

## MASTER COOPERATIVE AGREEMENT

AGREEMENT NO. W912PQ-16-2-1000

PAGE 1 OF 23 PAGES

ISSUED BY: NATIONAL GUARD BUREAU

ISSUED TO: THE STATE OF NEW YORK

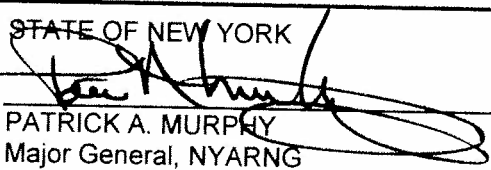
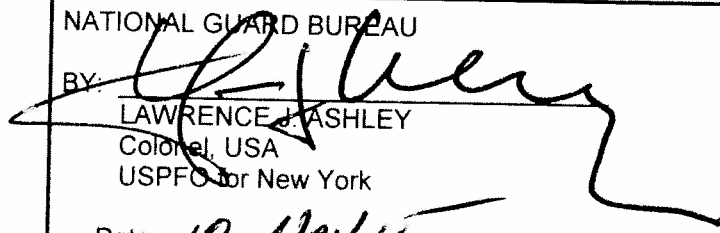
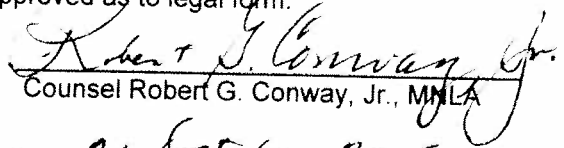
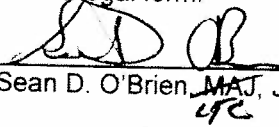
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### EXECUTION

By executing this Master Cooperative Agreement, the parties agree to the terms and conditions contained herein, including attachments.

IN WITNESS WHEREOF, the parties by their authorized representatives, execute this Master Cooperative Agreement.

<p>THE STATE OF NEW YORK</p> <p>BY: </p> <p>PATRICK A. MURPHY Major General, NYARNG The Adjutant General</p> <p>Date: <u>9 Nov 15</u></p>	<p>NATIONAL GUARD BUREAU</p> <p>BY: </p> <p>LAWRENCE J. ASHLEY Colonel, USA USPFO for New York</p> <p>Date: <u>10 Nov 15</u></p>
<p>Approved as to legal form:</p> <p></p> <p>Counsel Robert G. Conway, Jr., MNLA</p> <p>Date: <u>21 October 2015</u></p>	<p>Approved as to legal form:</p> <p></p> <p>Counsel Sean D. O'Brien, MAJ, JA, NYARNG</p> <p>Date: <u>21 October 2015</u></p>



## ARTICLE I – SCOPE, PURPOSE AND AUTHORITY

### Section 101. General.

a. The National Guard Bureau (NGB) and the State (Grantee) have entered this Master Cooperative Agreement (MCA) to establish the terms and conditions applicable to the contribution of NGB funds or In-Kind Assistance for the operation and training of the State Army and Air National Guard.

b. This MCA and its appendices, includes all terms and conditions related to NGB's contribution of Cooperative Agreement funds for the operation and training of the Army and Air National Guard within the State/Territory or Commonwealth. Funds, equipment, supplies, or training acquired, issued, supplied, assigned or provided by NGB for the operation and training of the State Army and Air National Guard under applicable statutes and directives, are not covered by this MCA.

c. The attached Appendices are integral to this MCA.

d. Attachment A contains the provisions required by OMB, published in 2 CFR part 200. They apply to and are incorporated in this MCA, each appendix hereto and to such other NGB assistance awards/agreements within which reference to the MCA is made.

### Section 102. Scope.

The scope of this MCA includes all activities enumerated in the Appendices and in non-appendix awards/agreements made or administered by NGB within which reference to the MCA is made.

### Section 103. Performance Specifications.

Specifications, for the performance of activities within the scope of this MCA, are contained in the Appendices and separate agreements.

### Section 104. Authority.

a. Title 32 U.S.C. §§ 106 and 107 authorize the NGB to contribute funds for the support of the operation and training of the State Army and Air National Guard.

b. This MCA is a Cooperative Agreement within the meaning of 31 U.S.C. §§ 6301-6308.



## ARTICLE II – OBLIGATIONS OF THE PARTIES

### Section 201. Obligations of the Grantee.

a. The Grantee shall exercise its best efforts to supervise, manage, operate and/or maintain all activities or projects within the scope of this MCA according to sound, efficient, commercial practice and according to the terms, condition, and specifications of this MCA and its Appendices.

b. The Grantee will obligate sufficient funds to pay its share of the costs under this MCA and, where NGB provides services in kind, the costs of which are to be shared under the terms of this MCA, and to reimburse NGB in the manner provided under this MCA.

c. The Grantee's obligations are contingent upon the NGB funding of the MCA Appendices in each fiscal year.

### Section 202. Obligations of NGB.

a. NGB shall reimburse the Grantee for the allowable costs incurred in performance of this MCA according to its terms and conditions for reimbursement.

b. Whenever the terms of this MCA provide for approval by NGB, the approval will not be unreasonably withheld. Any request for approval shall be considered and acted upon by NGB in a timely fashion.

c. The obligations of NGB are subject to the availability of federal funds for the MCA Appendices and the Grantee's funding contribution for its share of the costs of this MCA.

### Section 203. Obligations of Both Parties-Close out.

NGB and the Grantee both share in the responsibilities for accurate and timely closeouts of all appendices under this MCA. Fiscal year end closeouts and/or projected completion/termination closeout of appendices shall be in accordance with NGR 5-1, Chapter 11, **and 2 CFR §200.343**



## ARTICLE III – COSTS

### Section 301. General.

a. NGB shall reimburse the Grantee for all activities and costs that are allowable, allocable and reasonable in the performance of this MCA.

### Section 302. Estimated Cost.

- a. The total estimated costs under this MCA are specified in each Appendix.
- b. The Grantee share in the costs under this MCA are provided for in the approved Appendices.

### Section 303. Cost Sharing.

Wherever an item of cost for the performance under this MCA is identified to be funded in-part by Grantee contributions and in-part by NGB contributions, NGB shall be obligated to reimburse the Grantee only for its percentage share of the total allowable costs that would otherwise be allowable under this MCA.

### Section 304. Allowability of costs.

a. Except as otherwise stated in this Article or elsewhere in this MCA, the allowability of costs incurred by the Grantee in performance under this MCA shall be determined according to the terms and conditions of **2 CFR Part 200, as amended**, and NGR 5-1, Chapter 5 effective at the time the cost is incurred.

b. **The provisions of 2 CFR §200.400 are applicable to costs for awards to states and local governments made against this MCA, including but not limited to §200.416 (Special Considerations for States, Local Governments and Indian Tribes) and §§200.420 et seq. (General Provisions for Selected Items of Cost).**

c. The allowability of costs has no effect on the maximum funding level of this cooperative agreement. NGB has no liability to reimburse any cost over and above the maximum amount of funding obligated in this cooperative agreement, even if such cost would otherwise be allowable.

### Section 304-A Authorized charges

#### a. Personnel.

(1) Payments for salaries, to include approved overtime and allowable benefits in accordance with state personnel policy for the payment of salary and benefits of like state government positions within the same geographic area. If a state has a pay raise, pay freeze or pay cap, a hiring freeze or employee furloughs for like positions throughout the state, then state employees under this Appendix will have corresponding limitations. When there is no like state government position available, salaries and benefits will be equivalent to a comparable grade and series Federal Civil Service position in the geographic area. Raises for federally-reimbursed state employees and state-contracted personnel will not exceed those of comparable state employees.

(2) Benefit costs include state- or employer-paid Social Security contributions, premiums for workers compensation, medical and unemployment insurance, and the state retirement system.

(3) Costs for merit and incentive awards based on performance providing the awards are part of a program available and consistent with those offered to similar state government positions.

(4) Overtime required by Fair Labor Standards Act (FLSA), based on the work schedule authorized by the state. When operational requirements or personnel circumstances dictate additional staffing in support of the





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mission, overtime may be authorized as specified in the appendix to satisfy minimum staffing requirements.

Overtime may be approved on an exception basis (filling for sick or annual leave, emergency, or training, etc.).

b. Costs for travel expenses and per diem, at a rate consistent with state travel regulations, for performing activities authorized under that appendix or separate agreement away from their home office.

c. Costs of training for qualification in accordance with established work center requirements, and as authorized in each appendix.

d. Costs for facilities, equipment and supplies required or reasonably necessary to perform the activities specified or described in each appendix or separate agreement.

e. Any other charges or activities not otherwise authorized require prior approval by the OPR-PM or as specified in that appendix.

**Section 305. Advance Agreements on the Allowability of Costs.**

a. No cost incurred by the Grantee that is contrary to any valid restriction, limitation, or instruction contained in any Budget and/or Financial Plan under this MCA shall be allowable.

b. The costs of compensation for personnel services, including fringe benefits, but not limited to, the costs of workmen's compensation, unemployment compensation, State sponsored life/health insurance, and retirement benefits, shall be allowable as specified in NGR 5-1, Chapter 5, **and 2 CFR §200.431.**

**Section 306. Unauthorized Activities/Charges and Costs.**

Unallowable, unauthorized activities and costs/charges. In addition to the unauthorized activities and charges that may be identified in each specific Appendix, **unallowable costs identified in General Provisions for Selected Items of Cost, throughout 2 CFR §200.420 through 2 CFR §200.475 shall be unauthorized for reimbursement.**



## ARTICLE IV – FUNDING LIMITATIONS

### Section 401. Funding Limitations

a. The Annual Funding Program (AFP) limitation amount for NGB for any fiscal year is specified in the appendices. Increases/decreases to the AFP in a FY will be by a bilateral modification. The AFP amount of an appendix for the subsequent FY will be added by agreement modification to the applicable Appendix.

b. If, at any time within the fiscal year, the Grantee determines that NGB's share of allowable costs, as specified in the appendices, has reached the amount reflected in the appendix or determines that the total amount of NGB's share of allowable costs exceeds 90% of the amount reflected in the appendix, the Grantee will notify the USPFO in writing. The notice shall state the total estimated amount of NGB's share of allowable costs and the amount of the Grantee's share of allowable costs necessary to complete a fiscal year.

c. The addition of program income to the funds obligated in a cooperative agreement will not require an increase in the federal funding limitation.

d. Within its discretion, NGB may unilaterally increase the maximum funding limitation at any time.

e. The Grantee shall have no obligation to incur costs which exceed NGB's share of the maximum funding limitation.

### Section 402. Method of Funding.

a. MCA Appendices will be either incrementally or fully funded annually, subject to the availability of funds.

b. The annual funding of MCA Appendices will be in accordance with NGR 5-1, Chapter 3 and as specified in the Budget Requirements/Financial Plan Requirements sections of each Appendix.

### Section 403. Budgets/Financial Plans.

a. Budgets/Financial Plans Requirements are specified in each Appendix.

### Section 404. Limitation on the Availability of Funds For State Obligation.

Funds provided by NGB under this MCA for any Fiscal Year are available for obligation (as the term "obligation" is defined in **2 CFR 200 §200.71**) by the State only in that Fiscal Year. Allowable costs must be incurred in the same fiscal year as the funding.



## ARTICLE V - PAYMENT

### **Section 501. General.**

There are only two payment methods authorized in the execution of this MCA, the reimbursement method and the advance method.

### **Section 502. Payment by the Reimbursement Method.**

Reimbursement method payments shall be according to procedures established by the Defense Finance and Accounting Service (DFAS), DoD Financial Management Regulation 7000.14R Volumes 11A and 11B, NGR 5-1, Chapter 11, **and 2 CFR §200.305.**

### **Section 503. Payment by Advance Method.**

The advance payment method shall be according to procedures established in, NGR 5-1, Chapter 11, and **2 CFR §200.305.**

### **Section 504. Direct Federal Payment of State Obligations.**

In no event, shall the USPFO make direct payment to a state contractor, state employee, contractor employee, or state vendor for any costs incurred by the state under this MCA.

### **Section 505. Interest.**

The amount of interest due the United States on funds advanced to the state or interest due the state shall be determined and paid in accordance with 31 U.S.C. § 6503 and the items of the Cash Management Improvement Act Agreement in effect between the State and U.S. Treasury and regulations as issued by the U.S. Department of Treasury and the Department of Defense, as amended. For interest on advance payments see 31 U.S.C. 6503, 32 CFR. § 33.21, **and 2 CFR §200.305.**



## ARTICLE VI – DEFINITIONS

### **Section 601. Army National Guard and Air National Guard Cooperative Agreements.**

Army National Guard (ARNG) and Air National Guard (ANG) Cooperative Agreements mean any agreements entered into by the Department of Defense, National Guard Bureau, with the states, funded by Department of Defense appropriations for the Army National Guard and Air National Guard, for construction, minor construction, distance learning, maintenance, repair, or operation of facilities, operations of the Army National Guard and Air National Guard, and for other programs authorized and directed by Congress or the Department of Defense to be performed by the states and the National Guard Bureau.

