satisfy the Matching Funds requirement; and (d) if the Institution fails to expend the required Matching Funds, the Secretary may terminate this Grant Agreement, whereupon no further disbursement of the Grant Amount will be provided to the Institution for the Project.

The obligation of the Institution to provide Matching Funds and to perform its obligations under this Grant Agreement shall be absolute and unconditional, and such Matching Funds shall be required without any rights of set off, recoupment or counterclaim it might have against the Secretary, the State, the Authority, or any other person, whether or not the Project is used by the Institution or available for use by the Institution.

SECTION 1.3: Reduction or Cancellation of Grant Amount.

The Institution acknowledges and agrees that the Secretary may reduce or cancel the Grant Amount if the Institution fails to commit the Grant Amount within eighteen (18) months of the allocations made by the Secretary unless (a) the request for approval to modify the Grant has been received by the Secretary within 18 months of the allocation; (b) the facility in which the Project will be housed is under construction or renovation; (c) delays are the result of federal, State, or local governmental approvals, or regulatory requirements not attributable to the Institution; (d) other compelling and documentable reasons exist as determined by the Secretary; or (e) delays are the result of the availability of funding under this Grant Agreement. The Grant Amount will be considered committed when this Grant Agreement has been entered into between the Institution and the Authority.

SECTION 1.4: Eligibility of Expenditures.

The Institution agrees that the Grant Amount may not be used to reimburse expenditures incurred by the Institution prior to the Reimbursement Eligibility Date. As used herein, the term “incurred” as applied to any expenditure shall mean the earlier to occur of (i) the date services were provided or goods were delivered, or (ii) the date that the Institution expended funds to pay (or prepay) for the expenditure. Only expenditures incurred on or after the Reimbursement Eligibility Date may be reimbursed. All such reimbursements shall be subject to approval by the Authority and, upon the request of the Authority, review by its bond counsel. No financing costs or interest expense of any

interim debt shall be reimbursed, and no liens in respect of any interim debt shall be permitted to exist at the time of issuance of the Bonds.

SECTION 1.5: Sufficient Funding.

The Institution represents and warrants that it has or reasonably expects to have sufficient funding to complete the Project, including the Matching Funds. The Institution also acknowledges that any Project costs exceeding the costs of the Project approved by the Secretary shall be the responsibility of the Institution.

SECTION 1.6: Use of Grant Amount; Disbursement Pursuant to Requisitions.

The Institution has committed, by resolution of its governing board, to support the annual operating costs of and maintenance requirements of the Project.

All costs to be funded or reimbursed from the Grant Amount shall be subject to the State prevailing wage requirements of N.J.S.A. 18A:72A-5.1 et seq.

The Authority shall disburse, or cause the trustee for the Bonds (the “Bond Trustee”) to disburse, from time to time, the Grant Amount to the Institution, but only upon receipt and approval of requisitions submitted to and approved by the Authority. Each requisition shall be executed by an authorized representative of the Institution and shall be in the form set forth in Exhibit C attached hereto, or in such other form as the Authority may require. The Institution shall not alter, retype, reformat, or otherwise modify or revise the approved form of requisition. The Authority will not accept any requisition that does not conform to the Authority’s approved form.

The Institution acknowledges and agrees that disbursement of the Grant Amount is contingent upon receipt by the Authority of evidence satisfactory to the Authority that after the disbursement, the aggregate of the Grant Amount disbursed is no greater than the aggregate amount of Matching Funds expended.

The Institution shall submit requisitions promptly and shall comply with any time constraints for the submission of requisitions that the Authority or the Secretary may impose.

SECTION 1.7: No Assignment; No Pledge.

This Grant Agreement may not be assigned by the Institution, nor may it be pledged as collateral for any purpose.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1: Existence.

The Institution is a body corporate and politic created under the laws of the State, and has the necessary power and authority to execute and deliver this Grant Agreement

and any other documents to which the Institution is a party, and to perform its obligations hereunder and thereunder.

SECTION 2.2: Eligible Institution; Accuracy of Grant Application.

(a) The Institution represents and warrants that it is a duly accredited “public institution of higher education” as defined in N.J.S.A. 18A:72A-3.

(b) The Institution represents and warrants that all of the statements and representations made in its application for the Grant were on the date made, are on the Effective Date hereof, and shall continue to be, true and correct in all material respects.

SECTION 2.3: Authorization and Validity.

The execution, delivery and performance of this Grant Agreement by the Institution shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or a breach of any provision contained in its certificate of formation or authorizing legislation (as applicable), or contained in any agreement, instrument, document, bond indenture, law, rule, regulation, order, decree, writ, judgment, injunction, or award to which it is now a party or by which it or any of its assets is bound.

The execution and delivery by the Institution of this Grant Agreement and any other documents to which the Institution is a party related to the execution and delivery of this Grant Agreement (including, without limitation, the application for the Grant submitted to the Secretary, resolutions adopted by the Institution, and any Tax Representation Certificates, as defined below (collectively, the “Other Grant Documents”)) have been or will be as of their date of execution, duly authorized by proper proceedings of the Institution, and no further approval, authorization or consents are required by law or otherwise. This Grant Agreement and the Other Grant Documents constitute or shall, upon their execution and delivery, constitute the legal, valid and binding obligations of the Institution enforceable in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, and by general equitable principles.

SECTION 2.4: Reporting; Inspection; Disclosure; Recordkeeping.

(a) Annual Financial Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year [2024] and continuing until the expiration of the Term (as defined in Section 3.1 hereof) of this Grant Agreement, the Institution shall provide the following to the Authority: copies of the Institution’s annual financial statements and auditor’s reports for the prior fiscal year, prepared in compliance with applicable State policy, as may be amended from time to time, including but not limited to the provisions of any policies applicable to the receipt of grants from the State.

(b) Annual Compliance Reporting. By not later than May 31 of each year, or by such other date as shall be determined by the Secretary, commencing in calendar year

[2024] and continuing until the expiration of the Term of this Grant Agreement, the Institution shall provide the following information and certifications to the Authority in response to the Authority’s annual compliance questionnaire or in such other format as may be requested by the Authority:

(i) A detailed description of any use of the Project by any person or entity other than the Institution (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(ii) A detailed description of the receipt by the Institution of any previously undisclosed contribution or other amount earmarked for the Project (A) during the prior calendar year, and (B) during the current calendar year up to the date of submission of the Institution’s response;

(iii) If the Grant Amount has not yet been fully disbursed, (A) a detailed report of all expenditures for the Project during the prior calendar year and during the current calendar year up to the date of submission of the Institution’s response (including the amount and purpose of each expenditure), and (B) a detailed description of the amounts or estimated amounts expected to be spent on the Project during the current calendar year (including the timing, amount, and purpose of each such expenditure);

(iv) If a Completion Certificate (as defined in Section 4.2 hereof) has not yet been submitted to the Authority, a statement regarding the status and progress of the Project, including the estimated percentage of completion of the Project;

(v) Written confirmation that the Institution has used all disbursements of the Grant Amount for approved Project costs, in the amounts and for the purposes stated on the related requisitions, such confirmation to be made as of the date of submission of the Institution’s response, or, if the Institution cannot provide such confirmation, a detailed description and explanation of the use of any amounts of the Grant Amount for which the Institution cannot so confirm;

(vi) Written confirmation that the Institution is in compliance with the Written Procedures (as defined in Section 5.6 hereof), has conducted an annual review for compliance with federal tax requirements during the prior calendar year, and has determined that the Project and the use of the Grant Amount are in compliance with federal tax requirements;

(vii) Written confirmation that there have been no material changes to the Project or to the use of the Grant during the prior calendar year or during the current calendar year up to the date of submission of the Institution’s response;

(viii) Written confirmation that the Institution has procured and is maintaining the Required Insurance (as defined in Section 4.8 hereof); and

(ix) Such other information and certifications relating to the use of the Project and the use of the Grant Amount as may be reasonably requested by the Authority

for the purpose of confirming the Institution’s compliance with applicable State and federal law and policy.

(c) Reporting of Special Notice Events. The Institution shall provide prompt written notice to the Authority of the occurrence of any Special Notice Event, as described in Section 5.7.

(d) Inspection. The Institution agrees to permit inspection of the Project and the Institution’s books and records pertaining thereto by the Authority and the Secretary upon written request during normal business hours.

(e) Disclosure. The Institution agrees that, whenever requested by the Authority, it shall provide and certify, in form satisfactory to the Authority, such information concerning the Institution and the Project, the operations and finances of the Institution and such other matters that the Authority considers to be necessary in order to enable the Authority to prepare and publish an official statement or other similar disclosure document relating to the sale of the Bonds or any refunding bonds or to enable the Authority to make any reports which are required by any law or governmental regulations in connection with the Bonds.

(f) Recordkeeping. The Institution shall retain until three (3) years after the retirement of the Bonds and any refunding bonds, adequate records with respect to the use of the Project and the expenditure of the proceeds of the Grant, as described in Section 5.8.

SECTION 2.5: Disclaimer of Warranties; Indemnification.

(a) The Institution acknowledges and agrees that (i) neither the Authority nor the Secretary makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or the Secretary or their respective agents be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Grant Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Grant Agreement; and (iii) to the fullest extent permitted by law, the Institution shall indemnify and hold the Authority and the Secretary harmless against, and the Institution shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the Authority and the Secretary may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Institution, the Institution’s ownership of the Project, or the acquisition, construction or installation of the Project.

(b) To the fullest extent permitted by law, the Institution shall at all times protect and hold the State, the Secretary, the Department of the Treasury, the Authority,

the Bond Trustee and each of their assigns, directors, officers, agents, contractors and employees (collectively, the “Indemnified Parties”) harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, attorneys’ fees) and liabilities for losses, damage and injury, resulting from or arising out of: (1) any claim for the non-delivery of the Grant Amount in the event that the Bonds are not issued (2) the financing of the costs of the Project, (3) the ownership, planning, design, acquisition, site preparation, transportation, construction, renovation, equipping, installation, maintenance, repair, replacement or completion of the Project or any part thereof or the effecting of any work done as part of the Project, (4) any defects (whether latent or patent) in the Project or any part thereof, (5) the maintenance, repair, replacement, restoration, rebuilding, demolition, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, (6) any act of negligence of the Institution or of any of its agents, contractors, servants, employees or licensees at the Project, (7) any act of negligence of any assignee or sublessee of the Institution at the Project, (8) any violation of or failure to comply by the Institution with any legal requirement applicable to the Project, including environmental laws, or any cost imposed upon any of the Indemnified Parties by any legal requirement applicable to the Project, or (9) any action or inaction of the Institution that may adversely affect the tax-exempt status of the Bonds or any refunding bonds (assuming for this purpose that the Bonds consist only of the Allocable Bonds). The Institution shall reimburse any such Indemnified Party for any reasonable legal or other expenses incurred by it in investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the Project. The indemnification required pursuant hereto shall be binding upon the Institution for any and all claims, demands, expenses, liabilities and taxes set forth herein. No Indemnified Party shall be liable for any damage or injury to the person or property of the Institution or its assigns, directors, officers, agents, contractors or employees, or persons under the control or supervision of the Institution or any other person who may be involved with the Project in any way, due to any action, inaction, or negligence of any person. This provision shall survive the expiration or earlier termination of this Grant Agreement.

SECTION 2.6: Litigation.

There is no action or proceeding pending, or to the best knowledge of the Institution, threatened by or against it by or before any court or administrative agency that might adversely affect the ability of the Institution to perform its obligations under this Grant Agreement.

SECTION 2.7: Compliance with Laws and Regulations.

To the best of its knowledge, the Institution is in compliance with all applicable statutes, regulations or ordinances of governmental agencies and authorities having jurisdiction over it and the Project, including without limitation, those of the United States of America, the State and any municipal or local government entity with jurisdiction over the Project, including but not limited to those relating to the procurement and any and all environmental laws.

The Institution agrees to comply with the Act, all State and federal laws, all rules and regulations, and any other requirements imposed by law, including but not limited to those relating to the procurement of contracts to effectuate the Project.

Except as set forth on Exhibit B attached hereto and made a part hereof, the Institution has obtained, and is in material compliance with respect to, all government approvals, permits, certificates, inspections, consents and franchises necessary to complete the Project, to conduct its business, and to own or lease and operate its properties, and all such government approvals, permits and certificates are in full force and effect.

ARTICLE III: TERM OF THE GRANT AGREEMENT

SECTION 3.1: Term.

The term of this Grant Agreement shall commence on the Effective Date and continue in effect until such time as all of the Bonds and any refunding bonds have been paid (the “Term”).

This Grant Agreement shall not terminate prior to the end of the Term (other than such termination as is provided for elsewhere herein) for any cause including, without limitation, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the failure of the Secretary or the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Grant Agreement.

ARTICLE IV: THE PROJECT

SECTION 4.1: Project Acquisition or Construction.

The Institution agrees to enter into contract(s) for the acquisition or commencement of the Project no later than twelve (12) months after the Effective Date. Additional requirements with respect to carrying out the Project will be set forth in the Tax Representation Certificate(s) (as defined in Section 5.1 hereof).

SECTION 4.2: Completion of Project.

Completion of the Project shall be evidenced by delivery to the Authority of a completion certificate (the “Completion Certificate”) in the form set forth in Exhibit E attached hereto, or in such other form as the Authority may require, certifying (a) the date of completion of the Project; (b) that the Institution has received and delivered to the Authority a copy of the permanent or temporary certificate of occupancy for the Project, if applicable; and (c) that the Institution has required in each construction contract with respect to the Project that wages paid to workers employed in the performance of such construction contract be paid, or has determined that such workers were paid, at a rate not less than the State prevailing wage rate, in compliance with N.J.S.A. 18A:72A-5.1 et seq.

SECTION 4.3: Title to Project.

With respect to the property or facility comprising the Project and in or on which the Project is to be constructed, located, affixed, and/or installed, the Institution represents, warrants, and covenants that it has either (i) good, indefeasible and marketable title to and fee simple ownership of such property or facility, or (ii) the legal and enforceable right to use and occupy such property or facility, and to construct, locate, affix, and/or install the Project therein or thereon, pursuant to a written agreement, the term of which extends or can be renewed at the Institution’s option for so long as the Project is located therein or thereon.