### **Section 602. Air National Guard.**

The Air National Guard (ANG) means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that--

- a. is an air force;
- b. is trained, and has its officers appointed, under the sixteenth clause of section 8, article 1 of the Constitution;
- c. is organized, armed, and equipped wholly or partly at federal expense; and
- d. is federally recognized (32 USC § 101).

### **Section 603. Army National Guard.**

The Army National Guard (ARNG) means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that --

- a. is a land force;
- b. is trained, and has its officers appointed, under the sixteenth clause of section 8, article 1 of the Constitution.
- c. is organized, armed, and equipped wholly or partly at federal expense; and
- d. is federally recognized (32 U.S.C. § 101).

### **Section 604. Chief, National Guard Bureau.**

The Chief, National Guard Bureau means the head of the National Guard Bureau or his/her designee.

### **Section 605. Cooperative Agreement Program Manager.**

An individual appointed by the USPFO, in coordination with TAG/ANG Unit command, as the Federal CA Program Manager (CA PM) to act for the ARNG / ANG in all matters relating to an MCA Appendix.

### **Section 606. Equipment. (Non-military).**

For the purpose of NGR 5-1, and consistent with the definition at **2 CFR §200.33**, equipment is tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit, purchased for the performance of this MCA. Use and disposal of equipment shall comply with the requirement of NGR 5-1, Chapter 8 and **2 CFR 200 §200.313**.





**Section 607. Fiscal Year.**

Fiscal Year (FY) means the federal FY that runs from October 1 to September 30.

**Section 608. Government Furnished Property (GFP) or Government Furnished Equipment (GFE).**

Government furnished property/equipment is property in the possession of, or directly occupied by, the Government and subsequently made available to the grantee (e.g. facilities, materials, special tools, special test equipment, installation property, GSA vehicles and "agency peculiar" equipment).

**Section 609. Grantee.**

The State (**2 CFR §200.90**) or local government (**2 CFR §200.64**) responsible for the performance and administration of this award.

**Section 610. Grants Officer/Grantor.**

Grants Officer or Grantor shall mean an individual appointed by the NGB, Head of Contracting Activity (HCA) authorized to provide approvals, receive reports, modify or change the terms of the MCA, provide funds under the MCA or take any other action for NGB under this MCA except for deciding any appeal of a dispute under this MCA as provided in Section 1203 and any other action delegated to a specific person by this MCA or Appendices. For purposes of this agreement, the Grants Officer shall be the USPFO of the respective State/Territory.

**Section 611. Grants Officer Representative.**

Grants Officer Representative (GOR) means a representative of the Grants Officer acting within the limits of his or her authority as delegated, in writing, by the Grants Officer. If the Grants Officer designates a GOR, the Grantee will receive a copy of the written designation. It will specify the extent of the GOR's authority to act on behalf of the Grants Officer. The GOR is not authorized to make commitments or changes that will affect terms or conditions of the MCCA or an appendix.

**Section 612. In-Kind Assistance.**

In-Kind Assistance is the transfer of supplies or services by NGB to the state in lieu of funds, to satisfy in whole or in part, NGB's obligation of assistance support to the state. IKA will be the fair market value at the time of the contribution.

**Section 613. Military Equipment.**

Military Equipment is federal equipment, used by the Army and Air National Guard to carry out military missions (i.e. combat, or homeland defense/security), listed in the ARNG Modified Table of Organization Equipment (MTOE), Table of Distribution and Allowances (TDA) or AF Designed Operational Capability (DOC). Military equipment cannot be issued/transferred to the State for the purpose of MCA execution.

**Section 614. National Guard Bureau.**

The National Guard Bureau (NGB) is a joint activity of the Department of Defense pursuant to Section 10501, Title 10 United States Code (U.S.C.). The Chief, NGB, is under the authority, direction, and control of the Secretary of Defense. The Secretary normally exercises authority, direction, and control through the Secretaries of the Army and the Air Force for matters pertaining to their responsibilities in law or DoD policy. The Chief, NGB, is a principal advisor to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff on matters involving non-federalized National Guard forces and through other DoD officials on matters as in DoD Directive 5105.77, May 21, 2008, or as determined by the Secretary of Defense.



**Section 615. Operating Materials and Supplies.**

Items purchased, provided, and consumed in normal operations in support of this MCA, its appendices or separate agreements which incorporate the MCA.

**Section 616. Operation and Maintenance Activities.**

Operation and Maintenance (O&M) Activities mean and include, but are not limited to actions by the state, through employment by the state, by contract or hire, of sufficient personnel, acquisition by contract of supplies or services, or other necessary actions, to perform the services, tasks, or activities within the scope of this MCA which are properly charged to an Operations and Maintenance appropriation.

**Section 617. State.**

Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state exclusive of local governments, **and consistent with the definition at 2 CFR §200.90.**

**Section 618. Territory.**

Territory means any Territory. However, for purposes of laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States. "Territory" includes Guam and the Virgin Islands (32 U.S.C. § 101).

**Section 619. The Adjutant General.**

a. The Adjutant General (TAG) is the head of the State, Commonwealth or Territory's Military Department, appointed by the Governor or otherwise determined in accordance with the State, Commonwealth or Territory's law or policy.

b. TAG receives funds, property, and accounts for all expenditures and property acquired through this MCA, and makes returns and reports concerning those expenditures and that property, as required by this MCA.

**Section 620. United States Property and Fiscal Officer. (Grantor)**

a. The United States Property and Fiscal Officer (USPFO) is the qualified commissioned officer of the Army National Guard or the Air National Guard, as the case may be, designated by the Chief, National Guard Bureau, to be the United States Property and fiscal Officer of a State or Territory.

b. The USPFO receives and accounts for all funds and property of the United States, in the possession of the National Guard for which he/she is property and fiscal officer, and makes returns and reports concerning those funds and that property, as required by the Secretary concerned. (32 U.S.C. § 708).

**Section 621. Unit.**

The Unit includes Air National Guard (ANG) flying Groups and Wings, Combat Communication Flights and Squadrons, Engineering Installation Flights and Squadrons, and Combat Readiness Training Centers (CRTC).



## ARTICLE VII – GENERAL PROVISIONS

### **Section 701. Term of Agreement.**

Unless sooner terminated by its terms, this MCA shall terminate on 30 September 2020 .

### **Section 702. Sole Benefit.**

This MCA is intended for the sole benefit of NGB and the Grantee and is not intended to create any other beneficiaries.

### **Section 703. Modifications.**

This MCA may be modified only by a written instrument signed by the parties hereto. Appendices may be modified separately. However, no appendix modification may modify this MCA by reference.

### **Section 704. Successors and Assigns.**

This MCA may not be assigned by a party without the express written consent of the other party. All covenants made under this MCA shall bind and take effect to the benefit of any successors and assigns of the parties whether or not expressly assumed or acknowledged by such successors or assigns.

### **Section 705. Entire Agreement.**

This MCA forms the entire agreement between the parties as to scope and subject matter of this MCA. All prior discussions and understandings concerning the scope and subject matter are superseded and incorporated by this MCA.

### **Section 706. Severability.**

If any provision of this MCA is held judicially invalid, the remainder of the MCA shall continue in force and effect to the extent not inconsistent with such holding.

### **Section 707. Waiver of Breach.**

If a party waives enforcement of any provision of this MCA upon any event of breach by the other party, the waiver shall not automatically extend to any other or future events of breach.

### **Section 708. Notices.**

Any notice, transmittal, approval, or other official communication made under this MCA shall be in writing and shall be delivered by hand, email, facsimile transmission, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

NGB                      Colonel Lawrence J. Ashley, USP&FO for New York, 330 Old Niskayuna Road, Latham,  
New York 12110-3514, [lawrence.j.ashley.mil@mail.mil](mailto:lawrence.j.ashley.mil@mail.mil)

Grantee                   Major General Patrick A. Murphy, The Adjutant General for New York, 330 Old Niskayuna  
Road, Latham, New York 12110-3514, [Patrick.a.murphy14.mil@mail.mil](mailto:Patrick.a.murphy14.mil@mail.mil)

### **Section 709. Execution.**

This MCA may be executed in several counterparts, each of which shall be deemed an original. Subsequent execution of any or all Appendices shall not affect the legality or enforceability of this MCA.



This MCA may be executed in several counterparts, each of which shall be deemed an original. Subsequent execution of any or all Appendices shall not affect the legality or enforceability of this MCA.

**Section 710. Conflict of Interest.**

The Grantee shall insure that its employees are prohibited from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others.

**Section 711. Access to and Retention of Records.**

The Grantee shall afford any authorized representative of NGB, the Department of Defense, or the Comptroller General access to and the right to examine all records, books, papers, and documents ("Records") that are within the Grantee's custody or control and that relate to its performance under this MCA. The Grantee shall retain all such records intact in a form, if not original documents, as may be approved by NGB for at least three (3) years following termination of this MCA.

**Section 712. Change of Circumstances.**

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the party's ability to carry out any of its obligations under this MCA.

**Section 713. Liability and Indemnity.**

Except as stated in section 716, nothing in this MCA shall be construed as an indemnification by one party or the other for liabilities of a party or third persons for property loss or damage, or for death or personal injury arising out of and during and performance of this MCA. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or (assigns) or by third persons, arising out of and during the performance of this MCA shall be determined according to applicable law.

**Section 714. Reports.**

In addition to any financial or other reports required by the terms of this MCA, NGB may require the State to prepare reports or provide information relating to this MCA. The state agrees to provide the reports within a reasonable time of request and in such detail as may be required.

**Section 715. Special State Requirements.**

Changes to established requirements of this MCA made necessary by governing State statutes will be processed in accordance with NGR 5-1, Chapter 3 for approval by NGB. Upon approval, a statement of alterations or changes, along with justification, shall be attached to this MCA and will be considered a part thereof. (If none, state NONE.)

**Section 716. Government Furnished Equipment (GFE).**

In addition to the Liability and Indemnity provisions in section 713, nothing in this MCA shall be construed as an indemnification by the United States of the State, its employees, agents, or third persons, for liability with respect to any and all claims, including, but not limited to: (1) claims for damages; and (2) claims for reimbursement arising from property loss, personal injury or accident damage related to the use, care, or operation of GFE. The Grantee's liability for lost or damaged GFE will be in accordance with applicable State laws. (NGR 5-1, Chapter 8). The Grantee is liable for loss, in the event that State law does not authorize indemnification GFE should not be provided.





## ARTICLE VIII – APPLICABLE LAWS AND REGULATIONS

### Section 801. Applicable Law.

This MCA is incidental to the implementation of a Federal program. Accordingly, this MCA shall be governed by and construed according to federal law as it may affect the rights, remedies, and obligations of the United States.

### Section 802. Governing Regulations.

**Title 2 Code of Federal Regulations (CFR) Part 200**, and NGR 5-1, are hereby incorporated into this MCA by reference as if fully set forth herein, shall govern this Agreement. Attachment A consists of those provisions of part 200 which are terms & conditions commonly applicable to NGB assistance instruments.

### Section 803. Nondiscrimination.

The Grantee covenants and agrees that no person shall be subject to discrimination or denied benefits in connection with the State's performance under the MCA. Accordingly, and to the extent applicable, the Grantee covenants and agrees to comply with the following national policies prohibiting discrimination:

- a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.
- b. On the basis of race, color or national origin, in Executive Order 11246 as implemented by Department of Labor regulations at 41 CFR Chapter 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681, et seq.), as implemented by DoD regulations at 32 CFR Part 196.
- d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.
- e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR Part 56.

### Section 804. Lobbying.

a. The state covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions. The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any CA; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Cooperative Agreement.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the state agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

### Section 805. Drug-Free work Place.

The Grantee covenants and agrees to comply with the requirements regarding drug-free workplace requirements in of 32 CFR Part 26, which implements Section 5151-5160 of the Drug-Free Workplace act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).



**Section 806. Environmental Protection.**

a. The Grantee covenants and agrees that its performance under this Agreement shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this award may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Grantee shall also identify to the awarding agency (NGB) any impact this award may have on:

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300H-3).

**Section 807. Use of United States Flag Carriers.**

a. The state covenants and agrees that travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The state agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).



**Section 808. Debarment and Suspension.**

**Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.** The grantee agrees to comply with the DOD implementation of 2 CFR Part 180 (at 2 CFR Part 1125) by checking the Excluded Parties List System (EPLS) at [www.sam.gov](http://www.sam.gov) to verify contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The grantee and subrecipients shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the grantee and subrecipient contract files, and shall be subject to audit by the grantor and Federal/State audit agencies

**Section 809. Buy American Act.**

The state covenants and agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq.). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

**Section 810. Uniform Relocation Assistance and real Property Acquisition Policies**

The state covenants and agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

**Section 811. Copeland “Anti-Kickback” Act.**

The state covenants and agrees that it will comply with the Copeland “Anti-Kickback” Act (18 U.S.C. Section 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this agreement, the Copeland “Anti-Kickback” Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

**Section 812. Contract Work Hours and Safety Standards Act.**

The state covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

**Section 813. System for Award Management and Data Universal Numbering Requirements**

The Grantee covenants and agrees to comply with the System for Award Management (SAM) and Data Universal Numbering Requirements (DUNS) as indicated below:

a. Requirement for SAM. You as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this Agreement or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.



b. Requirement for DUNS Numbers. If you are authorized to make subawards under this Agreement, you:

- (1) Must notify potential subrecipients that no entity (see definition in paragraph (c) of this Agreement term) may receive a subaward from you unless the entity has provided its DUNS number to you; and
- (2) May not make a subaward to an entity unless the entity has provided its DUNS number to you.
- (3) Definitions. For purposes of this Agreement:

(a) SAM means the official U.S. Government system that consolidated the capabilities of CCR and EPLS. There is NO fee to register in SAM. Entities may register at no cost at [www.sam.gov](http://www.sam.gov). Additional information about registration procedures, updating your recipient account, searching records, as well as user guides and helpful hints may be found at the SAM website.

1. If you had an active record in CCR, you have an active record in SAM. You do not need to do anything in SAM at this time, unless a change in your business circumstances requires updates to your Entity record(s) in order for you to be paid or to receive an award or you need to renew your Entity(s) prior to its expiration. SAM will send notifications to the registered user via email 60, 30, and 15 days prior to expiration of the Entity. To update or renew your Entity records(s) in SAM you will need to create a SAM User Account and link it to your migrated Entity records. You do not need a user account to search for registered entities in SAM by typing the DUNS number or business name into the search box.

(b) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the internet (currently at <http://fedgov.dnb.com/webform>).

(c) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, Subpart C:

1. A Governmental organization, which is a State, local Government, or Indian Tribe;
2. A foreign public entity;
3. A domestic or foreign nonprofit organization;
4. A domestic or foreign for-profit organization; and
5. A Federal Agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

(4) Subaward:

(a) This term means a legal instrument to provide support for the performance of any portion of the substantive project or Program for which you received this Agreement and that you as the recipient award to an eligible subrecipient.

(b) The term does not include your procurement of property and services needed to carry out the project or Program.

(c) A subaward may be provided through any legal Agreement, including an Agreement that you consider a contract.

(5) Subrecipient means an entity that:

(a) Receives a subaward from you under this Agreement; and is accountable to you for the use of the Federal funds provided by the subawards

#### **Section 814. Reporting Subawards and Executive Compensation**

The Grantee covenants and agrees to comply with the Reporting Subawards and Executive Compensation requirements indicated below:

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.





1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--

- i. the total Federal funding authorized to date under this award is \$25,000 or more;
- ii. in the preceding fiscal year, you received--

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

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

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

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

- i. As part of your registration profile at <http://www.ccr.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if--

i. in the subrecipient's preceding fiscal year, the subrecipient received--

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

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

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

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

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

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

i. Subawards, and

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

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in **2 CFR Part 200**:

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

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

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

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

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program.



iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

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

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



## ARTICLE IX – PROCUREMENT

### **Section 901. State Contracts.**

The Grantee's acquisition of goods and services by the State in performance of this MCA shall be according to applicable State contracting procedures, standards and procedures contained and cited in **2 CFR §200.317**

### **Section 902. State Contract Flow-down.**

Subject to existing contracts, the Grantee is required to insert the substance of provisions of article VIII in contracts issued under this MCA, unless state laws or regulations offer more protection.



## ARTICLE X – PROPERTY

### Section 1001. Equipment.

- a. Equipment purchased by the Grantee under the terms of this agreement becomes the property of the state and will be managed, used, and disposed of in accordance with **2 CFR §200.313**, and Chapter 8, NGR 5-1.
- b. Equipment purchased by the federal government, including equipment acquired specifically for a National Guard Cooperative Agreement, vests in the Federal Government. This equipment shall be managed, used, and accounted for as provided in **2 CFR 200.313(d)**, and NGR 5-1, Chapter 8.
- c. Equipment purchased by the federal government and issued to the state is Government Furnished Equipment (GFE). The title to GFP/GFE vests in the federal government and cannot be transferred to the state and therefore cannot be considered as In-Kind Assistance (IKA).

### Section 1002. Operation Materials and Supplies.

- a. Items to be consumed in normal operations purchased by the state under the terms of this agreement become the property of the State and will be managed and disposed of in accordance with **2 CFR Part 200**, and NGR 5-1, Chapter 8.
- b. Supplies purchased by the federal government shall be managed, used, and accounted for as provided in **2 CFR §200.314**, and NGR 5-1, Chapter 8. State use of federal supplies and materials may be considered as IKA.























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## **PART 1: DEFINITIONS OF TERMS USED IN THIS AGREEMENT**

**Section A. Purpose of this part.** This part provides definitions of terms used in this Agreement.

**Section B. Precedence of definitions of terms in national policy requirements.**

Some portions of the general terms and conditions in this Agreement use a term in relation to compliance with a national policy requirement in a statute, Executive order, or other source that defines the term differently than Section D of this part. For purposes of that particular national policy requirement, the definition of a term provided by the source of the requirement and any regulation specifically implementing it takes precedence over the definition in this part. For the purpose of determining eligibility for an award under the Procurement Technical Assistance Cooperative Agreement Program, the definitions in 10 U.S.C. 2411 take precedence over the definitions in this part.

**Section C. Definitions of terms used in the Government-wide cost principles or single audit requirements.**

1. The general terms and conditions in this Agreement incorporate by reference the provisions of:
  - a. The implementation of the Single Audit Act requirements for audits of recipients and subrecipients that are in Subpart F of OMB guidance in 2 CFR Part 200;
  - b. The Government-wide cost principles for institutions of higher education, nonprofit entities, States, local governments, and Indian tribes that are contained in Subpart E of OMB guidance in 2 CFR Part 200; and
  - c. The cost principles for for-profit entities at subpart 31.2 of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement at subpart 231.2 of 48 CFR Part 231.
  
2. This part includes the definition of a term used in any of the issuances listed in paragraph 1 of this Section only if the terms and conditions in this Agreement use that term directly. If the only usage is indirect--i.e., through an issuance incorporated by reference--then this part will not include a definition and you should consult definitions in:
  - a. Subpart A of the OMB guidance in 2 CFR Part 200 for terms used in Subparts E and F of that Part; and
  - b. FAR Part 2 (48 CFR Part 2) for terms used in the cost principles at 48 CFR Part 31.

**Section D. Definitions.**

1. Acquire.

*Acquire* means to:

- a. Purchase services; or
  - b. Obtain property, by purchase, construction, fabrication, development, or otherwise.
2. Acquisition.

*Acquisition* means the process of acquiring as described in the definition of “acquire”.

3. Acquisition cost.

*Acquisition cost* means the cost of an asset to a recipient or subrecipient, including the cost to ready the asset for its intended use.

- a. For example, when used in conjunction with:
    - i. The purchase of equipment, the term means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired.
    - ii. Equipment that a recipient or subrecipient constructs or fabricates--or software that it develops--under an award, the term includes, when capitalized in accordance with generally accepted accounting principles (GAAP):
      - A. The construction and fabrication costs of that equipment; and
      - B. The development costs of that software.
  - b. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from, the acquisition cost in accordance with the recipient's or subrecipient's regular accounting practices.
4. Administrative offset.

*Administrative offset* means an action whereby money payable by the United States Government to, or held by the Government for, a recipient is withheld to satisfy a delinquent debt the recipient owes the Government.

5. Advance payment.

*Advance payment* means a payment that DoD or a recipient or subrecipient makes by any appropriate payment mechanism, including a predetermined payment schedule, before the recipient or subrecipient disburses the funds for project or program purposes.

6. Approved budget.

*Approved budget* means, in conjunction with a DoD Component award to a recipient, the most recent version of the budget the recipient submitted and the DoD Component approved (either at the time of the initial award or subsequently), to summarize planned expenditures for the project or program under the award. It includes all Federal funding made available to the recipient under the award to use for project or program purposes and any cost sharing or matching that the recipient is required to provide under the award.

7. Assistance.

*Assistance* means the transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants, cooperative agreements, and technology investment agreements are examples of legal instruments that DoD Components use to provide assistance.

8. Award.

*Award* means a grant, cooperative agreement, technology investment agreement, or other nonprocurement instrument.

9. Award administration office.

*Award administration office* means a DoD Component office that performs assigned post-award functions related to the administration of grants, cooperative agreements, technology investment agreements, or other nonprocurement instruments.

10. Award-specific terms and conditions.

*Award-specific terms and conditions* means requirements that are included in an individual award and pertain to that particular award specifically. Award-specific terms and conditions may be used to modify or supplement general terms and conditions.

11. Capital asset.

*Capital asset* means a tangible or intangible asset used in operations having a useful life of more than one year which is capitalized in accordance with GAAP. Capital assets include:

- a. Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

- b. Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

12. Claim.

*Claim* means a written demand or written assertion by one of the parties to an award seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by written notice to the grants officer if it is disputed either as to liability or amount, or is not acted upon in a reasonable time.

13. Cognizant agency for indirect costs.

*Cognizant agency for indirect costs* means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans and indirect cost proposals on behalf of all Federal agencies. The cognizant agency for indirect costs for a particular entity may be different than the cognizant agency for audit. The cognizant agency for indirect costs:

- a. For an institution of higher education, nonprofit organization, State, or local government is assigned as described in the appendices to OMB guidance in 2 CFR Part 200. See 2 CFR 200.19 for specific citations to those appendices.
- b. For a for-profit entity, normally will be the agency with the largest dollar amount of pertinent business, as described in the Federal Acquisition Regulation at 48 CFR 42.003.

14. Contract.

*Contract* means a procurement transaction, as that term is defined in this part. A contract is a transaction into which a recipient or subrecipient enters. It is therefore distinct from the term “procurement contract,” which is a transaction that a DoD Component awards at the prime tier.

15. Contractor.

*Contractor* means an entity to which a recipient or subrecipient awards a procurement transaction (also known as a contract).

16. Cooperative agreement.

*Cooperative agreement* means a legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of “grant” in this part), except that substantial involvement is expected between the

Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include “cooperative research and development agreements” as defined in 15 U.S.C. 3710a.

17. Cost allocation plan.

*Cost allocation plan* means either a:

- a. Central service cost allocation plan, as defined at 2 CFR 200.9 and described in Appendix V to OMB guidance in 2 CFR Part 200; or
- b. Public assistance cost allocation plan as described in Appendix VI to 2 CFR Part 200.

18. Cost sharing or matching.

*Cost sharing or matching* means the portion of project costs not borne by the Federal Government, unless a Federal statute authorizes use of any Federal funds for cost sharing or matching.

19. Cost-type contract.

*Cost-type contract* means a procurement transaction awarded by a recipient or a subrecipient at any tier under a DoD Component’s grant or cooperative agreement that provides for the contractor to be paid on the basis of the actual, allowable costs it incurs (plus any fee or profit for which the contract provides).

20. Cost-type subaward

*Cost-type subaward* means a subaward:

- a. That a recipient or subrecipient makes to another entity at the next lower tier; and
- b. Provides for payments to the entity that receives the cost-type subaward based on the actual, allowable costs it incurs in carrying out the subaward.

21. Debarment.

*Debarment* means an action taken by a Federal agency debarring official to exclude a person or entity from participating in covered Federal transactions, in accordance with debarment and suspension policies and procedures for:

- a. Nonprocurement instruments, which are in OMB guidance at 2 CFR Part 180, as implemented by the DoD at 2 CFR Part 1125; or
- b. Procurement contracts, which are in the Federal Acquisition Regulation at 48 CFR 9.4.