The Institution shall not sell, lease, abandon, or otherwise dispose of the Project prior to the expiration of the Term without the prior written approval of the Authority and the Secretary. In addition, the Institution acknowledges and agrees that, notwithstanding the receipt of any such approval, the Institution may be required to repay the Grant in full in the event of any sale, lease, abandonment, or other disposition of the Project.

SECTION 4.4: Default in Contractors’, Vendors’ or Suppliers’ Performance.

In the event of a default of any contractor, subcontractor, vendor or supplier under the terms of any contract made in connection with the Project, the Institution will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Institution against the contractor, subcontractor, vendor or supplier in default and against each surety for the performance of such contractor, subcontractor, vendor or supplier. The Institution agrees to advise the Authority, in writing, of the steps it intends to take in connection with any such default. The Authority, after notifying the Institution in writing, in good faith and in its own name, may but shall not be required under any circumstances to, prosecute or defend any action or proceeding or take any other action which the Authority deems reasonably necessary, and in such event the Institution hereby agrees to cooperate fully with the Authority. Such action may be taken in the sole discretion of the Authority. Any amounts which are recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, net of expenses incurred by the Authority to obtain such recovery, shall be paid to the Institution, and applied to payment of the costs of the Project.

SECTION 4.5: Maintenance of the Project.

The Institution covenants that it shall at all times during and after the completion of the Project cause the same to be maintained, preserved and kept properly, with the appurtenances and every part and parcel thereof in good repair, working order and condition.

SECTION 4.6: Covenant Against Waste.

The Institution covenants not to cause, suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, the Project.

SECTION 4.7: Damage or Destruction.

The Institution agrees to immediately notify the Authority in the event of damage to or destruction of all or a portion of the Project resulting from fire or other casualty. The Institution agrees to promptly repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction and the Institution will apply the net proceeds of any insurance relating to such damage or destruction received by the Institution to the payment or reimbursement of the costs of such repair and restoration, except as expressly authorized by the Authority in its sole discretion upon the advice of its bond counsel.

SECTION 4.8: Insurance.

Prior to the execution of this Grant Agreement, the Institution shall provide evidence to the Authority that the Institution has procured the insurance required by this Section 4.8.

The Institution shall procure and maintain, or cause to be procured and maintained, sufficient coverage under its commercial general liability insurance policy and, if applicable, builder's risk insurance policy to cover not only its own liability but also any liability which might arise against the Indemnified Parties (as defined in Section 2.5(b)) to the extent such liability is insurable under a commercial general liability insurance policy or a builder's risk insurance policy. The Institution shall include or cause to be included the Indemnified Parties as additional insureds in any liability insurance coverage for the Project, including insurance obtained by the Institution's general contractor and subcontractors performing work on the Project.

In addition to procuring and maintaining the liability insurance specified above, the Institution agrees to procure and maintain, or to cause to be procured and maintained, to the extent reasonably obtainable, at the expense of the Institution, such insurance as is customarily maintained on facilities and equipment similar to the facilities and equipment comprising the Project. The Authority, the State, the Secretary, the Department of the Treasury and the Bond Trustee shall be named as additional insureds on such insurance.

All insurance required by this Section 4.8 (collectively, the "Required Insurance") shall be procured from financially sound and reputable insurers qualified to do business in the State with a minimum A-VII rating per AM BEST or insurers approved, in writing, by the Authority.

Upon the Authority's request from time to time, the Institution shall provide evidence to the Authority that the Institution has procured the Required Insurance in accordance with this Section 4.8. In addition, pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution has procured and is maintaining the Required Insurance.

The Institution shall promptly notify the Authority and the Secretary in writing in the event of any change in the insurance coverage being maintained by the Institution.

Notwithstanding the foregoing, nothing herein shall be deemed to prohibit the Institution from participating in a program of self-insurance, a cooperative insurance purchasing program, or a similar insurance program, and such programs may, upon review by the Authority, be deemed to meet the requirements of this Section 4.8. The procurement of insurance shall not relieve the Institution from its obligations under Section 2.5 hereof.

SECTION 4.9: Mechanics’ Liens.

The Institution covenants to keep the Project, and the fixtures and equipment thereof, free and clear of mechanics’ liens and other liens of like nature at all times during the Term of this Grant Agreement, and the Institution shall at all times duly protect the State, the Authority, the Secretary, the Department of the Treasury and their respective directors, officers, and employees against any and all attorney’s fees, costs and expenses which may accrue, grow out of or be incurred by reason of or on account of any such liens or claims.

SECTION 4.10: Modification of Project.

Pursuant to N.J.A.C. 9A:13-1.7(c), in the event that the Institution requires a modification to the Project, the Institution shall submit a formal written request to the Secretary, prior to the Institution taking any action to modify the Project, in order to allow the Secretary to evaluate the merits of the proposed modification against the purpose of the Act and the objectives set forth at N.J.A.C. 9A:13-1.5(b). The Secretary may exercise discretion to allow the Institution to modify the Project, if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved project, and if such modification does not constitute a material change. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the Grant Agreement, the Tax Representation Certificate, any other applicable Bond documents, and applicable State and federal law.

SECTION 4.11: No Use of Project for Religious Instruction or Worship.

The Institution covenants and agrees that the Project shall be used solely for the approved purposes of the Grant and as permitted under the Act. The Institution further covenants and agrees that at no time shall the Project, or any part thereof, be used or be allowed to be used for religious instruction or as a place for religious worship even after the Bonds or any refunding bonds are no longer outstanding.

SECTION 4.12: Additional Covenants.

(a) The Institution covenants, represents and agrees that the Institution is and during the Term of this Grant Agreement will be in compliance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

(b) The use of the Project, the admission of students to the Institution, and the provision of services to students, are not, and shall at no time be, restricted on racial or religious grounds, nor shall there be a religious test for such use, admission, or provision of services.

(c) There is not, and shall at no time be, a requirement that individuals gaining admission to or receiving services from the Institution, or otherwise using the Project, receive instruction in the tenets of a particular faith, nor shall religious instruction be mandatory.

ARTICLE V: TAX COVENANTS

SECTION 5.1: Tax Status; Tax Representation Certificate.

The Institution covenants and represents that it has executed or will execute one or more Tax Representation Certificates (each, a “Tax Representation Certificate”) as to compliance with the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code” or the “Code”) and the Treasury Regulations promulgated thereunder or made applicable thereto (the “Treasury Regulations”) relating to the Grant, the Project and the Bonds (and any refunding bonds), in the form required by the Authority’s bond counsel. The provisions of each such Tax Representation Certificate shall be incorporated herein by reference and shall be binding upon the Institution. The Institution represents, and covenants that the representations and covenants of the Institution set forth in the Institution’s Tax Representation Certificate(s) are and will be true, correct and complete as of the date of issuance of the Bonds, and, in the case of any Tax Representation Certificate delivered in connection with refunding bonds, as of the date of issuance of the refunding bonds. The Institution understands that the statements, covenants and undertakings made in the Tax Representation Certificate(s) and this Grant Agreement shall be relied upon by the Authority and its bond counsel in connection with the issuance of the Bonds and any refunding bonds, and that any misstatement or failure to comply with any such undertaking on the part of the Institution may result in adverse consequences affecting a significantly greater principal amount of Bonds (or refunding bonds) than the amount of the Grant Amount.

SECTION 5.2: No Change in Use of Grant Amount or Project.

The Institution acknowledges and agrees that the Grant Amount is or will be funded from Bonds issued or to be issued by the Authority pursuant to the Act, and that such Bonds have been or are expected to be issued on a tax-exempt basis. In order to ensure the continued compliance of the Project with applicable State law and policy, and to ensure the continued tax-exempt status of the Bonds and any bonds issued to refund the Bonds, the Institution shall use the Grant Amount and the Project as described in Section 1.1 hereof and in the Institution’s Tax Representation Certificate(s) and shall not change or permit a change in the use of the Grant Amount or the Project unless (i) the Authority approves such change in use of all or a portion of the Grant Amount and the Project, (ii) all other required approvals are obtained, including the approval of the Secretary, and (iii) if required, the Authority receives an opinion from nationally

recognized bond counsel that such change in use will not adversely affect the tax-exempt status of the Bonds and any bonds issued to refund such Bonds. The Institution shall pay any and all fees incurred to obtain such opinion(s).

SECTION 5.3: No Arbitrage Bonds.

The Institution does not anticipate any fundraising campaigns or the receipt of any charitable contributions or other sources of funding for the Project that would result in having such other sources of funds and the proceeds of the Allocable Bonds available for the same costs of the Project. Without limiting the foregoing, the Institution hereby covenants that it will make no use of the proceeds of the Allocable Bonds or the proceeds of any refunding bonds if such use would cause the Bonds or the refunding bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

SECTION 5.4: Certain Uses of Proceeds of the Grant Not Permitted.

The Institution covenants and agrees that, unless the Institution obtains the prior written consent of the Authority, which consent shall be based upon the advice of bond counsel to the Authority, the Institution shall not, directly or indirectly, (i) use or allow any portion of the Project or any amount of the Grant to be used by any person or entity that is not a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code); (ii) use any amount of the Grant to make or finance loans to any person; or (iii) use or allow the Project or the Grant to be used with respect to any output facility or to acquire non-governmental output property (within the meaning of Section 141 of the Code).

SECTION 5.5: Covenant Not to Purchase Bonds.

The Institution covenants and agrees that neither it nor any party related to it, within the meaning of Treasury Regulation 1.150-1(b), pursuant to an arrangement, formal or informal, shall purchase bonds of the Authority issued to finance or refinance the Grant or the Project.

SECTION 5.6: Written Procedures as to Post-Issuance Tax Compliance.

The Institution acknowledges and agrees that the Authority has adopted written post-issuance compliance procedures (the “Authority Written Procedures”) to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. Unless the Institution has already adopted its own written post-issuance compliance procedures with respect to bond-financed facilities to monitor compliance with the applicable provisions of the Code and Treasury Regulations, then, within ninety (90) days after the Effective Date of this Grant Agreement or within ninety (90) days after the date of issuance of the Bonds (whichever is earlier), the Institution shall adopt written post-issuance compliance procedures (collectively, the “Institution Written Procedures” and, together with the Authority

Written Procedures, the “Written Procedures”) to monitor compliance of the Allocable Bonds (and any refunding bonds) with the applicable provisions of the Code and Treasury Regulations. The Institution shall provide a copy of the Institution Written Procedures to the Authority upon adoption thereof. The Institution agrees to comply with the Written Procedures and, at least once each year, the Institution shall review the use of the Institution’s facilities that have been financed or refinanced with proceeds of the Allocable Bonds and/or proceeds of any other outstanding bonds of the Authority (“Other Authority Bonds”), in order to determine whether the use of such facilities complies with all federal tax requirements applicable to the Allocable Bonds and the Other Authority Bonds. Pursuant to Section 2.4 hereof, the Institution shall annually confirm to the Authority in writing that the Institution is in compliance with the Written Procedures and this Section 5.6.

SECTION 5.7: Special Notice Events.

The Institution shall provide prompt written notice to the Authority of the occurrence of any of the acts or events listed on Exhibit D attached hereto and made a part hereof (each, a “Special Notice Event”). The Institution acknowledges and agrees that the occurrence of any of such acts or events may jeopardize the tax-exempt status of the Bonds (and any refunding bonds). The Institution will use its best efforts to provide advance notice of any such occurrence, but will in any event provide notice no later than thirty (30) days after the occurrence of any such Special Notice Event, whether the Institution is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Special Notice Event shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event shall have occurred, or otherwise. The Institution agrees that, in consultation with the Authority, and at the sole cost and expense of the Institution, the Institution shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, or it shall assist the Authority in the Authority’s taking of such actions, including without limitation such actions as may be required pursuant to Treasury Regulations Section 1.141-12 or a closing agreement with the Internal Revenue Service, and shall provide to the Authority an opinion of nationally recognized bond counsel as to such plan of remediation and whether or not the tax-exempt status of the Bonds will be preserved. Without limiting the foregoing, the Authority shall have the right, upon prior written notice to the Institution, to conduct its own investigation of any Special Notice Event and, at the sole cost and expense of the Institution, retain bond counsel to determine any and all actions required to remediate such Special Notice Event including but not limited to the delivery of an opinion of bond counsel.

SECTION 5.8: Records Retention.

The Institution covenants and agrees to create and maintain records with respect to the Grant and the Project which, in the judgment of the Authority, are sufficient to determine the compliance of the Allocable Bonds (and any refunding bonds) with the requirements of the applicable provisions of the Code and Treasury Regulations,

including but not limited records with respect to (i) the allocation and use of the proceeds of the Allocable Bonds, (ii) the ownership and use of all property financed with proceeds of the Allocable Bonds, (iii) the existence or creation of any “replacement proceeds” (as defined in the Institution’s Tax Representation Certificate) as such records are further described in the Institution’s Tax Representation Certificate with respect to the Allocable Bonds, and (iv) the information necessary to establish any exception to the arbitrage rebate requirement (as defined in the Institution’s Tax Representation Certificate) with respect to the Allocable Bonds, as such records are further described in the Institution’s Tax Representation Certificate. The Institution covenants to retain all such records until the expiration of three (3) years after the later of (i) the last scheduled maturity date or earlier retirement of the Bonds, and (ii) if any of the Bonds have been refunded, the last scheduled maturity date or earlier retirement of any refunding bonds. Such records of the Institution shall be provided to the Authority upon written request.

SECTION 5.9: Right to Obtain Bond Counsel Opinion.

The Authority and the Institution shall not be required to comply with any one or more requirements of this Article V to the extent that an opinion of nationally recognized bond counsel is obtained to the effect that failure to comply with such requirements, or compliance with other requirements in lieu thereof, will not impair the exclusion from gross income of interest on the Bonds for purposes of federal income taxation under Section 103 of the Code.

ARTICLE VI: EVENTS OF DEFAULT

SECTION 6.1: Events of Default.

The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree, or order of any court, or any order, rule or regulation of any administrative or governmental body) shall constitute an “Event of Default”:

- (a) Any representation or warranty, statement, report, financial statement or certificate made by the Institution in its application or in this Grant Agreement is false, misleading, or inaccurate in any material respect.
- (b) Failure by the Institution to observe and perform in any material respect any term, covenant, or condition imposed on it under this Grant Agreement and such failure shall have continued for thirty (30) days after the earlier of (i) delivery to the Institution of written notice thereof from the Authority, or (ii) the Institution’s actual or constructive knowledge of such failure, however, if such failure is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) day period, but such diligent efforts are properly commenced within the cure period and the Institution is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional forty-five

(45) days and in no case to extend beyond the expiration of the Term of this Grant Agreement.