22. Debt.

*Debt* means any amount of money or any property owed to a Federal agency by any person, organization, or entity except another United States Federal agency. Debts include any amounts due from insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, or overpayments, penalties, damages, interest, fines and forfeitures, and all other claims and similar sources.

23. Delinquent debt.

*Delinquent debt* means a debt:

- a. That the debtor fails to pay by the date specified in the initial written notice from the agency owed the debt, normally within 30 calendar days, unless the debtor makes satisfactory payment arrangements with the agency by that date; and
- b. With respect to which the debtor has elected not to exercise any available appeals or has exhausted all agency appeal processes.

24. Direct costs.

*Direct cost* means any cost that is identified specifically with a particular final cost objective, in accordance with the applicable cost principles. Costs identified with a given award are direct costs of that award.

25. DoD Components.

*DoD Components* means the Office of the Secretary of Defense, the Military Departments, and all Defense Agencies, DoD Field Activities, and other organizational entities within the DoD that are authorized to award or administer grants, cooperative agreements, and other non-procurement instruments.

26. Equipment.

*Equipment* means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of:

- a. \$5,000; or
- b. The recipient's or subrecipient's capitalization threshold for financial statement purposes.

27. Expenditures.

*Expenditures* means charges made by a recipient or subrecipient to a project or program under an award.

- a. The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.
- b. For reports prepared on a cash basis, expenditures are the sum of:
  - i. Cash disbursements for direct charges for property and services;
  - ii. The amount of indirect expense charged;
  - iii. The value of third-party in-kind contributions applied; and
  - iv. The amount of cash advance payments and payments made to subrecipients.
- c. For reports prepared on an accrual basis, expenditures are the sum of:
  - i. Cash disbursements for direct charges for property and services;
  - ii. The amount of indirect expense incurred;
  - iii. The value of third-party in-kind contributions applied; and
  - iv. The net increase or decrease in the amounts owed by the recipient or subrecipient for:
    - A. Goods and other property received;
    - B. Services performed by employees, contractors, subrecipients, and other payees; and
    - C. Programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

28. Federal interest.

*Federal interest* means, in relation to real property, equipment, or supplies acquired or improved under an award or subaward, the dollar amount that is the product of the:

- a. Federal share of total project costs; and
- b. Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.



29. Federal share.

*Federal share* means the portion of the project costs under an award that is paid by Federal funds.

30. Fixed amount subaward

*Fixed amount subaward* means a subaward:

- a. That a recipient or subrecipient makes to another entity at the next lower tier; and
- b. Under which the total amount to be paid to the other entity is based on performance and results, and not on the actual, allowable costs that entity incurs.

31. General terms and conditions.

*General terms and conditions* means requirements that apply broadly to a class of awards rather than specifically to a particular award. For example, the requirements in this Agreement are general terms and conditions because they apply, except as modified or supplemented by award-specific terms and conditions, to all applicable awards under solicitation number DLA-20130412.

32. Grant.

*Grant* means a legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

- a. Of which the principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the DoD's direct benefit or use.
- b. In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

33. Grants officer.

*Grants officer* means a DoD official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

34. Indian tribe.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C.

450b(e)). See the annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

35. Indirect costs (also known as “Facilities and Administrative,” or F&A, costs).

*Indirect costs* means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

36. Institution of higher education.

*Institution of higher education* has the meaning specified in at 20 U.S.C. 1001.

37. Intangible property.

*Intangible property* means:

- a. Property having no physical existence, such as trademarks, copyrights, patents and patent applications; and
- b. Property such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether the property is considered tangible or intangible.

38. Local government.

*Local government* means any unit of government within a State, including a:

- a. County;
- b. Borough;
- c. Municipality;
- d. City;
- e. Town;
- f. Township;
- g. Parish;
- h. Local public authority, including any public housing agency under the United States Housing Act of 1937;
- i. Special district;

- j. School district;
- k. Intrastate district;
- l. Council of governments, whether or not incorporated as a nonprofit corporation under State law; and
- m. Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

39. Management decision.

*Management decision* means a written decision issued to an audited entity by a DoD Component or a recipient or subrecipient from which the audited entity received an award or subaward. The DoD Component, recipient, or subrecipient issues the management decision to specify the corrective actions that are necessary after evaluating the audit findings and the audited entity's corrective action plan.

40. Nonprocurement instrument.

*Nonprocurement instrument* means a legal instrument other than a procurement contract that a DoD Component may award. Examples include an instrument of financial assistance, such as a grant or cooperative agreement, or an instrument of technical assistance, which provides services in lieu of money.

41. Nonprofit organization.

*Nonprofit organization* means any corporation, trust, association, cooperative, or other organization, not including an institution of higher education, that:

- a. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- b. Is not organized primarily for profit; and
- c. Uses net proceeds to maintain, improve, or expand the operations of the organization.

42. Obligation.

*Obligation* means:

- a. When used in conjunction with a DoD Component's action, a legally binding agreement that will result in outlays, either immediately or in the future. Examples of actions through which a DoD Component incurs an obligation include the signature

of a grant, cooperative agreement, or technology investment agreement authorizing the recipient to use funds under the award.

- b. When used in conjunction with a recipient's or subrecipient's use of funds under an award or subaward, an order placed for property and services, a contract or subaward made, or a similar transaction during a given period that requires payment during the same or a future period.

43. Office of Management and Budget.

*Office of Management and Budget* means the Executive Office of the President, United States Office of Management and Budget.

44. Outlays.

*Outlays* means "expenditures," as defined in this part.

45. Participant support costs.

*Participant support costs* means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

46. Period of performance.

*Period of performance* means the time during which a recipient or subrecipient may incur new obligations to carry out the work authorized under an award or subaward, respectively.

47. Personal property.

*Personal property* means property other than real property. It may be tangible, having physical existence, or intangible, such as copyrights, patents, and securities.

48. Procurement contract.

*Procurement contract* means a legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. A procurement contract is a prime tier transaction and therefore distinct from a recipient's or subrecipient's "procurement transaction" or "contract" as defined in this part.

49. Procurement transaction.

*Procurement transaction* means a legal instrument by which a recipient or subrecipient purchases property or services it needs to carry out the project or program under its prime award or subaward, respectively. A procurement transaction is distinct both from “subaward” and “procurement contract,” as those terms are defined in this part.

50. Program income.

*Program income* means gross income earned by a recipient or subrecipient that is directly generated by a supported activity or earned as a result of an award or subaward.

a. Program income includes, but is not limited to, income earned under this award from:

- i. Fees for services performed;
- ii. The use or rental of real or personal property for which the recipient or subrecipient is accountable under the award or subaward (whether acquired under the award or subaward, or other Federal awards from which accountability for the property was transferred);
- iii. The sale of commodities or items fabricated under the award or subaward; and
- iv. License fees and royalties on patents and copyrights.

b. Program income does not include:

- i. Interest earned on advances of Federal funds;
- ii. Proceeds from the sale of real property or equipment under the award; or
- iii. Unless otherwise specified in Federal statute or regulation, or the terms and conditions of the award or subaward:
  - A. Rebates, credits, discounts, and interest earned on any of them; or
  - B. Governmental revenues, including any taxes, special assessments, levies, fines, and similar revenues raised by the recipient or subrecipient.

c. Costs incidental to the generation of program income may be deducted from the gross provided those costs have not been charged to the federal award. 2 CFR 200.307(b).

d. It is NGB policy (i.e. prior approval has been granted) to add the amount of program income collected to the total budgeted amount for that project or activity. 2 CFR 200.307(e)(2)

51. Project costs.

*Project costs* means the total of:

- a. Allowable costs incurred under an award by the recipient, including costs of any subawards and contracts under the award; and
- b. Cost sharing or matching contributions that are required under the award, which includes voluntary committed (but not voluntary uncommitted) contributions and the value of any third-party in-kind contributions.

52. Property.

*Property* means real property and personal property (equipment, supplies, intangible property, and debt instruments), unless stated otherwise.

53. Real property.

*Real property* means land, including land improvements, structures and appurtenances thereto, but excluding moveable machinery and equipment.

54. Recipient.

*Recipient* means an entity that receives an award directly from a DoD Component. The term does not include subrecipients.

55. Research.

*Research* means basic, applied, and advanced research.

56. Simplified acquisition threshold.

*Simplified acquisition threshold* means the dollar amount set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1, in accordance with 41 U.S.C. 1908. The simplified acquisition threshold, which is adjusted periodically for inflation, currently is \$150,000.

57. State.

*State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

58. Subaward.

*Subaward* means a legal instrument by which a recipient or subrecipient at any tier below a DoD Component prime award, transfers--for performance by an entity at the next lower tier--a portion of the substantive program for which the DoD Component's prime award provided financial assistance. A subaward is either a cost-type or a fixed amount subaward.

59. Subrecipient.

*Subrecipient* means an entity that receives a subaward.

60. Supplies.

*Supplies* means all tangible personal property, including a computing device, acquired under an award that does not meet the definition of equipment in this part.

61. Suspension.

*Suspension* means either:

- a. When used in the context of a specific award or subaward to an entity, the temporary withdrawal of authority for that entity to obligate funds under the award or subaward, pending its taking corrective action or a decision to terminate the award or subaward.
- b. When used in the context of an entity, an action by a DoD Component's suspending official under 2 CFR Part 1125, DoD's regulation implementing OMB guidance on nonprocurement debarment and suspension in 2 CFR Part 180, to immediately exclude the entity from participating in covered Federal Government transactions, pending completion of an investigation and any legal or debarment proceedings that ensue.

62. Technology Investment Agreement.

*Technology investment agreement* means one of a special class of assistance instruments used to increase involvement of commercial firms in defense research programs and for other purposes related to integration of the commercial and defense sectors of the nation's technology and industrial base. Technology investment agreements include one kind of cooperative agreement with provisions tailored for involving commercial firms, as well as one kind of assistance transaction other than a grant or cooperative agreement. Technology investment agreements are subject to, and described more fully in, 32 CFR Part 37.

63. Termination.

*Termination* means the ending of an award or subaward, in whole or in part, at any time prior to the planned end of period of performance.

## 64. Third-party in-kind contribution.

*Third-party in-kind contribution* means the value of a non-cash contribution (i.e., property or services) that:

- a. A non-Federal third party contributes, without charge, either to a recipient or subrecipient at any tier under a DoD Component's award; and
- b. Is identified in the approved budget of the DoD Component's award as a contribution being used toward meeting the award's cost sharing or matching requirements (which includes voluntary committed, but not voluntary uncommitted, contributions).

## 65. Unique entity identifier.

*Unique entity identifier* means the identifier required for System for Award Management registration to uniquely identify entities with which the Federal Government does business (currently the Dun and Bradstreet Data Universal Numbering System, or DUNS, number).

## 66. Unobligated balance.

*Unobligated balance* means the amount of funds under an award or subaward that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's or subrecipient's unliquidated obligations and expenditures of funds from the cumulative amount of funds that it was authorized to obligate under the award or subaward.

## 67. Voluntary (committed or uncommitted) cost sharing.

- a. *Voluntary cost sharing* means cost sharing that an entity pledges voluntarily in its application or proposal (i.e., not due to a stated cost sharing requirement in the program announcement to which the entity's application or proposal responds).
- b. *Voluntary committed cost sharing* means voluntary cost sharing that a DoD Component accepts through inclusion in the approved budget for the project or program and as a binding requirement of the terms and conditions of the award made to the entity in response to its application or proposal.
- c. *Voluntary uncommitted cost sharing* means voluntary cost sharing that does not meet the criteria in paragraph 67.b of this Section.

## 68. Working capital advance.

*Working capital advance* means a payment method under which funds are advanced to a recipient or subrecipient to cover its estimated disbursement needs for a given initial period, after which payment is made by way of reimbursement.





## PART 2: PROGRAM REQUIREMENTS

**Section A. Allowability of certain costs and cost sharing contributions.** The allowability of certain costs and cost sharing or matching contributions is addressed in this Section. The allowability of costs and cost sharing or matching contributions is addressed more generally in FMS Articles III and VI, respectively.

1. Third-party in-kind contributions. Among other things, contributions must be allowable under the applicable cost principles. With regard to third-party in-kind contributions, this means that contributions are allowable only if they are items that would have been necessary to include in the budget as direct costs had they not been donated.

Acceptable third-party in-kind contributions are performed by the third party for the direct benefit of the project/supported activity. Activities performed by third parties in their ordinary course of business, in pursuit of their own organization's mission, are usually not acceptable as in-kind contributions just because those activities coincidentally support the project/supported activity.

Anything that is normally available free of charge to the project/supported activity or clients is not acceptable as a third-party in-kind contribution (e.g., use of a public library). "Discounts" are never acceptable third-party in-kind contributions. You may count a third-party in-kind contribution towards the award's cost sharing or matching requirement only after you receive and use it. You may not count third-party contributions or donations that were made available for you to use, but that you do not actually use.

2. Food and beverages. With the exception of non-local travel for project/supported activity personnel, any cost related to the providing food and/or beverages for either project/supported activity personnel or clients is unallowable for either reimbursement or towards your cost sharing or matching, including use as a third-party in-kind contribution. This does not prohibit the charging of reasonable fees to attendees of project/supported activity events, such as a conference or workshop, to pay for necessary refreshments. These fees constitute program income and must be accounted for as such (refer to FMS Article VII).
3. Memberships. The cost of individual memberships in any business, technical, and professional organization is not allowable.
4. Indirect costs. The indirect cost rate established between the state and HHS applies to this award.
5. Indirect costs cannot include any costs agreed-upon as direct costs. For states in which the USPFO and the grantee have established a Centralized Personnel Plan (CPP), an indirect rate which does not exclude CPP costs is unallowable for reimbursement or advance.

**Section B. Additional guidance on program income.** You are permitted by Part 4, Article VII to earn program income under this award when doing so does not interfere with the program the award supports.

1. You may deduct costs incidental to the generation of program income as long as those costs are not charged to this award (which includes those costs being counted toward any cost sharing or matching you are required to provide). 2 CFR 200.307(b).

2. As permitted by 2 CFR 200.307(f), the period during which grantees are required to report program income attributable to an activity funded in whole or in part by this award, is extended to include any and every subsequent period during which the grantee receives an award which itself requires reporting of program income attributable to the same activity.

### **PART 3: NATIONAL POLICY REQUIREMENTS**

#### **Article I. Nondiscrimination national policy requirements. (Mar 2015)**

By signing this award or accepting funds under this award, you assure that you will comply with applicable provisions of the national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.
2. On the basis of gender, blindness, or visual impairment, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DoD regulations at 32 CFR Part 196.
3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.
4. On the basis of disability, in the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and DoD regulations at 32 CFR Part 56.
5. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) related to physically handicapped persons' ready access to, and use of, buildings and facilities for which Federal funds are used in design, construction, or alteration.

**Article II. Environmental national policy requirements. (Mar 2015)**

You must:

1. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.).
2. Immediately identify to us, as the Federal awarding agency, any potential impact that you find this award may have on:
  - a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NEPA.
  - b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
  - c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.).
  - d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.
  - e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
  - f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).
3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR Part 35. The requirements concern lead-based paint in buildings owned by the Federal Government or housing receiving Federal assistance.

**Article III. Other national policy requirements. (Mar 2015)**

1. Debarment and suspension. You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR Part 180, as adopted by DoD at 2 CFR Part 1125. This includes requirements concerning your principals under this award, as well as requirements concerning your procurement transactions and subawards that are implemented in PROC Articles I through III and SUB Article II.
2. Drug-free workplace. You must comply with drug-free workplace requirements in Subpart B of 2 CFR Part 26, which is the DoD implementation of 41 U.S.C. chapter 81, "Drug-Free Workplace."
3. Lobbying.
  - a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR Part 28, and submit all disclosures required by that statute and regulation.
  - b. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.
  - c. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions.
4. Officials not to benefit. You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 6306.
5. Hatch Act. If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508) concerning political activities of certain State and local government employees, as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. Native American graves protection and repatriation. If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR Part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).
7. Fly America Act. You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.
8. Use of United States-flag vessels. You must comply with the following award term specified by the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:
  - a. Pursuant to Pub. L. 83-664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.
  - b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 8.a of this Article shall be furnished to both our award administrator (through you in the case of your contractor’s bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
9. Historic preservation. You must identify to us any:
  - a. Property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR Part 800 and Executive Order 11593, “Identification and Protection of Historic Properties,” [3 CFR, 1971-1975 Comp., p. 559].
  - b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1, et seq.).

10. Constitution Day. You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.
11. Trafficking in persons. You must comply with requirements concerning trafficking in persons specified in the award term at 2 CFR 175.15(b), as applicable.
12. Whistleblower protections. You must comply with 10 U.S.C. 2409, including the:
  - a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies; and
  - b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.
13. Internal confidentiality agreements. Section 743 of the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235) prohibits us from providing funds through grants and cooperative agreements to entities with certain internal confidentiality agreements or statements.
  - a. By signing this Master Cooperative Agreement, any appendix hereto and any other NGB-funded agreement referring to this MCA, you represent that:
    - i. You will not require any of your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting those employees, contractors, or subrecipients from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information; and
    - ii. You will notify your employees, contractors, or subrecipients that any prohibitions and restrictions of any internal confidentiality agreements inconsistent with this prohibition are no longer in effect.
    - iii. You will notify the grants officer immediately should the required representation no longer be accurate.
  - b. This prohibition does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

- c. If we determine that you are not in compliance with this provision, we:
  - i. Will prohibit your use of funds under this award; and
  - ii. May pursue other remedies available for your material failure to comply with the award terms and conditions.



## **PART 4: FINANCIAL AND PROGRAM MANAGEMENT**

### **Article I. Financial management system standards. (Mar 2015)**

**Section A. System standard for States.** As a State, you must expend and account for funds under this award in accordance with:

1. Applicable State laws; and
2. To the extent they comply with the requirements of Section B of this Article, your procedures for expending and accounting for your own State funds.

**Section B. System standards for all recipients.** Your financial management system must provide for:

1. Inclusion, in your accounts, of the following information about each DoD grant or cooperative agreement that you receive:
  - a. That you received it from the Department of Defense;
  - b. The number and title listed in the Catalog of Federal Domestic Assistance for the DoD program under which the award was made;
  - c. The DoD award number;
  - d. The year (your fiscal year) in which you received the award;
2. Accurate, current, and complete disclosure of the financial results of the award needed to comply with financial and programmatic reporting requirements that are specified in REP Articles I and II of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements. If you are asked at any time under this award to report financial information on an accrual basis, you:
  - a. Need not establish an accrual accounting system if you maintain your records on a different basis; and
  - b. May develop the accrual data based on an analysis of the data you have on hand.
3. Records that identify adequately the sources of funds for all activities funded by DoD awards, including any required cost sharing or matching, and the application of those funds. This includes funding authorizations; your obligations and expenditures of the funds; unobligated balances; property and other assets under the award; program income; and interest.

4. Effective control over, and accountability for, all funds, property, and other assets under this award. You must adequately safeguard all assets and assure they are used solely for authorized purposes (see Section C of this Article for additional requirements concerning internal controls).
5. Comparison of expenditures under this award for project or program purposes with amounts in the approved budget for those purposes.
6. Written procedures:
  - a. To implement requirements specified in FMS Article II, "Payments;"
  - b. For determining the allowability of costs, which for this award are determined in accordance with FMS Article III, "Allowable costs, period of availability of funds, and fee or profit," of these general terms and conditions supplemented by any award-specific terms and conditions of this award that relate to allowability of costs.

**Section C. Internal controls.** Your system of internal controls must conform to OMB guidance in 2 CFR 200.303. With respect to paragraph (e) of 2 CFR 200.303, your internal control system must include measures to safeguard any information that Federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export controlled information), whether generated under the award or provided to you and identified as being subject to protection.

## **Article II. Payments. (Mar 2015)**

**Section A. Awards to States.** This award is subject to Subpart B of 31 CFR Part 205 (Department of the Treasury regulations implementing the Cash Management Improvement Act). Consistent with Subpart B of 31 CFR Part 205:

1. Payment method, timing, and amounts. You must:
  - a. Minimize the time between your receipt of a payment under this award and your disbursement of those funds for program purposes.
  - b. Limit the amount of each advance payment request to the minimum amount you need to meet your actual, immediate cash requirements for carrying out the program or project.
  - c. Submit each advance payment request approximately 10 days before you anticipate disbursing the requested amount for program purposes, so that your receipt of the funds will be as close in time as is administratively feasible to your actual cash outlay for direct program or project costs and the proportionate share of any allowable indirect costs.

2. Interest. Neither you nor we will incur any interest liability due to a difference in timing between your receipt of payments under this award and your disbursement of those funds for program purposes.

**Section B. Awards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.**

1. Payment method. Unless the award-specific terms and conditions of this award provide otherwise, you are authorized to request advance payments under this award. That authorization is contingent on your continuing to maintain, or demonstrating the willingness to maintain, written procedures that minimize the time elapsing between your receipt of each payment and your disbursement of the funds for program purposes.
2. Amounts requested. You must:
  - a. Limit the amount of any advance payment request to the minimum amount needed to meet your actual, immediate cash requirements for carrying out the purpose of the approved program or project, including direct program or project costs and a proportionate share of any allowable indirect costs.
  - b. Exclude from any payment request amounts you are withholding from payments to contractors to assure satisfactory completion of the work. You may request those amounts when you make the payments to the contractors or to escrow accounts established to assure satisfactory completion of the work.
  - c. Exclude from any payment request amounts from any of the following sources that are available to you for program purposes under this award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for program purposes before requesting additional funds from us.
3. Timing of requests. For any advance payment you request, you should submit the request approximately 10 days before you anticipate disbursing the requested amount for program purposes. With time for agency processing of the request, that should result in payment as close as is administratively feasible to your actual disbursements for program or project purposes.
4. Frequency of requests. You may request payments as often as you wish unless you have been granted a waiver from requirements to receive payments by electronic funds transfer (EFT). If you have been granted a waiver from EFT requirements, the award-specific terms and conditions of this award specify the frequency with which you may submit payment requests.
5. Withholding of payments. We will withhold payments for allowable costs under the award at any time during the period of performance only if one or more of the following applies:

- a. We suspend either payments or the award, or disallow otherwise allowable costs, as a remedy under OAR Article III due to your material failure to comply with Federal statutes, regulations, or the terms and conditions of this award. If we suspend payments and not the award, we will release withheld payments upon your subsequent compliance. If we suspend the award, then amounts of payments are subject to adjustment in accordance with the terms and conditions of OAR Article III.
  - b. You are delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables," in which case we may, after reasonable notice, inform you that we will not make any further payments for costs you incurred after a specified date until you correct the conditions or liquidate the indebtedness to the Federal Government.
  - c. The award-specific terms and conditions include additional requirements that provide for withholding of payments based on conditions identified during our pre-award risk evaluation, in which case you should have been notified about the nature of those conditions and the actions needed to remove the additional requirements.
6. Depository requirements.
- a. There are no eligibility requirements for depositories you use for funds you receive under this award.
  - b. You are not required to deposit funds you receive under this award in a depository account separate from accounts in which you deposit other funds. However, FMS Article I requires that you be able to account for the receipt, obligation, and expenditure of all funds under this award.
  - c. You must deposit any advance payments of funds you receive under this award in insured accounts whenever possible and, unless any of the following apply, you must deposit them in interest-bearing accounts:
    - i. You receive a total of less than \$120,000 per year under Federal grants and cooperative agreements.
    - ii. You would not expect the best reasonably available interest-bearing account to earn interest in excess of \$500 per year on your cash balances of advance payments under Federal grants and cooperative agreements.
    - iii. The best reasonably available interest-bearing account would require you to maintain an average or minimum balance higher than it would be feasible for you to do within your expected Federal and non-Federal cash balances.
    - iv. A foreign government or banking system precludes your use of interest-bearing accounts.

- d. You may retain for administrative expenses up to \$500 per year of interest that you earn on advance payments you receive under this award and other Federal grants and cooperative agreements. You must remit annually the rest of the interest to the Department of Health and Human Services, Payment Management System, using the procedures set forth in 2 CFR 200.305(b)(9).

**Section C. Electronic funds transfer and other payment procedural instructions or information.**

1. Electronic funds transfer. Unless the award-specific terms and conditions of this award provide otherwise, you will receive payments under this award by electronic funds transfer.
2. Reimbursement method of payment. You are authorized to request payment by reimbursement instead of requesting advance payments. This may reduce the administrative burden necessary to comply with the requirements in this Article that apply when you request payment in advance, for example, timing your requests to coincide with your actual disbursements and remitting interest.

**Article III. Allowable costs, period of availability of funds, and fee or profit. (Mar 2015)**

**Section A. Allowable costs.** This Section specifies which Federal cost principles must be used in determining the allowability of costs charged to this award, a subrecipient's costs charged to any cost-type subaward that you make under this award, and a contractor's costs charged to any cost-type procurement contract into which you enter under this award. These cost principles also govern the allowable costs that you or a subrecipient of a subaward at any tier below this award may consider when establishing the amount of any fixed amount subaward or fixed price procurement contract at the next lower tier. The cost principles to be used in each case depends on the type of entity incurring the cost under the award, subaward, or contract.