SECTION 6.2: Remedies.

- (a) Upon the occurrence of any Event of Default, following applicable notice and cure periods, the Authority shall have the right, at its sole and absolute discretion, upon thirty (30) days written notice to the Institution, to terminate this Grant Agreement, at which time any obligation of the Authority to make any further payments as contemplated by this Grant Agreement shall immediately terminate. The Authority shall also have any remedies at law or equity, including specific performance.
- (b) If, after thirty (30) days written notice is sent, the Institution has failed to comply with any of the terms of this Grant Agreement, or if there are disallowed costs, or the failure to meet the Matching Funds requirement, or the payment of a Grant Amount in excess of eligible Project costs, then the State Treasurer is authorized to withhold and/or intercept any State aid or appropriation payable to the Institution, in an amount sufficient to satisfy any default or failure of the Institution, including return of the Grant Amount to the Authority.
- (c) Upon the occurrence of any Event of Default, the Grant Amount is subject to forfeiture, provided that the Grant Amount shall not be forfeited if such non-compliance is curable within forty-five (45) days and the Institution is diligently pursuing such cure.
- (d) Upon the occurrence of an Event of Default, the amount of the Grant Amount that has been expended as of the date of such Event of Default for or on behalf of the Institution may, upon demand of the Authority, in consultation with the Secretary, the Attorney General and the Authority's bond counsel, be required to be repaid to the Authority by the Institution. The Authority shall determine whether repayment of the Grant Amount is required, in consultation with the Secretary, the Attorney General and its bond counsel, based on the facts and circumstances related to the Event of Default and whether there exists the need to redeem or defease Allocable Bonds to ensure the continued tax-exempt status of the Bonds.
- (e) No remedy conferred herein upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Grant Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section 6.2, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

- (f) Absent an Event of Default, there is no obligation or expectation that any repayments will be made by the Institution to the Authority with respect to the Grant Amount.

ARTICLE VII: MISCELLANEOUS

SECTION 7.1: No Additional Waiver Implied by One Waiver.

In the event any agreement, covenant, warranty, or representation contained in this Grant Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7.2: Severability.

In case any one or more of the provisions of this Grant Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Grant Agreement, but this Grant Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

SECTION 7.3: Successors and Assigns.

This Grant Agreement shall inure to the benefit of and shall be binding upon the Institution, the Authority and their respective successors and assigns.

SECTION 7.4: Governing Law.

This Grant Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to its choice of law rules thereof. The Institution hereby consents to the jurisdiction of the Superior Court of the County of Mercer, New Jersey and agrees that any lawsuits of any nature pertaining to this Grant Agreement shall be brought in that Court in the first instance.

SECTION 7.5: Non-Waiver.

It is understood and agreed that nothing contained in this Grant Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right not explicitly waived in this Grant Agreement.

SECTION 7.6: Torts Claim and Contractual Liability Acts.

The liability of the Secretary, the Authority, the Department of the Treasury and their respective directors, officers and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., is not applicable by its terms to the Authority, the Institution

hereby agrees that such statute (except for N.J.S.A. 59:13-9) shall be applicable to all claims against the Authority under this Grant Agreement.

SECTION 7.7: Headings.

The Section headings in this Grant Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Grant Agreement.

SECTION 7.8: Notices.

All notices required to be given or authorized to be given by the Parties pursuant to this Grant Agreement shall be in writing and shall be sent to the main offices of the respective Parties by registered or certified mail or by email with confirmation of receipt.

SECTION 7.9: Amendments.

This Agreement shall not be amended or modified in any manner without the written consent of the Secretary and the State Treasurer. Any amendments or modifications shall be in writing and signed by each of the Parties. Material changes to this Agreement will not be allowed.

SECTION 7.10: Rights Cumulative.

All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

SECTION 7.11: Third Party Beneficiary.

The Parties agree that the State is intended to be and shall be a third party beneficiary of this Agreement.

SECTION 7.12: Additional Representations and Covenants.

Upon or prior to the issuance of the Bonds, a schedule reflecting additional representations, undertakings and covenants applicable to the Project and the Grant may be attached hereto as a condition to this Agreement. Any such additional provisions shall be incorporated herein and shall be binding upon the Institution.

SECTION 7.13: Electronic Signatures.

Pursuant to N.J.S.A. 12A:12-1 et seq., the “Uniform Electronic Transactions Act,” electronic signatures to a contract shall be binding upon agreement of all parties. The Parties hereto agree that this Grant Agreement, and all documents, certificates,

opinions and requisitions delivered pursuant to the terms hereof, may be executed with electronic signatures.

SECTION 7.14: Counterparts.

This Grant Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives, each acting in their official capacities, have caused this Grant Agreement to be executed and delivered as of the Effective Date.

[NAME OF INSTITUTION]

**NEW JERSEY EDUCATIONAL
FACILITIES AUTHORITY**

By: _____
Name:
Title:

By: _____
Name:
Title:

List of Exhibits:

- Exhibit A:** Description of Project
- Exhibit B:** Compliance Exceptions
- Exhibit C:** Form of Requisition
- Exhibit D:** Special Notice Events
- Exhibit E:** Completion Certificate

EXHIBIT A
DESCRIPTION OF PROJECT

[Project Description]

* The Project financed by the Bonds only includes components of the Project that can be financed under the Act and does not include those items that are described, but which are being financed by other grants or leases from the Authority or the State and/or other funding sources. To the extent the Project includes components that cannot be financed under the Act, the Institution represents that amounts advanced under this Grant Agreement will only be used for eligible components and that the Institution has sufficient funds from other sources to finance the balance of the Project. The portions of the Project that are financed with the Bonds will be described in the Institution's Tax Representation Certificate.

EXHIBIT B

COMPLIANCE EXCEPTIONS

- No compliance exceptions.**
- Compliance exceptions as described below:**

EXHIBIT C

FORM OF REQUISITION

EXHIBIT D

SPECIAL NOTICE EVENTS

EXHIBIT E

FORM OF COMPLETION CERTIFICATE

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**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY
2022 BUDGET VARIANCE ANALYSIS
FOR THE TWELVE MONTHS ENDED DECEMBER 31, 2022**

EXECUTIVE SUMMARY

Net Operating Income

The NJEFA concluded the year with preliminary unaudited net loss in the amount of \$150,793 based on year to date revenues of \$2,626,582 and expenses of \$2,777,375.

Revenues

Year-to-date revenues were \$948,493 less than projected primarily due to the OPEB trust valuation allowance mark to market adjustment for the continued market downturn and rising interest rate environment.

Expenses

Operating expenditures for the year 2022 are currently under budget by \$602,743 primarily due to staff vacancies, timing of expenditures related to pension/OPEB valuations and lower expense for professional services and Attorney General fees.

Exhibits

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NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY
ACTUAL vs. BUDGET REPORT
DECEMBER 2022

	Month Ended			Year Ended		
	December 31, 2022			December 31, 2022		
	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>
<u>Operating Revenues</u>						
Annual Administrative Fees	\$159,720	\$208,600	\$ (48,880)	\$ 2,856,908	\$ 2,842,075	\$ 14,833
Initial Fees	-	108,250	(108,250)	320,930	433,000	(112,070)
Investment Income	(33,423)	25,000	(58,423)	(551,256)	300,000	(851,256)
	<u>\$ 126,297</u>	<u>\$ 341,850</u>	<u>\$ (215,553)</u>	<u>\$ 2,626,582</u>	<u>\$ 3,575,075</u>	<u>\$ (948,493)</u>
<u>Operating Expenses</u>						
Salaries	\$108,302	\$124,728	\$ 16,426	\$ 1,535,267	\$ 1,621,474	\$ 86,207
Employee Benefits	42,125	58,103	15,978	532,090	697,234	165,144
Provision for Post Ret. Health Benefits	12,500	12,500	-	150,000	150,000	-
Office of The Governor	(127)	2,083	2,210	22,789	25,000	2,211
Office of The Attorney General	(8,332)	12,500	20,832	32,668	150,000	117,332
Sponsored Programs & Meetings	30	938	908	1,523	11,250	9,727
Telecom & Data	10,384	4,654	(5,730)	39,820	55,850	16,030
Rent	16,445	16,667	222	191,880	200,000	8,120
Utilities	2,638	3,333	695	33,464	40,000	6,536
Office Supplies & Postage Expense	645	1,913	1,268	10,914	22,950	12,036
Travel & Expense Reimbursement	59	1,317	1,258	896	15,800	14,904
Staff Training & Conferences	895	2,313	1,418	9,325	27,750	18,425
Insurance	5,094	4,917	(177)	57,554	59,000	1,446
Publications & Public Relations	-	1,848	1,848	13,866	22,175	8,309
Professional Services	9,307	10,918	1,611	86,810	180,000	93,190
Dues & Subscriptions	3,433	3,445	12	31,956	41,340	9,384
Maintenance Expense	-	1,067	1,067	8,741	12,800	4,059
Depreciation	1,775	1,458	(317)	17,812	17,495	(317)
Contingency	-	30,000	30,000	-	30,000	30,000
	<u>205,173</u>	<u>294,702</u>	<u>89,529</u>	<u>2,777,375</u>	<u>3,380,118</u>	<u>602,743</u>
Net Operating Income	<u>\$ (78,876)</u>	<u>\$ 47,148</u>	<u>\$ (126,024)</u>	<u>\$ (150,793)</u>	<u>\$ 194,957</u>	<u>\$ (345,750)</u>

**NJEFA
Vendor Payments
December 2022**

5:35 PM

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Account</u>	<u>Accrual Basis Amount</u>
Bill Pmt -Check	12/02/2022	EFT	NJSHBP	ID 150400 12/22 Covg	Accounts Payable	18,766.65
Bill Pmt -Check	12/02/2022	EFT	NJSHBP	ID 150400 12/22 Covg	Accounts Payable	3,302.91
Bill Pmt -Check	12/02/2022	EFT	United States Postal Service - Neopost	Ann ACH Fee for Postage Meter	Accounts Payable	50.00
Bill Pmt -Check	12/06/2022	EFT	BMO Financial Group	SHRM, ATT, Comcast, NABL Wrkshp E. Yang	Accounts Payable	926.56
Bill Pmt -Check	12/20/2022	2564	100 & RW CRA, LLC	011938	Accounts Payable	22,977.67
Bill Pmt -Check	12/20/2022	2565	DocuSafe InfoStore	158660	Accounts Payable	182.96
Bill Pmt -Check	12/20/2022	2566	Government News Network	96229-G	Accounts Payable	380.00
Bill Pmt -Check	12/20/2022	2567	McManimon Scotland & Baumann	59819/066 SPU 2022 B	Accounts Payable	30.00
Bill Pmt -Check	12/20/2022	2568	NJ Advance Media	0002949431	Accounts Payable	23.22
Bill Pmt -Check	12/20/2022	2569	NJ Economic Development Authority	2022December	Accounts Payable	1,274.55
Bill Pmt -Check	12/20/2022	2570	NJ OIT Fiscal Services	2022October	Accounts Payable	1,979.31
Bill Pmt -Check	12/20/2022	2571	Polar Inc.	844111	Accounts Payable	61.70
Bill Pmt -Check	12/20/2022	2572	Treasurer, State of New Jersey - Pinnacle	103122, 113022	Accounts Payable	2,712.36
Bill Pmt -Check	12/20/2022	2573	UPS	2Y687X482, X492, X502, X512	Accounts Payable	124.13
Bill Pmt -Check	12/20/2022	2574	US Bank (PFM)	13470570D, 13507487, 13508548D, 13536689	Accounts Payable	1,815.31
Bill Pmt -Check	12/20/2022	2575	Verizon Wireless	9921941566	Accounts Payable	315.36
Bill Pmt -Check	12/20/2022	2576	W.B. Mason Company, Inc.	IS1486431	Accounts Payable	48.40
						<u>54,971.09</u>

New Jersey Educational Facilities Authority
Summary of Construction Funds
As of December 31, 2022

<u>Institution</u>	<u>Issue</u>	<u>Description</u>	<u>Bond Proceeds</u>	<u>Net Disbursed</u>	<u>Balance</u>	<u>% Complete</u>
<u>Private</u>						
Princeton University	2022 A	Various Capital Improvements & Renovations	\$ 339,184,241.06	\$ (75,252,376.16)	\$ 263,931,864.90	22%
Seton Hall University	2020 D	Construction new student housing and athletic facilities	70,000,000.00	(2,750,309.32)	67,249,690.68	4%
Georgian Court University	2017 Series G&H	Various Capital Improvements & Renovations, Refund 07 D, H	7,874,383.16	(6,746,218.02)	1,128,165.14	86%
Sub Total			<u>\$417,058,624.22</u>	<u>(\$84,748,903.50)</u>	<u>\$332,309,720.72</u>	
<u>Public</u>						
Ramapo College	2022 A	Academic Building and Administrative Office Renovations	\$ 10,000,000.00	\$ 96,875.11	\$ 10,096,875.11	-1%
William Paterson Univeristy	2021 C	Renovation of buildings, Child Development Center	20,000,000.00	(15,094,130.28)	4,905,869.72	75%
Sub Total			<u>\$ 20,000,000.00</u>	<u>\$ (15,094,130.28)</u>	<u>\$ 4,905,869.72</u>	
<u>Other Programs</u>						
Equipment Leasing Fund	Series 2014 A&B	Acquisition and Installation of Equipment	\$ 101,266,893.00	\$ (99,880,695.16)	\$ 1,386,197.84	99%
Technology Infrastructure Fund	Series 2014	Development of Technology Infrastructure	41,313,667.00	(39,796,488.53)	1,517,178.47	96%
Capital Improvement Fund	Series 2014 A-D	Capital Improvements	191,905,596.00	(188,677,770.72)	3,227,825.28	98%
Facilities Trust Fund	Series 2014	Construct, Reconstruct, Develop & Improve Facilities	219,977,164.00	(218,209,962.53)	1,767,201.47	99%
Capital Improvement Fund	Series 2016 B	Capital Improvements	146,700,261.19	(146,365,350.48)	334,910.71	100%
Sub Total			<u>\$ 701,163,581.19</u>	<u>\$ (692,930,267.42)</u>	<u>\$ 8,233,313.77</u>	
Grand Total			<u><u>\$ 1,138,222,205.41</u></u>	<u><u>\$ (792,773,301.20)</u></u>	<u><u>\$ 345,448,904.21</u></u>	

* This issue has reached a completion rate of 95% or higher and will not appear on future reports.