1. General case. If you, your subrecipient, or your contractor is:
  - a. An institution of higher education, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR Part 200 other than 2 CFR 200.400(g), supplemented by Appendix III to that Part.
  - b. A nonprofit organization other than a hospital or institution of higher education, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR Part 200 other than 2 CFR 200.400(g), supplemented by Appendices IV and VIII to that Part. In accordance with guidance in 2 CFR 200.401(c), a nonprofit organization listed in Appendix VIII to 2 CFR Part 200 is subject to the cost principles for for-profit entities specified in paragraph 1.d of this Section.
  - c. A State, local government, or Indian tribe, the allowability of costs must be determined in accordance with applicable provisions of Subpart E of OMB guidance

in 2 CFR Part 200 other than 2 CFR 200.400(g), supplemented by Appendices V through VII to that Part.

- d. A for-profit entity (other than a hospital) or a nonprofit organization listed in Appendix VIII to 2 CFR Part 200, the allowability of costs must be determined in accordance with:
  - i. The cost principles for commercial organizations in the Federal Acquisition Regulation at subpart 31.2 of 48 CFR Part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement at subpart 231.2 of 48 CFR Part 231; and
  - ii. The additional provisions on allowability of audit costs, in 32 CFR 34.16(f).
2. Exception. You may use your own cost principles in determining the allowability of a contractor's costs charged to a cost-type procurement contract under this award--or in pricing for a fixed-price contract based on estimated costs--as long as your cost principles comply with the Federal cost principles that paragraph A.1 of this Section identifies as applicable to the contractor.

**Section B. Period of availability of funds.** You may charge to this award only allowable costs incurred during the period of performance specified in this award, including any subsequent modifications to it.

**Section C. Fee or profit.**

1. You may not receive any fee or profit under this award.
2. You may not use funds available to you under this award to pay fee or profit for an entity of any type to which you make a subaward.
3. You may pay fee or profit to an entity with which you enter into a procurement transaction to purchase goods or general support services for your use in carrying out the project or program under the award.

**Article IV. Revision of budget and program plans. (Mar 2015)**

**Section A. Revisions requiring prior approval.** You must request prior approval from the Grants Officer and OPR-PM for any of the following program or budget revisions [Note that neither this provision nor any other provision in the award terms is a dispensation from the requirements of fiscal law]:

1. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.
2. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

3. The transfer to other categories of expense of funds included in the approved budget for participant support costs, as defined at 2 CFR 200.75.
4. A subaward to another entity under which it will perform a portion of the substantive project or program under the award, if it was not included in the approved budget. This does not apply to your contracts for acquisition of supplies, equipment, or general support services you need to carry out the program.
5. Any change in the cost sharing or matching you provide under the award, as included in the approved budget, for which FMS Article VI requires prior approval.
6. A transfer of funds among direct cost categories or programs, functions, and activities, if the total anticipated amount of Federal funding of your award exceeds the simplified acquisition threshold and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the approved budget.
7. The need arises for additional Federal funds to complete the project or program.

**Section B. Procedures.** We will review each request you submit for prior approval for a budget or program change and, within 30 calendar days of our receipt of your request, we will write or e-mail you to either:

To the extent we can, should

1. Notify you whether your request is approved; or
2. Inform you that we still are considering the request, in which case we will let you know when you may expect our decision.

#### **Article V. Non-Federal audits. (Mar 2015)**

**Section A. Requirements for entities subject to the Single Audit Act.** You and each subrecipient under this award that is an institution of higher education, nonprofit organization, State, local government, or Indian tribe must comply with the audit requirements specified in Subpart F of 2 CFR Part 200, which is the OMB implementation of the Single Audit Act, as amended (31 U.S.C. chapter 75).

**Section B. Requirements for for-profit entities.** Any for-profit entity that receives a subaward from you under this award is subject to the audit requirements specified in 32 CFR 34.16, with the following differences:

1. Rather than having the subrecipient provide the audit reports to a DoD Component, as specified in 32 CFR 34.16(c), your subaward terms and conditions will require the subrecipient to provide the reports to you. If the for-profit entity is unwilling to agree to

provide the auditor's report to you, contact the grants officer for this award to discuss an alternative approach for carrying out audit oversight of the subaward.

2. You--rather than the Defense Contract Management Agency as provided in 32 CFR 34.16(d)(2)(ii)--will be responsible for resolution of audit findings that pertain to your subaward.

## **Article VI. Cost sharing or matching. (Mar 2015)**

### **Section A. Required cost sharing or matching.**

1. Cost sharing or matching required under this award is shown in the award and included in the approved budget. That cost sharing or matching includes all:
  - a. Cash and third-party in-kind contributions.
  - b. Contributions to the project or program made either by or through (if made by a third party) you and any subrecipients.
2. You must obtain our prior approval if you wish to:
  - a. Change the percentage of cost sharing or matching required under this award; or
  - b. Use any third-party in-kind contribution that was not included in the most recently approved budget toward cost sharing or matching required under this award.

**Section B. Allowability as cost sharing or matching.** Each cash or third-party in-kind contribution toward any cost sharing or matching required under this award, whether put forward by you or a subrecipient under a subaward that you make, is allowable as cost sharing or matching if:

1. You (or the subrecipient, if it is a subrecipient contribution) maintain records from which one may verify that the contribution was made to the project or program and, if it is a third-party in-kind contribution, its value.
2. The contribution is not counted as cost sharing or matching for any other Federal award.
3. The contribution is:
  - a. Allowable under the cost principles applicable to you (or the subrecipient, if it is a subrecipient contribution) under FMS Article III of these terms and conditions; and
  - b. Allocable to the project or program and reasonable.
4. The Government does not pay for the contribution through another Federal award, unless that award is under a program that has a Federal statute authorizing application of that



program's Federal funds to other Federal programs' cost sharing or matching requirements.

5. The value of the contribution is not reimbursed by the Federal share of this award as either a direct or indirect cost.
6. The contribution conforms to the other terms and conditions of this award, including the award-specific terms and conditions.

**Section C. (Reserved)**

**Section D. Valuation of services or property that you or subrecipients contribute or donate.** Services or property contributed or donated toward cost sharing or matching by you or subrecipients are distinct from third-party contributions or donations to you or subrecipients, which are addressed in Section E of this Article. Values established for contributions of services or property by you or a subrecipient must be the amounts allowable in accordance with the cost principles applicable to the entity making the contribution (i.e., you or the subrecipient), as identified in FMS Article III. For property, that generally is depreciation.

**Section E. Valuation of third-party in-kind contributions.**

1. General. If a third party furnishes goods or services to you or subrecipients that are to be counted toward cost sharing or matching under this award, the entity to which the third party furnishes the goods or services (i.e., you or a subrecipient) must document the fair market value of those in-kind contributions and, to the extent feasible, support those values using the same methods the entity uses internally.
2. Valuation of third-party services. You must establish values for third-party volunteer services and services of third parties' employees furnished to you or subrecipients as follows:
  - a. Volunteer services. Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor must be valued in accordance with 2 CFR 200.306(e).
  - b. Services of third parties' employees. When a third party organization furnishes the services of its employees to you or a subrecipient, values for the contributions must be established in accordance with 2 CFR 200.306(f).
  - c. Additional requirement for donations to nonprofit organizations. For volunteer services or services of third parties' employees furnished to a nonprofit organization:
    - i. OMB guidance in 200.434(e) also applies and may require the nonprofit organization to allocate a proportionate share of its applicable indirect costs to the donated services.

- ii. The indirect costs that the nonprofit organization allocates to the donated services in that case must be considered project costs and may be either reimbursed under the award or counted toward required cost sharing or matching, but not both.
- 3. Valuation of third-party property. You must establish values for third-party property furnished to you or subrecipients as follows:
  - a. Supplies donated by third parties. When a third party organization donates supplies (e.g., office, laboratory, workshop, or classroom supplies), the value that may be counted toward cost sharing or matching may not exceed the fair market value of the supplies at the time of donation.
  - b. Use of space donated by third parties. If a third party makes space available for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed the fair rental value of comparable space as established by an independent appraisal, as described in 2 CFR 200.306(i)(3).

#### **Article VII. Program income. (Mar 2015)**

**Section A. Earning program income.** You may earn program income under this award when doing so does not interfere with the program the award supports.

**Section B. Costs of generating program income.** You may deduct costs incidental to the generation of program income as long as those costs are not charged to this award (which includes their being counted toward any cost sharing or matching you are required to provide).

**Section C. License fees and royalties.** You have no obligations to the Federal Government with respect to program income earned under this award from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions developed or produced under the award.

#### **Section D. Reporting program income.**

You must report on each request for reimbursement or advance (SF 270) that you submit in accordance with REP Article II the program income that you earn and any that you use during the reporting period covered by that SF-270.

1. Program income increases the budgeted amount of the award (total of federal and state funding) or for that particular project or activity.
2. The federal share of program income is accounted for as federal funds advanced to the state.

3. You must report on each request for reimbursement or advance (SF 270) that you submit the amount of program income that you earn during the reporting period covered by that SF-270.

**Section E. Duration of accountability for program income.**

The period during which you are required to report program income attributable to an activity funded in whole or in part by this award, is extended to include any and every subsequent period during which the grantee receives an award which itself requires reporting of program income attributable to the same activity.

## **PART 5: PROPERTY ADMINISTRATION**

### **Article I. Title to property. (Mar 2015)**

#### **Section A. Title to property acquired under this award.**

1. Title to real property, equipment, and supplies that you acquire (whether by purchase, construction or fabrication, development, or otherwise) and charge as direct project costs under this award vests in you, the recipient. Title to intangible property that you acquire (other than by developing or producing it) under this award also vests in you.
2. That title is a conditional title, subject to the terms and conditions in Part 5, Articles II-IV, Section C of PROP Article V, and REP Article III of this award.
3. There is a Federal interest in the property, other than intangible property that you develop or produce under the award. For real property, equipment, and intangible property, we retain this Federal interest until final disposition of the property under Part 5, Article III (for real property), Part 5 Article IV (for equipment), or Section C of Part 5, Article V (for intangible property that is acquired, other than by developing or producing it), a period that in some cases may extend beyond closeout of this award.

**Section B. Property trust relationship.** Other than intangible property that you develop or produce under the award, you hold any real property, equipment, or intangible property that you acquire or improve under this award in trust for the beneficiaries of the project or program that you are carrying out under the award.

#### **Section C. Federal interest in property improved under the award.**

1. The Government has an interest in improvements (as distinct from ordinary repairs and maintenance) you make to an item of real property or equipment if you charge the costs of the improvements as direct costs to this award.
2. We thereby acquire an interest in the property if the Government did not previously have one. If the Government already had an interest in the property, the value of that Federal interest in the property increases by the amount of the Federal interest in the improvements.
3. The property is subject to Section B of this Article and the terms and conditions of Part 5, Articles II-IV and Part 7, Article III that are applicable to real property or equipment acquired under the award.
4. The Federal interest must be addressed at the time of property disposition.

### **Article II. Property management system. (Mar 2015)**

**Section A. Insurance coverage for real property and equipment.** You must, at a minimum, provide the equivalent insurance coverage for real property and equipment

acquired or improved under this award as you provide for real property and equipment that you own.

**Section B. Other management system standards for a State.** Your property management system for equipment acquired or improved in whole or in part under this award must be in accordance with your State laws and procedures.

**Section C. Other management system standards for an institution of higher education, nonprofit organization, local government, or Indian tribe.** Your procedures for managing equipment (including replacement equipment) acquired or improved in whole or in part under this award must, as a minimum, meet the requirements in this Section.

1. Records. You must maintain records that include for each item of equipment:
  - a. A description of the item.
  - b. The serial or other identification number.
  - c. Who holds title (e.g., you or the Government and, if the latter, which Federal agency).
  - d. The source of funding for the equipment, including the award number.
  - e. The acquisition date and cost of the equipment (or improvement to the equipment).
  - f. The location, use, and condition of the equipment.
  - g. Information from which one can calculate the amount of the Federal interest in the acquisition or improvement of the item (this amount is zero after you compensate us for the Federal interest in the item or improvement).
  - h. Any data on the ultimate disposition of the item including the date of disposal and sale price.
2. Inventory. You must take a physical inventory of equipment in which there is a Federal interest and reconcile the results with your records at least once every 2 years.
3. Control system. You must:
  - a. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of equipment.
  - b. Investigate any loss, damage, or theft and notify the award administration office if it involved equipment in which there is a Federal interest under the award.
4. Maintenance. You must maintain equipment acquired or improved in whole or in part under the award in good condition.