**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY
2023 BUDGET VARIANCE ANALYSIS
FOR THE MONTH ENDED JANUARY 31, 2023**

EXECUTIVE SUMMARY

Net Operating Income

The NJEFA concluded January with a month-to-date net operating income in the amount of \$266,097 based on year to date revenues of \$480,488 and expenses of \$214,391.

Revenues

Month-to-date revenues were \$197,556 more than projected due to timing of investment income.

Expenses

Operating expenditures for the first month of the year were under budget by \$65,320 primarily due to timing of expenditures.

Exhibits

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NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY
ACTUAL vs. BUDGET REPORT
JANUARY 2023

	Month Ended		
	January 31, 2023		
	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>
<u>Operating Revenues</u>			
Annual Administrative Fees	\$ 274,593	\$ 274,595	\$ (2)
Initial Fees	-	-	-
Investment Income	205,895	8,337	197,558
	<u>\$ 480,488</u>	<u>\$ 282,932</u>	<u>\$ 197,556</u>
 <u>Operating Expenses</u>			
Salaries	\$ 117,893	\$ 129,603	\$ 11,710
Employee Benefits	45,595	60,375	14,780
Provision for Post Ret. Health Benefits	8,337	8,337	-
Office of The Governor	2,083	2,087	4
Office of The Attorney General	3,000	12,500	9,500
Sponsored Programs & Meetings	-	932	932
Telecom & Data	369	4,837	4,468
Rent	16,445	16,663	218
Utilities	2,738	3,337	599
Office Supplies & Postage Expense	907	1,637	730
Travel & Expense Reimbursement	-	1,412	1,412
Staff Training & Conferences	-	2,487	2,487
Insurance	5,094	5,587	493
Publications & Public Relations	-	1,809	1,809
Professional Services	8,427	19,188	10,761
Dues & Subscriptions	2,508	6,409	3,901
Maintenance Expense	-	1,413	1,413
Depreciation	995	1,098	103
Contingency	-	-	-
	<u>214,391</u>	<u>279,711</u>	<u>65,320</u>
 Net Operating Income	 <u>\$ 266,097</u>	 <u>\$ 3,221</u>	 <u>\$ 262,876</u>

**NJEFA
Vendor Payments
January 2023**

12:30 PM

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Account</u>	<u>Accrual Basis Amount</u>
Bill Pmt -Check	01/05/2023	EFT	BMO Financial Group	GFOA 1/1/23-12/31/23, ATT, Comcast	Accounts Payable	262.56
Bill Pmt -Check	01/11/2023	EFT	NJSHBP	Jan Covg	Accounts Payable	22,456.09
Bill Pmt -Check	01/11/2023	EFT	NJSHBP	Jan Covg	Accounts Payable	3,536.26
Bill Pmt -Check	01/11/2023	EFT	Paycor, Inc	INV04135081	Accounts Payable	176.44
Bill Pmt -Check	01/24/2023	2577	100 & RW CRA, LLC	012060	Accounts Payable	22,977.67
Bill Pmt -Check	01/24/2023	2578	Government News Network	96503-G	Accounts Payable	380.00
Bill Pmt -Check	01/24/2023	2579	Governor's Authorities Unit	FY2023 Annual Assesment	Accounts Payable	22,789.24
Bill Pmt -Check	01/24/2023	2580	NJ Advance Media	0010526830, 0010526709	Accounts Payable	93.69
Bill Pmt -Check	01/24/2023	2581	NJ OIT Fiscal Services	2022November	Accounts Payable	1,938.14
Bill Pmt -Check	01/24/2023	2582	Penn Medicine	5810	Accounts Payable	105.00
Bill Pmt -Check	01/24/2023	2583	Polar Inc.	930157, 905588	Accounts Payable	73.60
Bill Pmt -Check	01/24/2023	2584	Quadient (Formerly Neopost)	59829822 Meter & Rate Maint	Accounts Payable	539.19
Bill Pmt -Check	01/24/2023	2585	Treasurer, State of New Jersey - Pinnacle	123122	Accounts Payable	1,356.05
Bill Pmt -Check	01/24/2023	2586	UPS	2Y687X512	Accounts Payable	15.98
Bill Pmt -Check	01/24/2023	2587	US Bank (PFM)	13536689 OPEB Nov	Accounts Payable	743.38
Bill Pmt -Check	01/24/2023	2588	Verizon Wireless	9924326127	Accounts Payable	265.92
Bill Pmt -Check	01/24/2023	2589	W.B. Mason Company, Inc.	IS1497279	Accounts Payable	240.70
						<u>77,949.91</u>

New Jersey Educational Facilities Authority
Summary of Construction Funds
As of January 31, 2023

<u>Institution</u>	<u>Issue</u>	<u>Description</u>	<u>Bond Proceeds</u>	<u>Net Disbursed</u>	<u>Balance</u>	<u>% Complete</u>
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Sub Total			<u>\$417,058,624.22</u>	<u>(\$117,338,417.50)</u>	<u>\$299,720,206.72</u>	
<u>Public</u>						
Ramapo College	2022 A	Academic Building and Administrative Office Renovations	\$ 10,000,000.00	\$ 96,875.11	\$ 10,096,875.11	-1%
William Paterson Univeristy	2021 C	Renovation of buildings, Child Development Center	20,000,000.00	(15,094,130.28)	4,905,869.72	75%
Sub Total			<u>\$ 30,000,000.00</u>	<u>\$ (14,997,255.17)</u>	<u>\$ 15,002,744.83</u>	
					\$ 30,000,000.00	
<u>Other Programs</u>						
Equipment Leasing Fund	Series 2014 A&B	Acquisition and Installation of Equipment	\$ 101,266,893.00	\$ (99,880,695.16)	\$ 1,386,197.84	99%
Technology Infrastructure Fund	Series 2014	Development of Technology Infrastructure	41,313,667.00	(39,796,488.53)	1,517,178.47	96%
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Sub Total			<u>\$ 701,163,581.19</u>	<u>\$ (692,930,267.42)</u>	<u>\$ 8,233,313.77</u>	
Grand Total			<u>\$ 1,148,222,205.41</u>	<u>\$ (825,265,940.09)</u>	<u>\$ 322,956,265.32</u>	

* This issue has reached a completion rate of 95% or higher and will not appear on future reports.



NJEFA Higher Education Overview

Access is everything™



Expertise

A comprehensive view of the global markets through our ratings and research



Credibility

Over 100 years of experience delivering forward-looking, independent, stable and transparent opinions



Engagement

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Agenda

1. Higher Education Outlook
2. New Jersey Universities

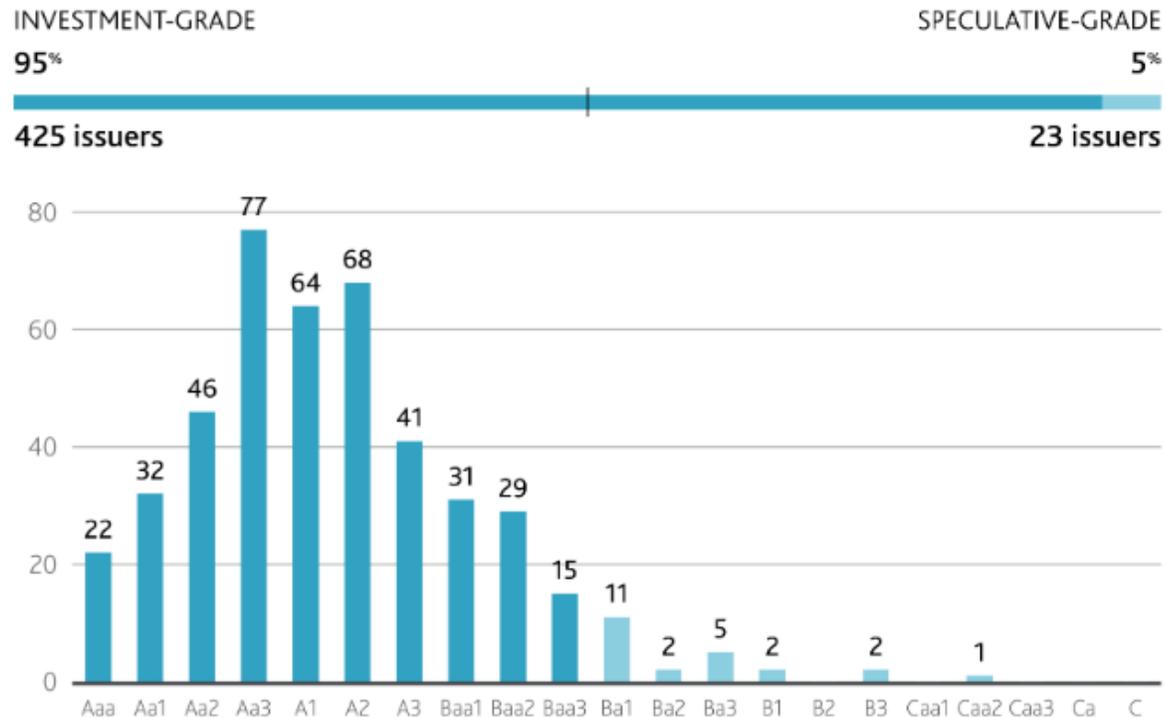
1

Higher Education Outlook

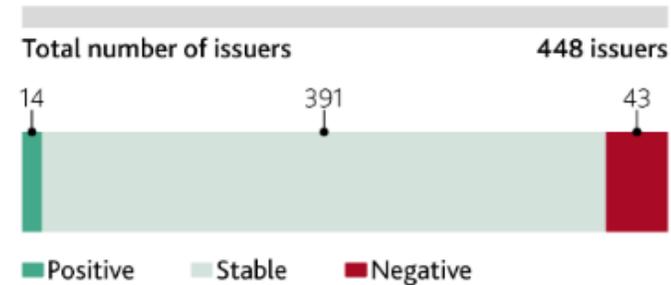
Higher education remains a highly rated sector

- » Moody's rates the financially-strongest but pressures building for over a decade
- » Strong getting stronger, weak weaker
- » Roughly 20% thriving, 50-60% managing with differing degrees of success, 20-30% struggling

RATING DISTRIBUTION BY NUMBER OF ISSUERS



OUTLOOK DISTRIBUTION



Source: Moody's Investors Service, December 2022 data

Global credit themes affecting the sector



Higher rates, slower growth

- » High inflation will constrain operating performance for the first six months of 2023 (end of fiscal 2023) and potentially into fiscal 2024 during the latter part of the year.
- » Inflation may make it more difficult for prospective students to afford higher education. Colleges and universities, in turn, may offer more financial aid to attract them. A drop in enrollment and/or more financial aid would curb revenue.
- » Increasing labor and other costs driven by inflation will squeeze budgets.
- » Rising interest rates provide opportunities to lower pension risks through tilting a pension fund's investments more toward fixed-income securities.
- » Higher interest rates that drive up borrowing costs will increase capital expenses at a time when deferred maintenance and aging facilities need to be addressed.



Geopolitical realignments

- » Lingering tensions with some governments may hamper recovery in the number of international students, a key revenue source.
- » Elevated energy costs may add to expenses.



Social challenges

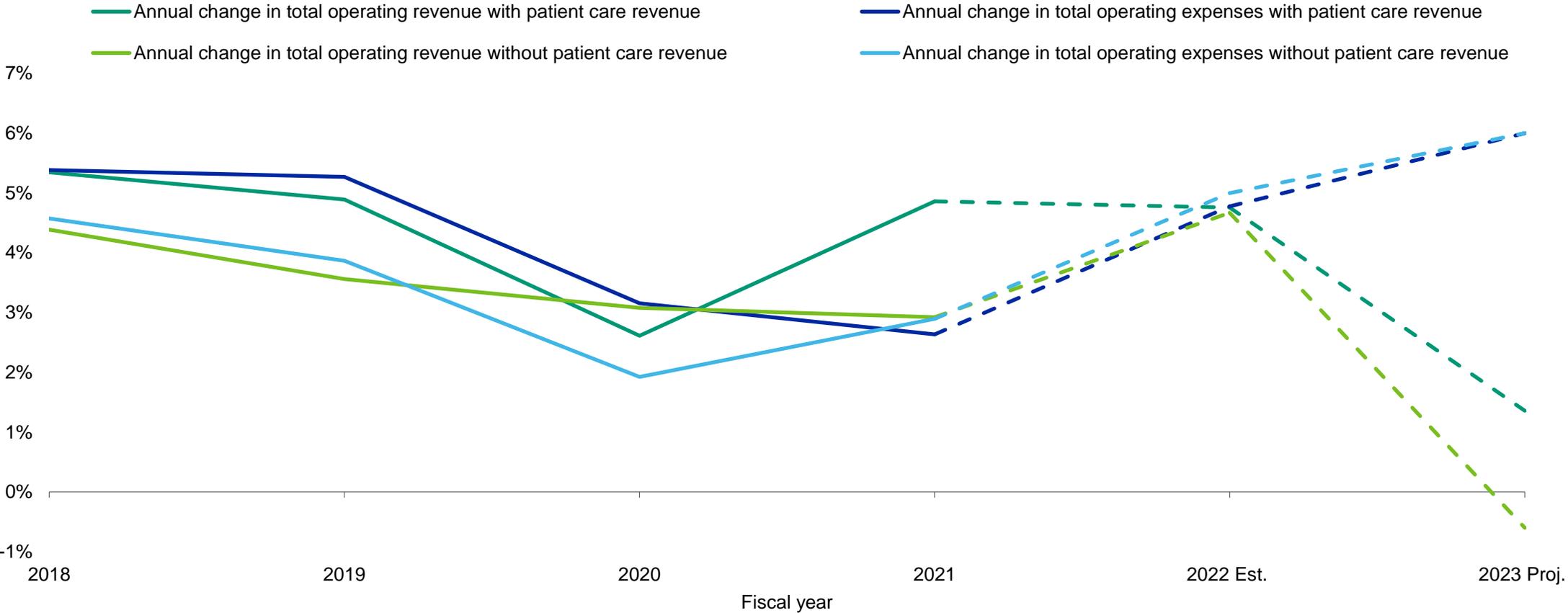
- » A focus on affordability and return on investment will limit the ability to raise tuition and drive increased tuition discounting.
- » Universities face growing costs to provide student support services, particularly in light of the pandemic.
- » Changing consumer preferences may push universities to alter program offerings and course delivery methods, most notably through online and hybrid offerings, to meet student demand and address employer needs.



Climate exposure & mitigation

- » To address increasing extreme weather events and climate change, universities may need more planning and greater investment to mitigate potentially damaging effects.

Constrained revenue growth well below increasing expenses demonstrates challenges facing higher education



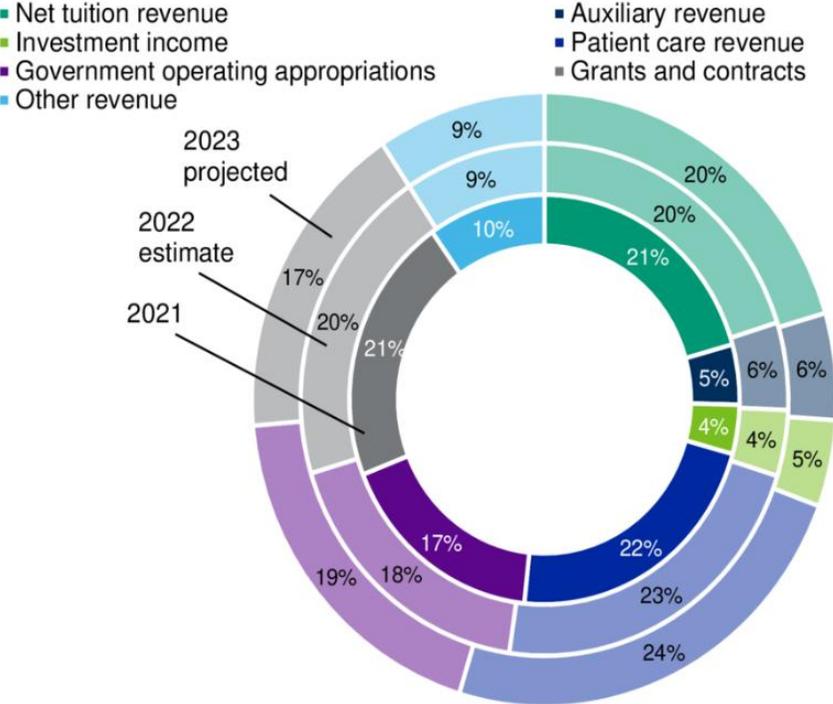
Fiscal years typically end June 30th.

Source: Moody's Investors Service

Muted growth in multiple revenue streams will limit sector-wide revenue growth to below inflation

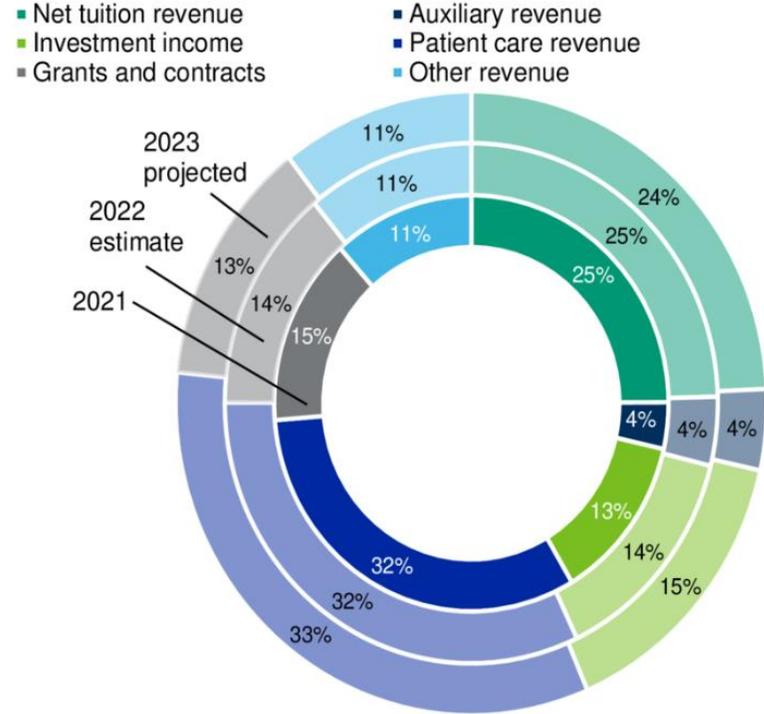
Public universities will endure more revenue strain than privates as federal pandemic aid winds down

% of total revenue by category by fiscal year



Private universities will suffer less than publics from waning federal COVID-19 aid

% of total revenue by category by fiscal year

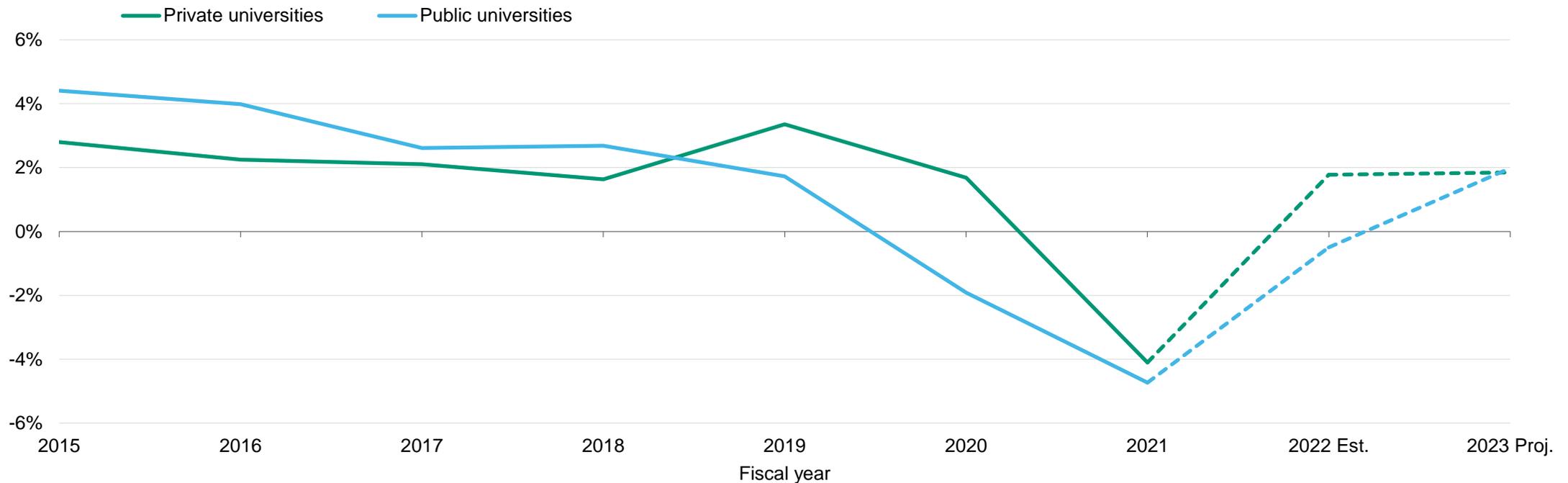


Federal pandemic aid is included in "Grants and contracts." Fiscal years typically end June 30th.

Source: Moody's Investors Service

Net tuition revenue rebounding from 2021 but well below inflation

% change in net tuition revenue; function of both enrollment and price

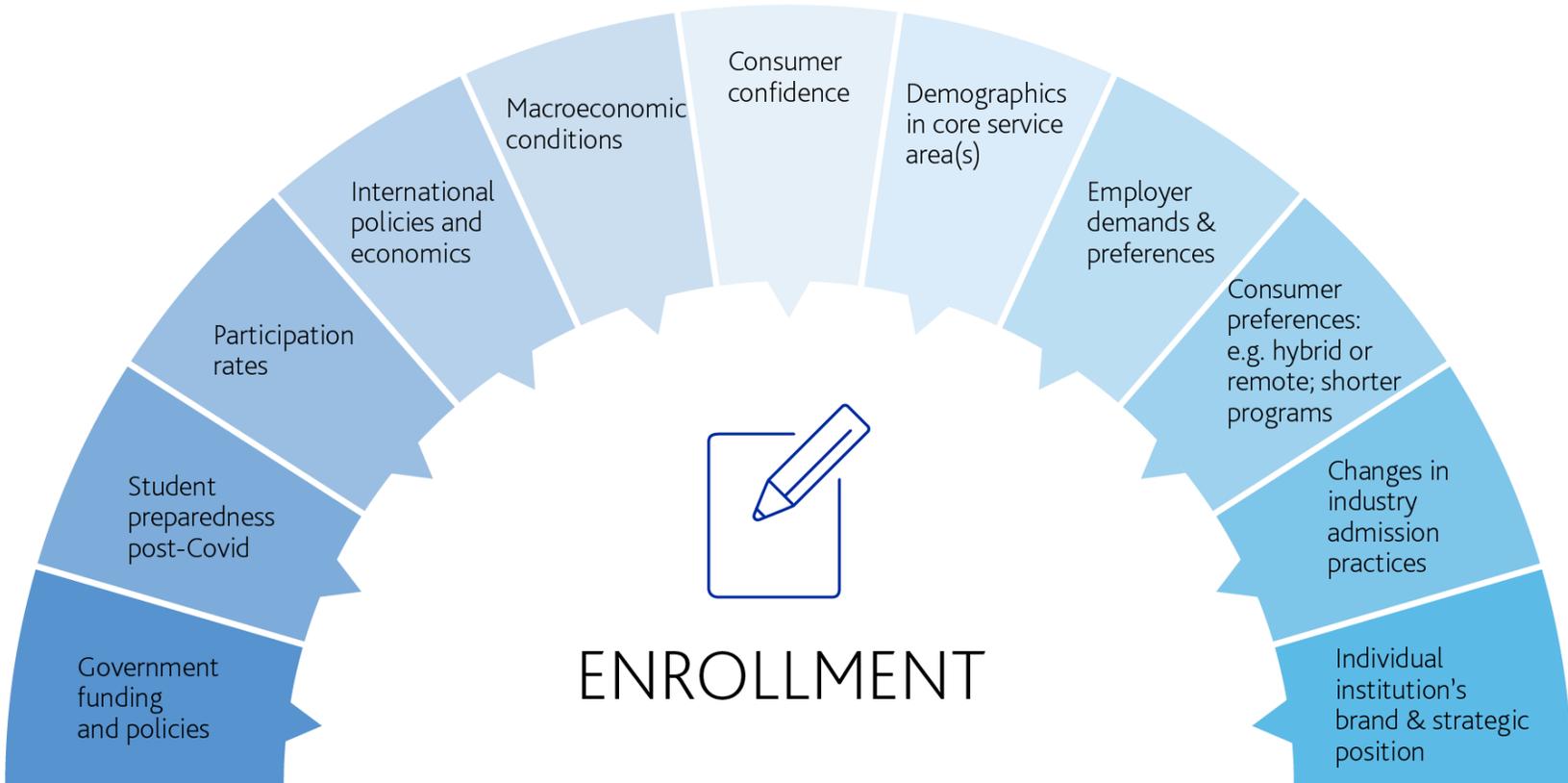


Fiscal years typically end June 30th.

Source: Moody's Investors Service

Predicting demand increasingly complex

Multiple external factors drive sector trends, individual performance impacted by brand and strategic position



Source: Moody's Investors Service

State funding rebounding after long term decline



OUTLOOK
5 December 2022

Send Your Feedback

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- States' robust reserves will soften the pressures of inflation-driven spending and revenue volatility 4
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- Environmental, social and cybersecurity challenges lead to increased spending and risks to long-term economic potential 7
- Moody's global credit themes affecting the US states sector 8
- Appendix 9

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States – US

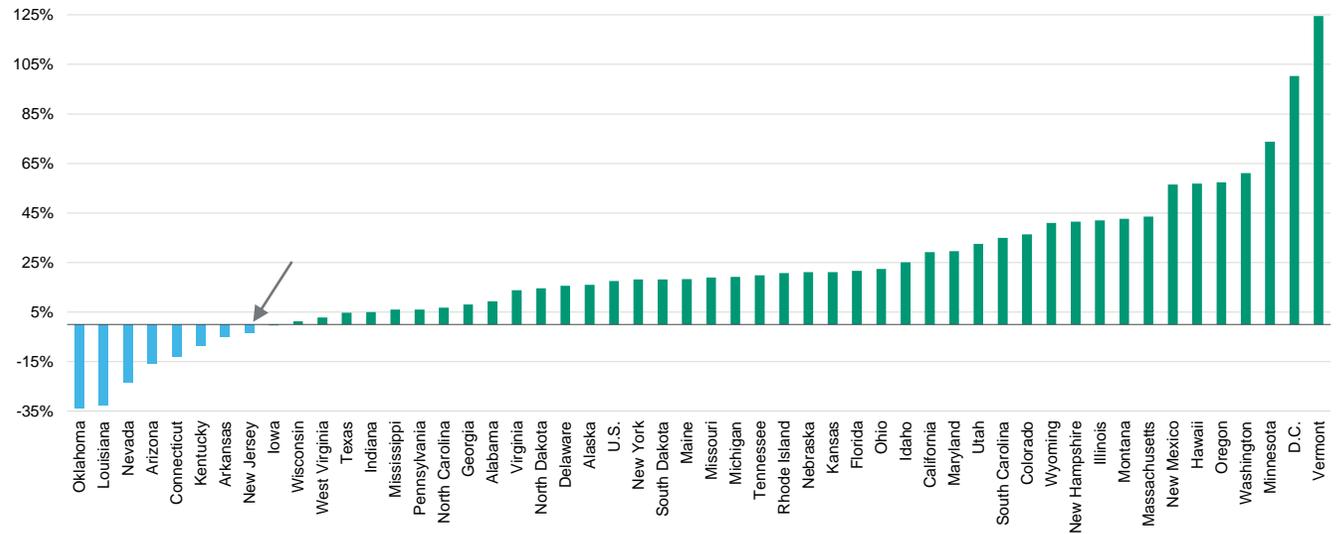
2023 Outlook - Stable as strong reserves, governance counter economic volatility

Summary

The outlook for US states over the next 12 months is stable for two key reasons: extremely robust reserves and strong financial governance. Tight macro conditions from higher interest rates will lead to slower tax revenue growth and potential declines for states with higher concentration in rate-sensitive industries or nonrecurring revenue such as capital gains taxes from the stock market. The lagged effects of inflation will continue to push up government wages, aid to downstream entities, and capital costs while driving taxpayer relief measures such as tax cuts. States' robust reserves will soften the pressures of inflation-driven spending while relatively conservative budgets will provide fiscal room to handle economic volatility.