**Article III. Use and disposition of real property. (Mar 2015)****Section A. Use of real property.**

1. You must use real property acquired or improved under this award for the originally authorized purpose as long as needed for that purpose. During that time, you may not:
  - a. Dispose of the property except to acquire replacement property under this award, in which case you may use the proceeds from the disposition as an offset to the cost of the replacement property; or
  - b. Encumber the title or other interests in the property without the approval of the award administration office identified in this award.
2. During the time that the real property is used for the originally authorized purpose, you may make the property available for use on other projects or programs, but only if that use will not interfere with the property's use as needed for its originally authorized purpose.
  - a. First preference must be given to other projects or programs supported by DoD Components and second preference to those supported by other Federal agencies.
  - b. Third preference is for other projects or programs not currently supported by the Federal Government. You should charge user fees for use of the property in those cases, if it is at all practicable.
3. When the real property is no longer needed for the originally authorized purpose, with the written approval of the award administration office, you may delay final disposition of the property to use it on other federally sponsored projects or programs. A condition for the award administration office's approval is that the other projects or programs have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

**Section B. Disposition of real property.** When you no longer need real property for the originally authorized purpose, you must obtain disposition instructions from the award administration office except as provided in paragraph A.3 of this Article. Those instructions will provide for one of the following three alternatives, which are that you:

1. Retain title after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of "Federal interest."
2. Sell the property and compensate us for the Federal interest in the property, as described in 2 CFR 200.311(c)(2).
3. Transfer title to us or a third party we designate, as described in 2 CFR 200.311(c)(3).

**Article IV. Use and disposition of equipment and supplies. (Mar 2015)**

**Section A. Property subject to this Article.** This Article specifies requirements for use and disposition of equipment and supplies. The types of property to which this Article applies are:

1. Supplies that you acquire either by purchase or by donation as cost sharing or matching under this award; and
2. Equipment for which title is vested conditionally in you, pending resolution of a Federal interest in the equipment. That includes equipment with a conditional title resulting from your having, either under this award or under a previous award from which you transferred accountability for the equipment to this award:
  - a. Directly charged as project costs, in whole or in part, the acquisition (by purchase, construction or fabrication, or development) of equipment; or
  - b. Directly charged as project costs improvements to the equipment that meet the criteria given in paragraph C.1 of PROP Article I.

**Section B. Requirements for a State's use and disposition of equipment. You:**

1. Must use the equipment for the authorized purposes of the project or program during the period of performance, or until the property is no longer needed for those purposes.
2. May not encumber the property without the prior written approval of the award administration office.
3. Must use and dispose of the equipment in accordance with your State laws and procedures, subject to the following condition. For any item of equipment that is no longer needed for the originally authorized purpose and has a current fair market value greater than \$5,000, the disposition process must include either your:
  - a. Payment of compensation to us in the amount of the Federal interest in the equipment; or
  - b. Contacting the award administration office to work out a mutually agreeable alternative that takes into account the Federal and State interests in that item of equipment. Examples of alternatives, subject to the agreement of the award administration office, include:
    - i. Deferring final disposition to allow continued use of the equipment on other federally supported projects or programs, as described in 2 CFR 200.313(c)(1);

- ii. Agreeing to transfer title to the Federal Government or a third party, with compensation to you for the State interest in the equipment, as described in 2 CFR 200.313(e)(3).

**Section C. Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.** You:

1. Must use the equipment for the authorized purposes of the project or program under this award until the equipment is no longer needed for those purposes, whether or not the project or program continues to be supported by this award.
2. May not encumber the equipment without the prior written approval of the award administration office.
3. During the time that the equipment is used for the project or program under this award:
  - a. You must make the equipment available for use on other projects or programs but only if that use will not interfere with the equipment's use as needed for the project or program supported by this award.
    - i. First preference must be given to other projects or programs supported or previously supported by DoD Components and second preference to those supported or previously supported by other Federal agencies.
    - ii. Third preference is for other projects or programs not supported by the Federal Government. You should charge user fees for use of the equipment in those cases, if it is at all practicable.
  - b. You may use the equipment, if you need to acquire replacement equipment, as a trade-in or sell it (using sales procedures designed to ensure the highest possible return) and use the proceeds from the sale to offset the cost of the replacement equipment.
4. When the equipment is no longer needed for the project or program under this award, you may defer final disposition of the equipment and continue to use it on other federally sponsored projects or programs. You must give first priority to other projects or programs supported by DoD Components.
5. Notwithstanding the authorization in FMS Article VII to earn program income, you may not use equipment in which there currently is a Federal interest--whether you acquired it under this award or are otherwise accountable for it under this award--to provide services for a fee that is less than private companies charge for equivalent services.

**Section D. Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.** You must request disposition instructions from the award administration office when either original or replacement equipment acquired



under this award is no longer needed for the original project or program or for other federally sponsored activities as described in paragraph C.4 of this Article.

1. We may issue disposition instructions that:
  - a. Allow you to retain, sell, or otherwise dispose of each item of equipment with a current fair market value of \$5,000 or less with no further obligation to the Federal Government; or
  - b. Require you to transfer title to the equipment to a Federal agency or a third party, in which case you are entitled to compensation from us for the non-Federal interest in the equipment.
2. If we fail to provide disposition instructions for any item of equipment within 120 calendar days of receiving your request, you may retain or sell the equipment but you must compensate us for the amount of the Federal interest in the equipment.
3. If you sell the equipment:
  - a. You use must sales procedures designed to ensure the highest possible return; and
  - b. You may deduct and retain for selling and handling expenses either \$500 or ten percent of the proceeds, whichever is less.

**Section E. Use and disposition of supplies acquired under this award.**

1. Use. As long as we retain a Federal interest in supplies acquired under this award either by purchase or by donation as cost sharing or matching, you may not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services, notwithstanding the authorization in FMS Article VII to earn program income.
2. Disposition. If you have a residual inventory of unused supplies with aggregate value exceeding \$5,000 at the end of the period of performance under this award, and the supplies are not needed for any other Federal award, you must retain the supplies or sell them but must in either case compensate us for the amount of the Federal interest in the supplies. You may deduct and retain for selling and handling expenses either \$500 or ten percent of the proceeds, whichever is less.

**Article V. Intangible property. (Mar 2015)**

**Section A. Copyrights asserted in works developed or purchased under the award.**

1. You may assert copyright in any work that:
  - a. You develop or purchase under this award; and

- b. Is eligible for copyright protection.
2. With respect to any work in which you assert copyright, as described in paragraph A.1 of this Section, the Department of Defense reserves a royalty-free, nonexclusive and irrevocable license to:
    - a. Reproduce, publish, or otherwise use the work for Federal Government purposes; and
    - b. Authorize others to reproduce, publish, or otherwise use the work for Federal Government purposes.

**Section B. Data produced under the award.** The Federal Government has the right to:

1. Obtain, reproduce, publish, or otherwise use the data produced under this award; and
2. Authorize others to receive, reproduce, publish, or otherwise use the data produced under this award for Federal Government purposes.

**Section C. Intangible property obtained, but not developed or produced, under the award.**

1. Applicability. This Section applies to a patent, patent application, copyright, or other intangible property obtained, but not developed or produced, under this award.
2. Use. You:
  - a. Must use the intangible property for the authorized purpose under this award until the intangible property is no longer needed for that purpose, whether or not that purpose is still being supported by this award.
  - b. May not encumber the intangible property without the prior written approval of the award administration office.
3. Disposition. When the intangible property is no longer needed for the originally authorized purpose, you must contact the award administration office to arrange for disposition in accordance with the procedures specified for disposition of equipment in either section B or D of PROP Article IV, as applicable.

## **PART 6: PROCUREMENT PROCEDURES**

### **Article I. Procurement standards for States. (Mar 2015)**

**Section A. Use of State procurement system.** Subject only to the conditions in Sections B through D of this Article, you must use the same policies and procedures to procure supplies, equipment, real property, and services under this award that you use when you procure those items for State purposes using non-Federal funds.

**Section B. Procurement of recovered materials.** You must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.322.

**Section C. Debarment and suspension.** You must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR Part 180, as implemented by DoD at 2 CFR Part 1125.

**Section D. Contract provisions.** You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements specified in PROC Article III, as applicable.

### **Article II. Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes. (Mar 2015)**

#### **Section A. General procurement standards.**

1. For procurement under this award, you must comply with the following paragraphs of OMB guidance in 2 CFR 200.318:
  - a. 200.318(a) concerning documented procurement procedures;
  - b. 200.318(b) concerning oversight of contractors;
  - c. 200.318(c) concerning standards of conduct and conflicts of interest;
  - d. 200.318(e) concerning intergovernmental or inter-entity agreements;
  - e. 200.318(g) concerning value engineering;
  - f. 200.318(i) concerning procurement records;
  - g. 200.318(j) concerning time and material type contracts; and
  - h. 200.318(k) concerning settlement of issues arising out of procurements.
2. You must comply with OMB guidance in paragraph (d) of 2 CFR 200.318 concerning purchases of unnecessary or duplicative items.

3. You are encouraged, as described in paragraph (f) of 2 CFR 200.318, to use Federal excess or surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs, with the following clarification. The encouragement to use Federal excess or surplus property is contingent not only on its being feasible but also on its not reducing the efficiency or effectiveness with which you can achieve the award's purposes. For example, the encouragement does not extend to use of older models of excess or surplus equipment under a research or related training award to an institution of higher education when use of current models would accelerate data acquisition or enable better training of future scientists and engineers in the latest research techniques.
4. You must do business only with responsible contractors who are able to perform, as described in OMB guidance in 2 CFR 200.318(h). Related to that, you must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR Part 180, as implemented by DoD at 2 CFR Part 1125.

**Section B. Competition.** You must award procurement transactions under this DoD award using the procedures related to competition that are described in OMB guidance in 2 CFR 200.319.

**Section C. Procurement methods.** You must award procurement transactions under this award using methods described in OMB guidance in 2 CFR 200.320.

**Section D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.** You must take the affirmative steps described in OMB guidance in 2 CFR 200.321 when awarding procurement transactions under this award.

**Section E. Contract cost and price.** When awarding a contract under this award, you must follow the procedures related to costs and price that are described in OMB guidance in 2 CFR 200.323, using the applicable cost principles specified in FMS Article III.

**Section F. Contract provisions.** You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements specified in PROC Article III, as applicable.

**Section G. Procurement of recovered materials.** If you are a political subdivision of a State, you must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.322.

**Section H. Review of procurement documents.** Upon our request, you must make available:

1. Technical specifications on proposed procurements, as described in 2 CFR 200.324(a).

2. Pre-procurement documents for our review, as described in 2 CFR 200.324(b) unless you are exempt from that requirement under 2 CFR 200.324(c).

**Article III. Contract provisions for recipient procurements. (Mar 2015)**

**Section A. Contract provisions for administrative requirements.**

1. Remedies. In any contract under this award for an amount in excess of the simplified acquisition threshold, you must provide for administrative, contractual, or legal remedies, including any appropriate sanctions and penalties, when the contractor violates or breaches the contract terms.
2. Termination. In any contract for an amount in excess of \$10,000, you must specify: conditions under which you may terminate the contract for cause or convenience; the procedures for termination; and the basis to be used for settlement.
3. Allowable costs under cost-type contracts. In any cost-type contract with an entity, you must include a clause to permit the entity to charge to the contract only costs that are allowable under the cost principles that FMS Article III identifies as applicable to that type of entity, as supplemented by any other terms and conditions related to allowability of costs that are included in this award to you.
4. Rights in copyright and data. You must include in each contract under this award a provision requiring that the contractor:
  - a. Grant the Government a royalty-free, nonexclusive and irrevocable right to:
    - i. Reproduce, publish, or otherwise use for Federal purposes any work that is subject to copyright and that the contractor develops, or acquires ownership of, under this award; and
    - ii. Authorize others to reproduce, publish, or otherwise use such work for Federal purposes.
  - b. Grant the Government the right to:
    - i. Obtain, reproduce, publish, or otherwise use data produced under this award; and
    - ii. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
  - c. Include in each subcontract it makes the requirements described in:

- i. Paragraphs A.4.a.i and ii of this Section, to provide for Government rights in any works subject to copyright that the subcontractor develops, or acquires ownership of, under this award; and
    - ii. Paragraphs A.4.b.i and ii of this Section, to provide for Government rights in any data that the subcontractor produces under this award.
5. Access to records.
- a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for access to any of the contractor's books, documents, papers, and records that are directly pertinent to that contract, to enable and support audits, examinations, excerpts, and transcriptions. The contract provision must provide access to those records for all of the following and their duly authorized representatives:
    - i. You;
    - ii. Us as the Federal awarding agency, including our Inspector General; and
    - iii. The Comptroller General of the United States.
  - b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR Part 200, you must provide for the access to audit documentation described in 2 CFR 200.517(b).
6. Records retention.
- a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for retention of all records that are directly pertinent to that contract for 3 years after you make final payment and all pending matters are closed.
  - b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR Part 200, you must provide for the retention of audit documentation described in 2 CFR 200.517(a).
7. Reporting. In any contract awarded under this award, you must include any provision for the contractor's reporting to you that may be needed in order for you to meet your requirements under this award to report to us.