- » **Tax revenue growth will slow to 0-5% as higher interest rates weigh on state economies.** Higher rates will likely cause unemployment to rise and wage growth and consumption to moderate, which will lead to softer tax revenue growth and potential declines for states with higher concentration in capital gains or rate-sensitive industries like real estate and durable goods manufacturing.
- » **States' robust reserves will soften the pressures of inflation-driven spending and revenue volatility.** Compensation growth, capital costs, and aid to downstream entities will all drive spending needs higher. Historically high fund balances and liquidity will help manage budgetary headwinds.
- » **Strong fiscal governance will provide stability in the face of economic risks.** Conservative budgets, limited exposure to variable rate debt and refinancing needs, along with a strong dollar and relative trade independence will buffer states more than [governments globally](#) from emerging economic challenges. Political pressures may make it difficult to access some fiscal tools like deep cost cuts or new revenue generation.
- » **Environmental, social and cyber-security challenges will increase spending and pose risks to long-term economic potential.** Slower population growth and ageing will weigh on long-term economic potential, while exposure to physical climate and cybersecurity risks will necessitate increased spending to mitigate costly events.
- » **What could change the outlook.** A sharp decline in revenue, driven by a deep and prolonged recession that causes economic and fiscal challenges beyond what state reserves can readily absorb, could lead to a negative sector outlook. While unlikely, a positive outlook is possible if macroeconomic conditions improve alongside strong reserves and mitigation of environmental and social risks.

Change in public higher ed appropriation per FTE since 2011, constant adjusted dollars



Source: State Higher Education Officers Organization, State Higher Education Finance 2021

Healthcare outlook remains negative

Margins constrained by high expenses



OUTLOOK

7 December 2022

Send Your Feedback

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Not-For-Profit and Public Healthcare – US

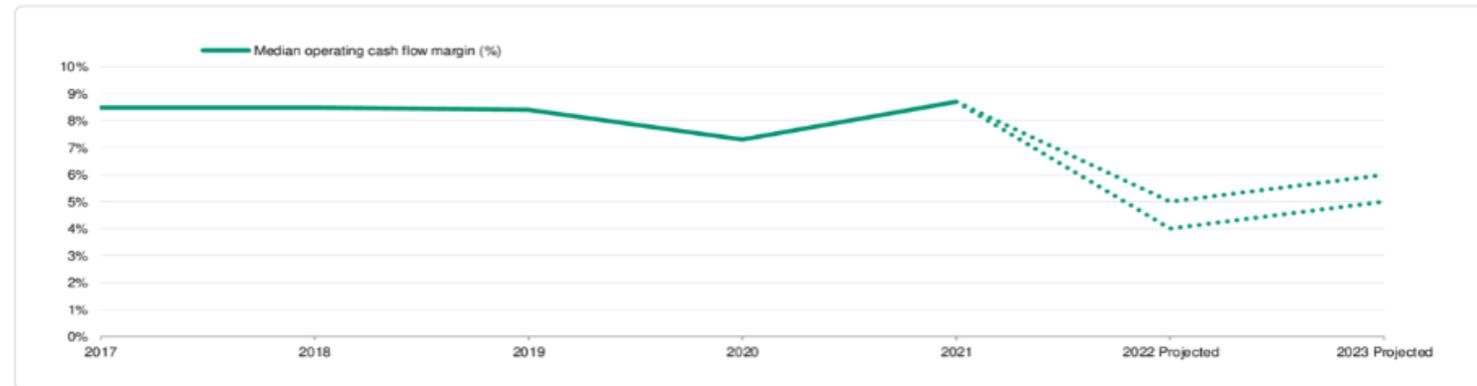
2023 Outlook - Negative as inflation, labor costs continue to drive expenses higher

Summary

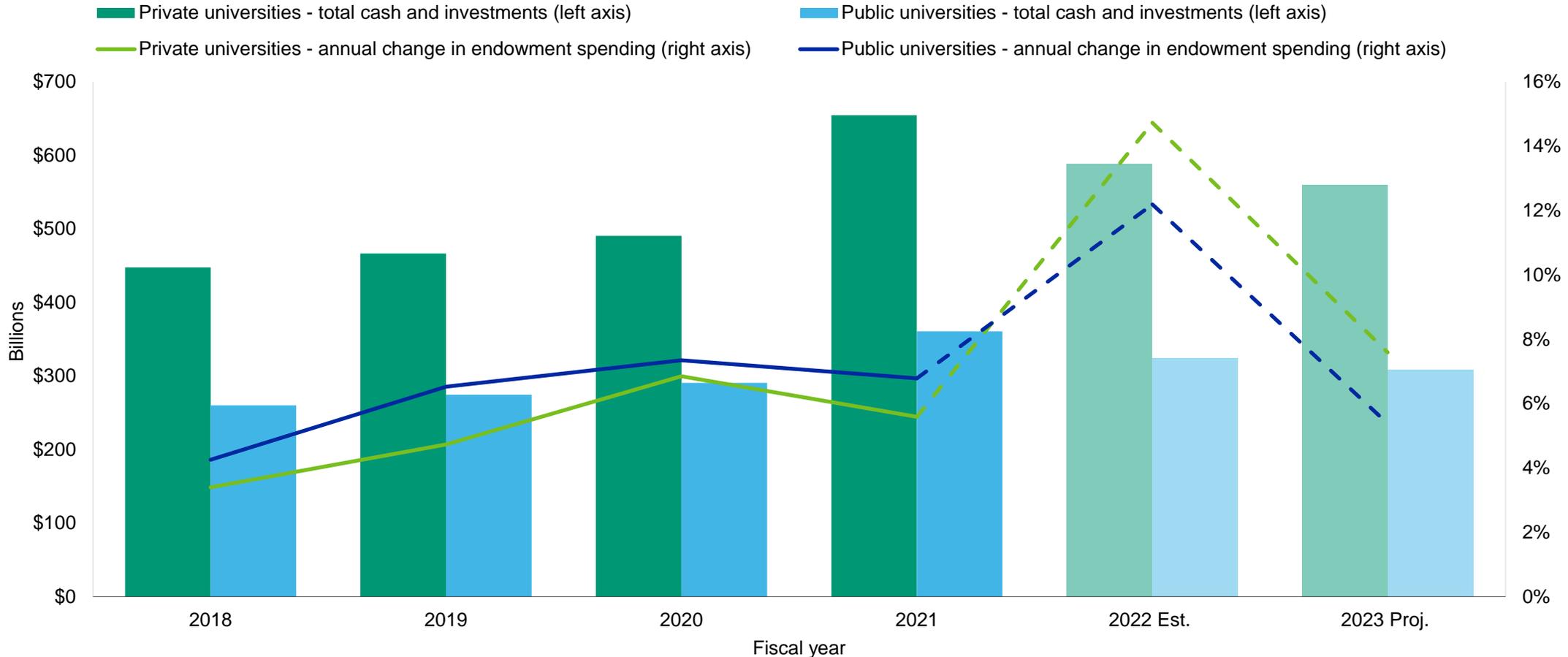
The outlook for the not-for-profit healthcare sector remains negative for 2023 as difficult operating conditions continue to weigh on the sector, including labor shortages, high inflation, supply chain challenges and only modest revenue increases. Operating cash flow will improve, but only against the background of a substantial decline the previous year. Liquidity will decline due to lower operating margins, higher interest rates and continued investment market volatility. Government policy will create additional challenges, including a reduction in Medicare rates and the cessation of extraordinary COVID support.

- » **Operating cash flow will grow, but margins will remain constrained by high expenses.** Labor shortages will remain a primary driver of elevated expenses, which will restrain growth in margins. Higher inflation, persistent COVID surges, supply chain disruptions and continued investment in cybersecurity will also exert upward pressure on costs.
- » **Revenue gains will only narrowly exceed expense growth.** Modest reimbursement increases will weigh on revenue growth, particularly when coupled with uneven volume recovery and the continued shift away from commercial insurance.
- » **Liquidity will decline due to lower margins, higher interest rates, and increased capital spending.** Hospitals will fully repay Medicare advances by year-end 2022, which will reduce hospitals' cash reserves going into 2023. Lower margins, increased capital spending and higher interest rates will further erode liquidity throughout the year.
- » **Risk of debt covenant violations will rise.** Increased covenant violations in 2023 are more likely given margin pressure and declines in cash. Hospitals already struggling with fundamental challenges, or those with weaker cash cushions or oversized operating losses, will face increased risk of a breach.
- » **Legislative, regulatory and judicial activity will continue to add risk.** The cessation of CARES funding, net Medicare cuts and the likely ending of the Public Health Emergency will negatively impact hospital revenues.
- » **What could change the outlook.** Improved reimbursement, an increase in high-margin service volumes and a decline in labor costs could move the outlook to stable if they result in operating cash flow growth that enables health systems to generate enough free cash flow to support organizational needs going forward.

Despite improvement, operating cash flow margins will remain below historical levels



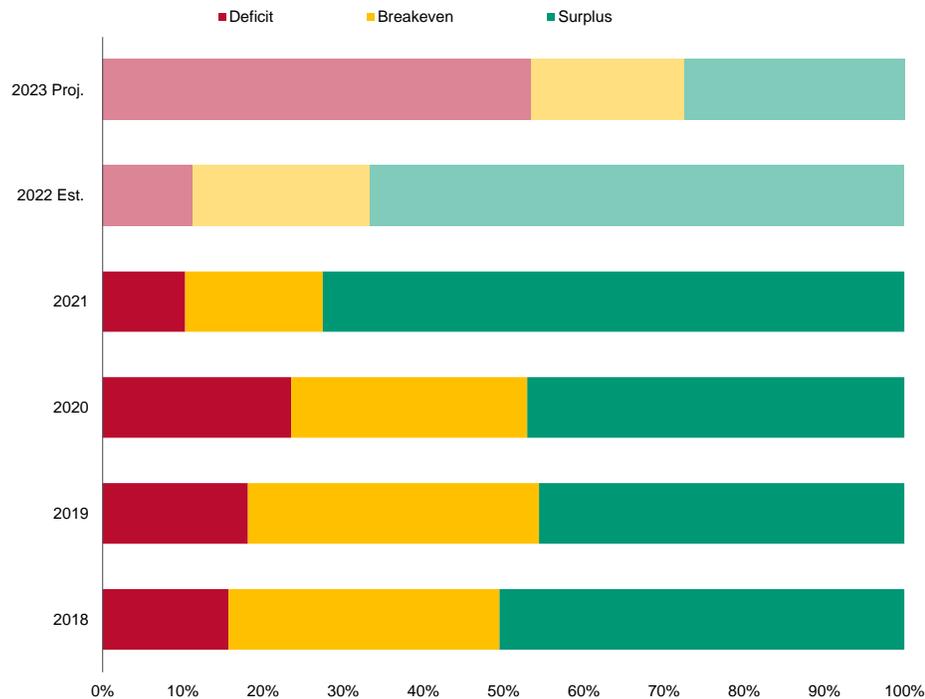
Financial reserves will continue to provide a cushion for many



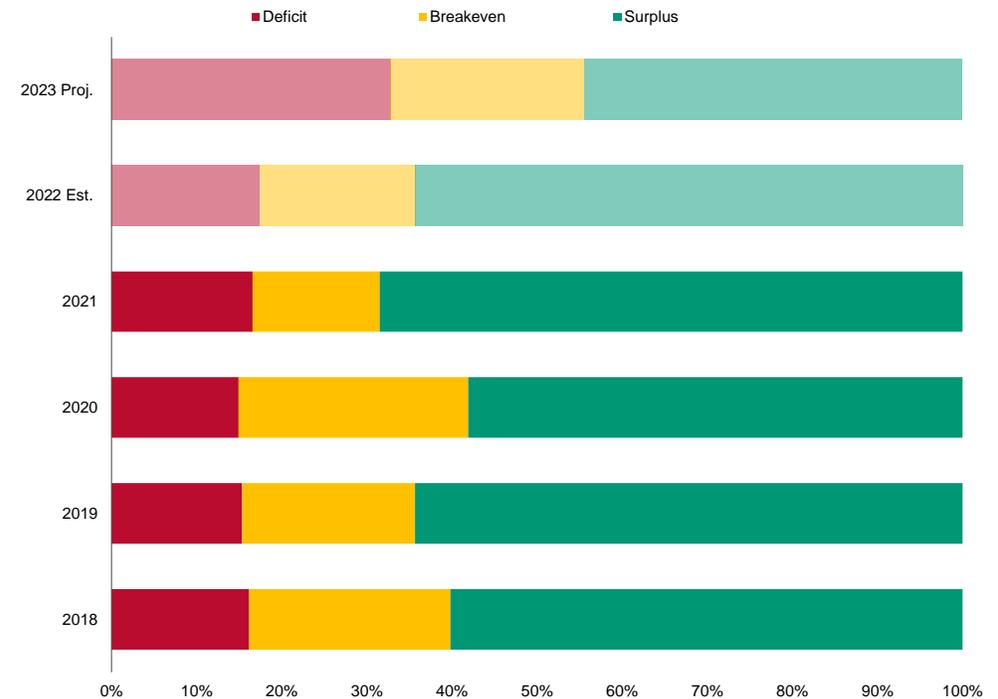
Source: Moody's Investors Service

More universities likely to run deficits in fiscal 2023

Without strong cost control, a majority of public universities will post deficits in fiscal 2023



Private universities will fare better, though still a growing number will post deficits



Deficit refers to an operating margin of less than negative 2%. Breakeven refers to an operating margin between negative 2% and 2%. Surplus refers to an operating margin greater than 2%.

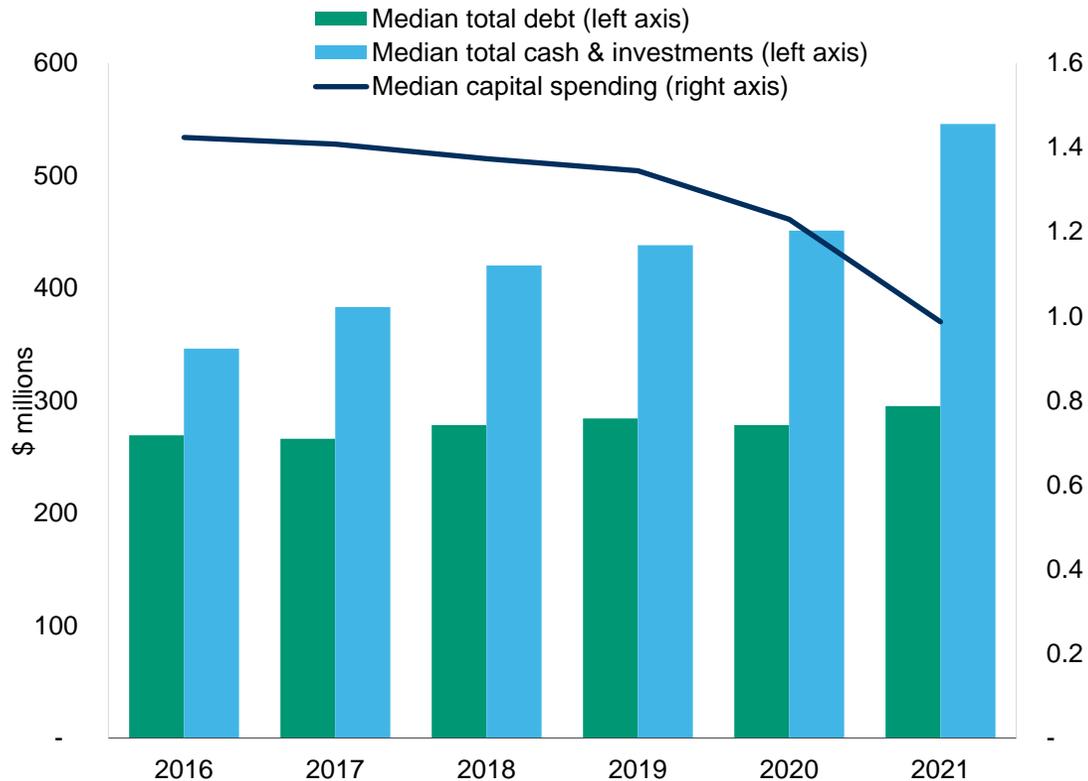
Fiscal years typically end on June 30.

Source: Moody's Investors Service

Potential pent-up demand for capital investment

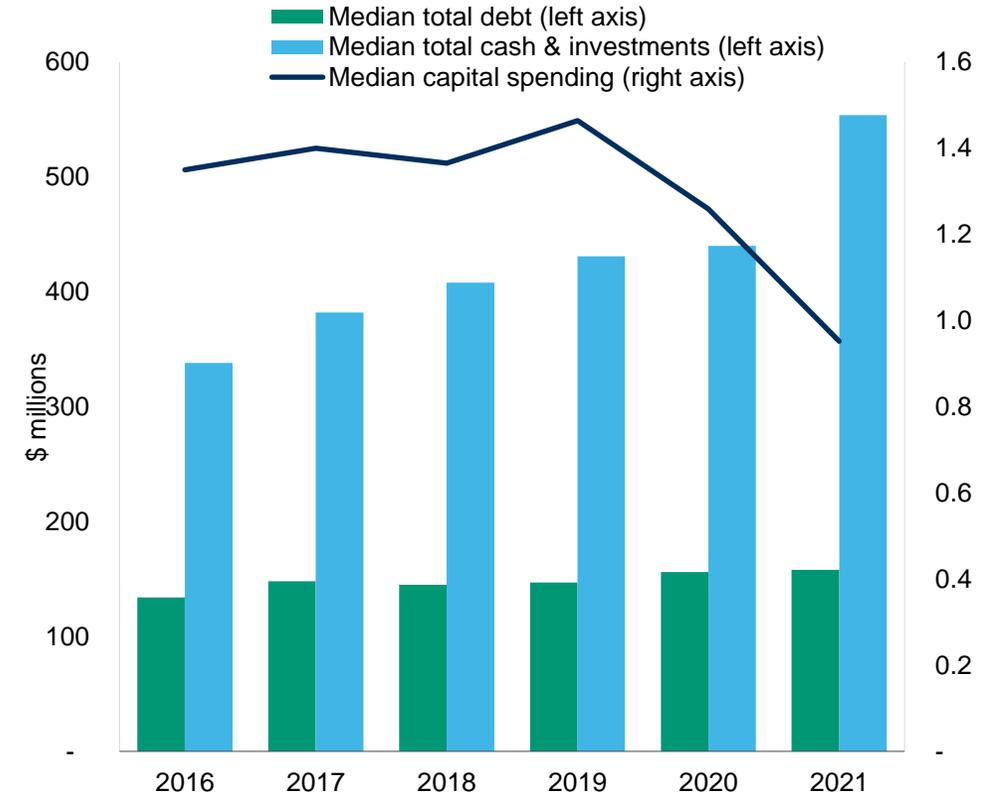
The pandemic initiated a capital diet for universities while wealth grew
 In fiscal 2022, wealth will decline by an estimated 10-20% for many

Public universities



Source: Moody's Investors Service

Private universities



Four Components to MIS Integration of ESG

New ESG scores will assist in transparently and systematically demonstrating the impact of ESG on credit ratings



Credit Ratings & Research

How is ESG integrated into credit ratings?

ESG factors taken into consideration for all credit ratings. Greater transparency in PRs, as well as Credit opinions. Credit Impact Score (CIS) is an output of the rating process that indicates the extent, if any, to which ESG factors impact the rating of an issuer or transaction.



ESG Scores

How is a specific issuer exposed to ESG risks/benefits?

Issuer Profile Scores (IPS) are issuer-specific scores that assess an entity's exposure to the categories of risks in the ESG classification from a credit perspective. IPSs, where available, are inputs to credit ratings.



ESG Classification

What is ESG?



Our classification reports describe how we define and categorize E, S and G considerations that are material to credit quality. New environmental classification sharpens focus on physical climate risks.

Heat Maps

Is ESG material to credit quality?



Heat maps provide relative ranking of various sectors along the E and S classification of risks.

Data informed, qualitative overlay

Representative but not exhaustive considerations for higher education

Environmental

- State, county, and specific geolocation data on water stress, sea level rise, wildfire risk, flooding, heat stress, hurricanes, etc.
- In context of state and county mitigation efforts as well as university's own mitigation
- Data primarily derived from Moody's ESG solutions data, ESG scores from state and local government teams

Social

- Demographic trends in core market(s)
- Yield on accepted students
- Retention and graduation rates
- Student loans relative to income, performance of loans
- Trends in net tuition per student, philanthropy, governmental support
- Labor structure: degree of unionization, tenure, full time vs. part time faculty
- Future labor obligations: pensions and OPEB
- Data primarily derived from US Department of Education, WICHE, Moody's internal databases

Governance

- Size and composition of governing board
- Financial strategies and outcomes (budgeting, operating performance, leverage, investment allocation)
- Risk management: identification and monitoring
- Relationships with foundations, hospitals, public private partnerships, etc.
- Established policies and procedures, review process, compliance with
- Internal and external reporting: regularity, transparency, quality
- Litigation
- Data primarily derived from public disclosures, including EMMA filings, as well as material provided to Moody's

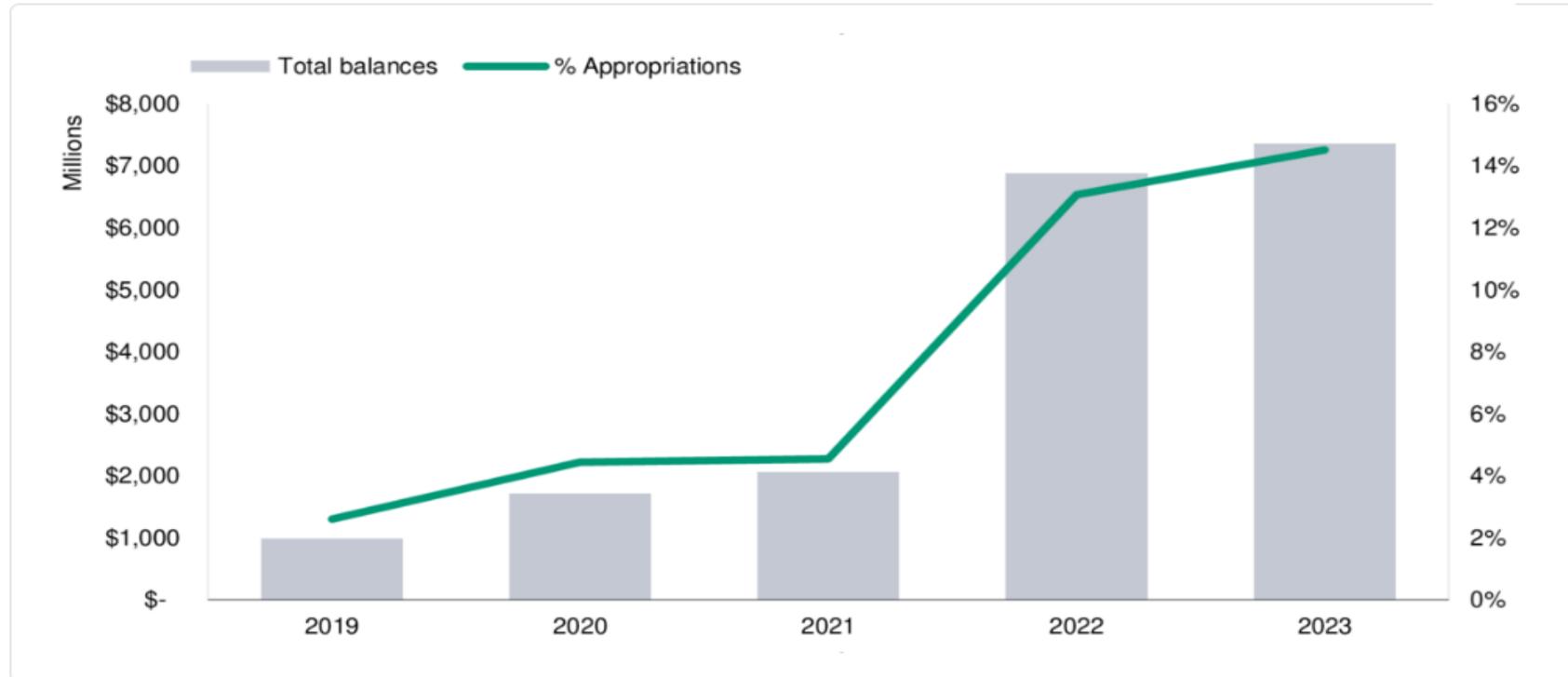
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New Jersey Universities

State of New Jersey

A2, positive outlook as of September 2022

Balances of budgeted state funds rose to 15% of appropriations at the start of fiscal 2023



Fiscal year opening undesignated balances of budgeted state funds (primarily the general fund, Property Tax Relief Fund and Surplus Revenue Fund) as of July 1; amounts for fiscal 2022 and 2023 are estimated.

Source: State of New Jersey bond offering document – Appendix I, Financial and Other Information Relating to the State of New Jersey (as of 9/13/2022)

New Jersey Universities

Varying credit quality among both public and private universities

Institution	Rating	Outlook
Publics		
Rutgers, The State University of New Jersey	Aa3	Stable
New Jersey Institute of Technology	A1	Stable
College of New Jersey	A2	Stable
Kean University	A2	Stable
Montclair State University	A2	Stable
Ramapo College	A2	Stable
Rowan University, NJ	A2	Stable
William Paterson University of New Jersey	A3	Negative
Stockton University	Baa1	Positive
New Jersey City University	Ba2	Negative
Privates		
Princeton University	Aaa	Stable
Princeton Theological Seminary	Aa1	Stable
Seton Hall University	Baa1	Stable
Georgian Court University	Ba1	Negative
Rider University	Ba3	Negative

Global Long-Term Rating Scale	
Aaa	Obligations rated Aaa are judged to be of the highest quality, subject to the lowest level of credit risk.
Aa	Obligations rated Aa are judged to be of high quality and are subject to very low credit risk.
A	Obligations rated A are judged to be upper-medium grade and are subject to low credit risk.
Baa	Obligations rated Baa are judged to be medium-grade and subject to moderate credit risk and as such may possess certain speculative characteristics.
Ba	Obligations rated Ba are judged to be speculative and are subject to substantial credit risk.
B	Obligations rated B are considered speculative and are subject to high credit risk.
Caa	Obligations rated Caa are judged to be speculative of poor standing and are subject to very high credit risk.
Ca	Obligations rated Ca are highly speculative and are likely in, or very near, default, with some prospect of recovery of principal and interest.
C	Obligations rated C are the lowest rated and are typically in default, with little prospect for recovery of principal or interest.
<p>Note: Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category. Additionally, a "(hyb)" indicator is appended to all ratings of hybrid securities issued by banks, insurers, finance companies, and securities firms.*</p> <p>Note: For more information on long-term ratings assigned to obligations in default, please see the definition "Long-Term Credit Ratings for Defaulted or Impaired Securities" in the Other Definitions section of this publication.</p> <p>* By their terms, hybrid securities allow for the omission of scheduled dividends, interest, or principal payments, which can potentially result in impairment if such an omission occurs. Hybrid securities may also be subject to contractually allowable write-downs of principal that could result in impairment. Together with the hybrid indicator, the long-term obligation rating assigned to a hybrid security is an expression of the relative credit risk associated with that security.</p>	

New Jersey Public Universities

Strengths

- » Generally flat or slightly growing enrollment
- » Serve broad, diverse population
- » Ability to set pricing
- » Generally adaptable
- » Good net tuition revenue per student at public universities

Challenges

- » High leverage
- » Demographics
- » Pension pressure
- » Flat total state support, declining operating support, limited capital support
- » Thin financial reserves

New Jersey Public Universities

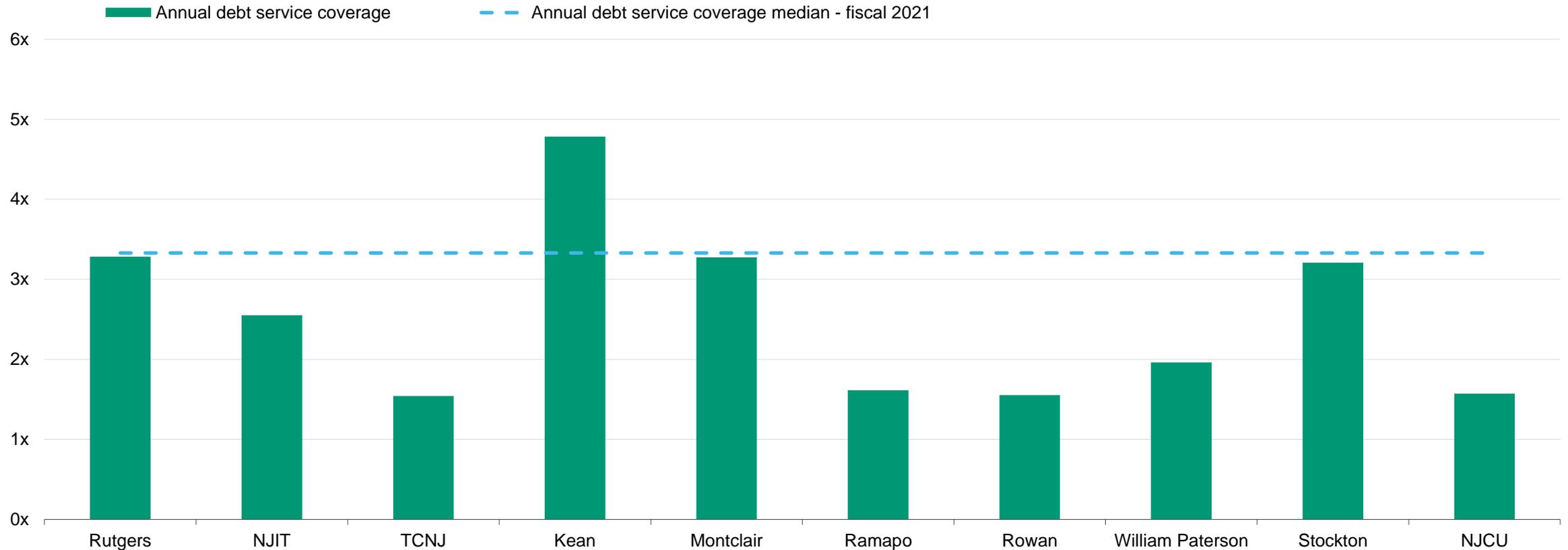
NJ publics 2021 debt relative to public university medians (\$ millions)



Source: Moody's Investors Service

New Jersey Public Universities

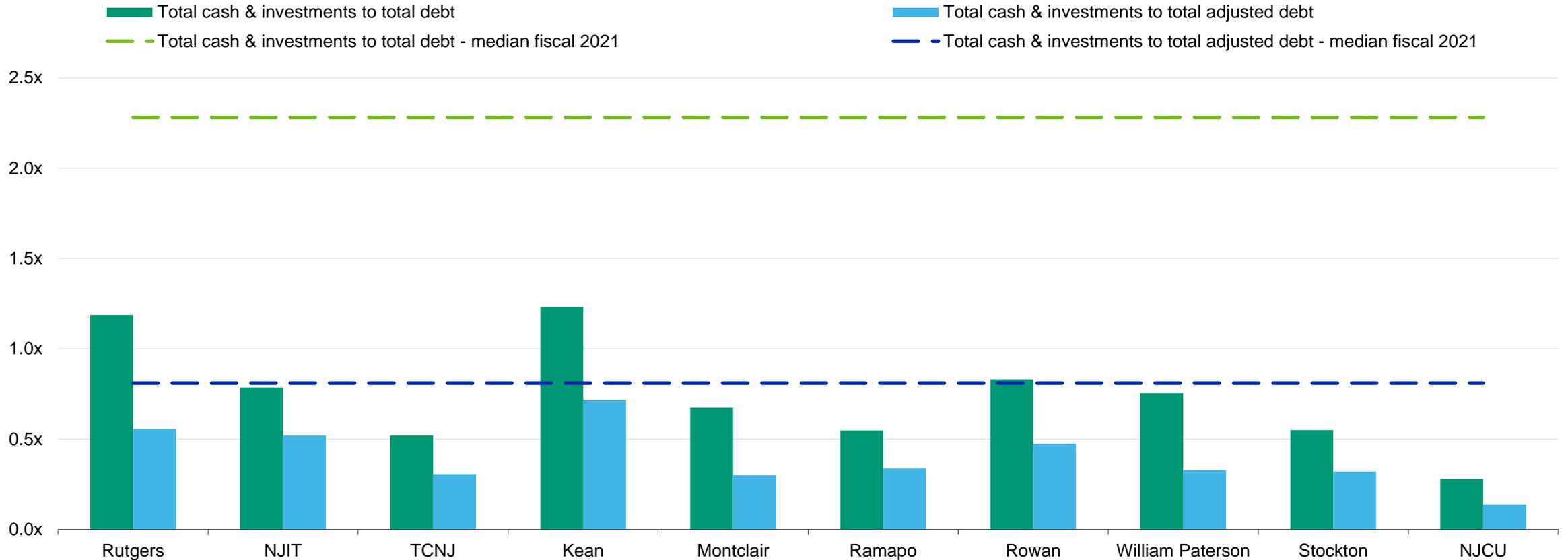
Public university 2021 annual debt service coverage (x) relative to public university median



Source: Moody's Investors Service

New Jersey Public Universities

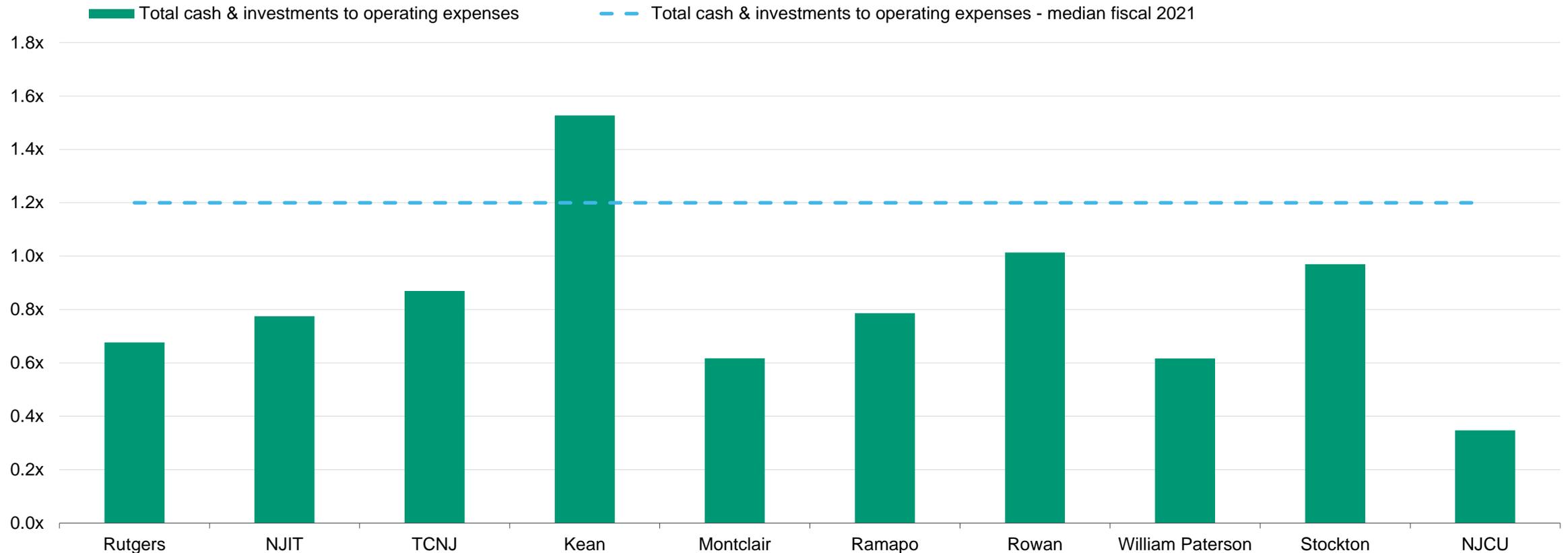
NJ publics 2021 cash & investment to debt relative to public university median



Source: Moody's Investors Service

New Jersey Public Universities

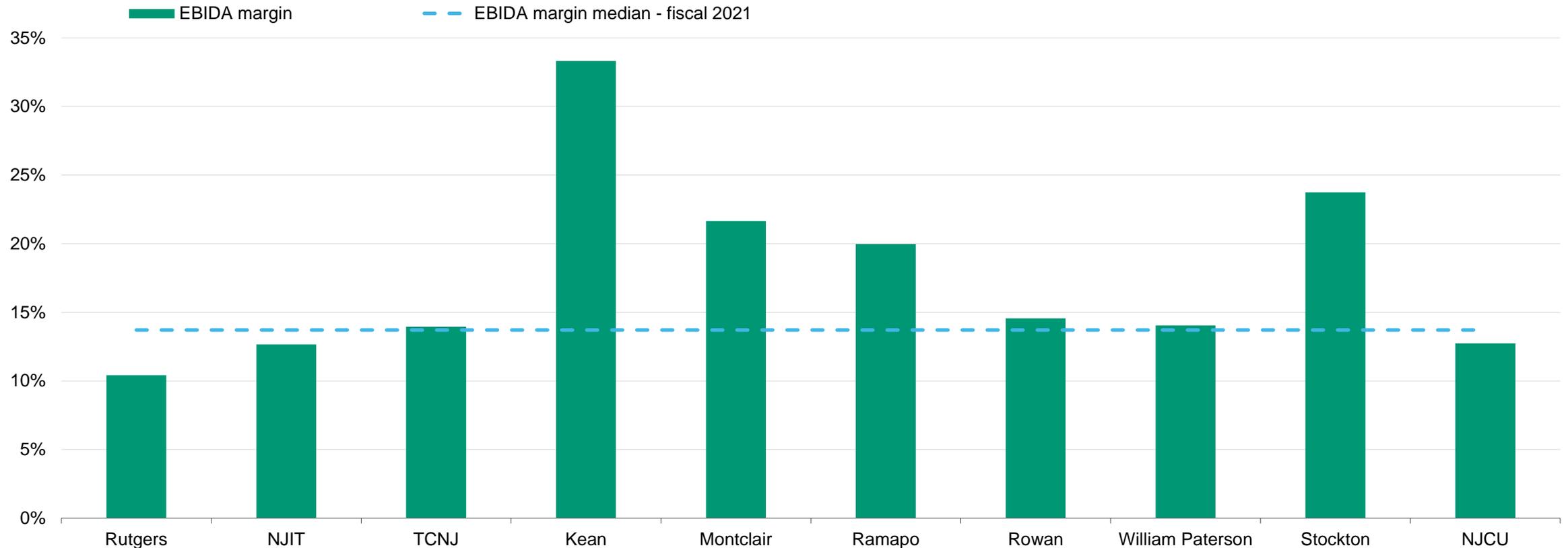
NJ publics 2021 cash & investments to expenses relative to public university median



Source: Moody's Investors Service

New Jersey Public Universities

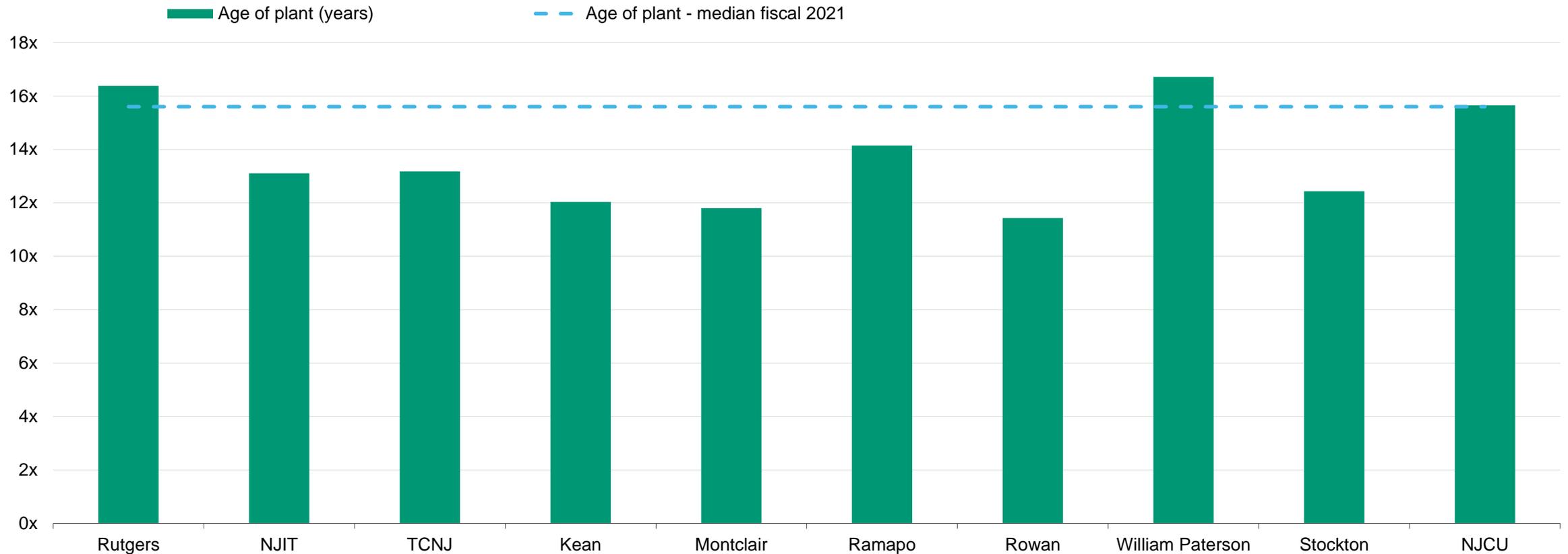
NJ publics 2021 EBIDA margins relative to public university median



Source: Moody's Investors Service

New Jersey Public Universities

NJ publics 2021 age of plant relative to public university median



Source: Moody's Investors Service

Questions?

Higher Education

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