**Section B. Contract provisions for national policy requirements.**

- 1. Equal employment opportunity. You must include the clause provided in 41 CFR 60-1.4(b) in any "federally assisted construction contract" (as defined in 41 CFR 60-1.3) under this award unless provisions of 41 CFR Part 60-1 exempt the contract from the

- requirement. The clause will require the contractor to comply with equal opportunity requirements in 41 CFR chapter 60.
2. Wage Rate Requirements (Construction), formerly the Davis-Bacon Act. With respect to each construction contract for more than \$2,000 to be awarded using funding provided under this award, you must:
    - a. Place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor;
    - b. Condition the decision to award the contract upon the contractor's acceptance of that prevailing wage determination;
    - c. Include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations at 29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," to require the contractor's compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C. 3141-44, 3146, and 3147); and
    - d. Report all suspected or reported violations to the award administration office identified in this award.
  3. Copeland Act prohibition on kickbacks. In each contract under this award to construct, complete, or repair a building or work, you must:
    - a. Include a provision requiring the contractor to comply with the anti-kickback provisions of the Copeland Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulations at 29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States."
    - b. Report all suspected or reported violations to the award administration office identified in this award.
  4. Clean air and water requirements. You must:
    - a. In each contract for an amount greater than \$150,000 under this award, include a clause requiring the contractor to comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401-7671q), Federal Water Pollution Control Act (33 U.S.C. 1251-1387), and standards, orders, or regulations issued under those acts; and
    - b. Report any violations of the Acts, standards, orders, or regulations to both the award administration office identified in this award and the appropriate regional office of the Environmental Protection Agency.

5. Nonprocurement suspension and debarment. Unless you have an alternate method for requiring the contractor's compliance, you must include a clause in each contract for an amount equal to or greater than \$25,000 and in each contract for federally required audit services to require the contractor to comply with Office of Management and Budget guidance on nonprocurement suspension and debarment in 2 CFR Part 180, Subpart C, as implemented by Department of Defense regulations at 2 CFR Part 1125.
6. Byrd Amendment anti-lobbying requirements. In each contract for an amount exceeding \$100,000, you must include a clause requiring the contractor to submit to you the certification and any disclosure forms regarding lobbying that are required under 31 U.S.C. 3152, as implemented by the Department of Defense at 32 CFR Part 28.
7. Purchase of recovered materials by States or political subdivisions of States. In each contract under which the contractor may purchase items designated in Environmental Protection Agency (EPA) regulations in 40 CFR Part 247, subpart B, you must include a clause requiring the contractor to comply with applicable requirements in those EPA regulations, which implement Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962).
8. Fly America requirements. In each contract under which funds provided under this award might be used to participate in costs of international air travel or transportation for people or property, you must include a clause to require the contractor to:
  - a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the "Fly America" Act), as implemented by the General Services Administration at 41 CFR 301-10.131 through 301-10.143, which provides that U.S Government-financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available; and
  - b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.
9. Cargo preference for United States flag vessels. In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S. flag commercial vessels, if available.



## **PART 7: FINANCIAL, PROGRAMMATIC, AND PROPERTY REPORTING**

### **Article I. Performance management, monitoring, and reporting. (Mar 2015)**

#### **Section A. Required reporting periods, forms, format, data elements, frequency, due dates and procedures for interim and final performance reports.**

1. Required reporting periods, forms, format, data elements, frequency, due dates and procedures for interim and final performance reports can be found in each Appendix, if applicable.

**Section B. Extensions of due dates.** You may request extensions of the due dates that Section A of this Article specifies for interim and final reports, respectively. You must provide the reasons for your request and we will approve extensions that are adequately justified.

**Section C. Reporting significant developments.** You must report the following information to us as soon as you become aware of it:

1. Problems, delays, or adverse conditions that will materially impair your ability to meet the objectives of this award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
2. Favorable developments which will enable you to meet schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

**Section D. Site visits.** We reserve the right to make site visits as warranted to monitor program performance under this award.

### **Article II. Financial reporting. (Mar 2015)**

**Section A. Required reporting form, format, or data elements for interim and final financial reports.** You must use the SF 270 and complete all applicable elements.

**Section B. Interim financial reports: frequency, reporting periods, and due dates.** Reports, frequency, reporting periods and due dates can be found in each Appendix, if applicable.

**Section C. Final financial report.** Due date can be found in each Appendix, if applicable.

**Section D. Extensions of due dates.** You may request extensions of the due dates for specified reports. You must provide the reasons for your request, and the Grants Officer will approve extensions that are adequately justified.

**Section E. Where and how to submit financial reports.** You must submit the SF 270 as directed by the Grants Officer identified in the award.

### **Article III. Reporting on property. (Mar 2015)**

**Section A. Real property.** The requirements specified in 2 CFR part 200 for tracking and reporting on real property in which, as a result of the current and previous awards, the federal government has an interest, are met for real properties supported by NGB cooperative agreements by the reporting requirements imposed by NGB, the Army and the Air Force. This term of these awards independently requires you meet those requirements (e.g. PRIDE, FISP, etc.) as they may change.

**Section B. Equipment and supplies.** Paragraphs B.1 through B.4 apply to equipment or supplies for which you are accountable under this award and in which there is a Federal interest (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. Periodic status report. There is no requirement for periodic reporting during the period of performance.
2. Notifications of loss, damage, or theft. You must comply with applicable requirements in PROP Article II governing your property management system to promptly notify the award administration office of any loss, damage, or theft of equipment.
3. Requests for disposition instructions. You must comply with applicable requirements in PROP Article IV to request disposition instructions for equipment, either during the period of performance or at closeout.
4. Closeout accounting.
  - a. Equipment. You must account to the award administration office for equipment at the time of closeout of this award, as required by Section D of OAR Article VI.
  - b. Supplies. If you have a residual inventory of unused supplies that meets the criteria specified in paragraph E.2 of PROP Article IV, you must as part of your closeout accounting arrange with the award administration office for the compensation that paragraph specifies for the Federal interest in the supplies.

**Section C. Intangible property.** This Section applies to intangible property for which you are accountable under this award.

1. Copyrights and data. You are not required to submit periodic reports about works developed or purchased under this award in which copyright was asserted, or about data produced under the award. However, because the Federal Government has the rights in

the works and data that Sections A and B of PROP Article V specify, you must provide information about the works and data if we request it.

2. Intangible property obtained, but not developed or produced, under the award. You must comply with requirements in Section C of Part 5, Article V to request disposition instructions for intangible property obtained, but not developed or produced, under the award.

**Article IV. Reporting on subawards and executive compensation. (Mar 2015)**

You must report information about subawards and executive compensation as specified in the award provision in Appendix A to 2 CFR Part 170, “Reporting subaward and executive compensation information,” modified as follows:

1. The Web site “<http://www.fsr.gov>” cited in paragraphs a.2.i. and a.3 of the award provision is replaced by “<http://www.fsr.gov> or successor OMB designated Web site for reporting subaward information”;
2. The Web site “<https://www.sam.gov>” cited in paragraph b.2.i. of the award provision is replaced by “<https://www.sam.gov> or successor OMB designated Web site for reporting information on total compensation”; and
3. The reference to “Sec. \_\_\_\_ .210 of the attachment to OMB Circular A-133, ‘Audits of States, Local Governments, and Non-Profit Organizations’” in paragraph e.3.ii of the award provision is replaced by “2 CFR 200.330, as implemented in Part 9, Article I of this award.”

## **PART 8: OTHER ADMINISTRATIVE REQUIREMENTS**

### **Article I. Maintaining recipient information. (Mar 2015)**

1. Unless you are exempted from this requirement based on the criteria provided in OMB guidance in section 25.110 of 2 CFR Part 25, you must maintain the currency of information about yourself in the system the Federal Government specifies as the repository for information about its business partners (currently the System for Award Management).
2. You must maintain the information in that system until you submit the final financial report required under this award or receive the final payment, whichever is later.
3. You must review and update the information at least annually after your initial registration in the system and more frequently if required by changes in your information.

### **Article II. Records retention and access. (Mar 2015)**

**Section A. Records retention period.** Except as provided in Sections B through D of this Article:

1. You must keep records related to any real property and equipment acquired, in whole or in part, using Federal funds under the award for 6 years and three months after final disposition of the property.
2. You must keep records related to rate proposals for indirect or facilities and administration costs, cost allocation plans, and supporting records such as indirect cost rate computations and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback or composite fringe benefit rates) as follows:
  - a. If you are required to submit a proposal, plan, or other computations to your Federal cognizant agency for indirect costs, as the basis for negotiation of a rate, you must keep the submissions and all supporting records for 6 years and three months from the date on which you were required to make the submissions.
  - b. If you are not required to submit a proposal, plan, or other computation as the basis for negotiation, you must keep the proposal, plan, other computation, and supporting records for 6 years and three months from the end of the fiscal year or other accounting period covered by the proposal, plan, or other computation.
3. You must keep other financial records, supporting documents, statistical records, and other records pertinent to this award for a period of 6 years and three months from the date you submit your final financial report under the award.

**Section B. Extensions of retention period due to litigation, claim, or audit.**

1. If any litigation, claim, or audit begins before the end of the required retention period specified in Section A of this Article and the final action related to the litigation, claim, or audit is not taken before the end of the retention period, you must retain all records related to this award that may be involved in the litigation, claim, or audit until all findings involving the records have been resolved and final action taken.
2. We may disallow costs and recover funds under this award based on an audit or other review of records you elected to retain beyond the retention period required by this Article, even if the audit or review begins after the end of the required retention period specified in Section A of this Article. Thus, the “retention period,” as that term is used in OMB guidance in 2 CFR 200.344(a)(1), is extended as described in 2 CFR 200.333(b) to include the entire period during which we and our authorized representatives continue to have access to those records under paragraph F.2 of this Article.

**Section C. Records for joint or long-term use.**

1. Joint use. To avoid duplicate recordkeeping for records that you and we both need to use on a continuous basis, we may ask you to make special arrangements with us, by mutual agreement, to make records available for joint and continuous use.
2. Long-term use. If we determine that some records will be needed longer than the 3-year period specified in Section A of this Article, we may request that you either:
  - a. Retain the records for a longer period of time; or
  - b. Transfer the records to our custody for long-term retention.
3. Retention requirements for transferred records. For any records transferred to our custody, you are not subject to the records retention requirements in Section A of this Article.

**Section D. Methods for collecting, transmitting, and storing information.**

1. You should, whenever practicable, collect, transmit, and store information related to this award in open and machine readable formats rather than in closed formats or on paper. However, if you request it, we will:
  - a. Provide award related-information to you on paper; and
  - b. Accept award related-information from you on paper. In that case, we will not require more than an original and two copies.
2. When your original records are in an electronic form that cannot be altered, you do not need to create and retain paper copies of those records.
3. When your original records are on paper, you may substitute electronic versions produced through duplication or using other forms of electronic media, provided that:

- a. You conduct periodic quality control reviews of the records;
- b. You provide reasonable safeguards against alteration of the records; and
- c. The records remain readable.

**Section E. Access to records.**

1. Scope of Government access rights.
  - a. We as the awarding agency, the Federal Government Inspectors General, the Comptroller General of the United States, and any of our authorized representatives have the right of access to any documents, papers, or other records you have that are pertinent to this award, in order to make audits, examinations, excerpts, and transcripts.
  - b. This right also includes timely and reasonable access to your personnel for the purposes of interview and discussion related to the records.
  - c. As described in OMB guidance at 2 CFR 200.336(b), the access to records described in this Section will include access to the true name of a victim of a crime only under extraordinary and rare circumstances.
    - i. You are required to provide that access only in response to a court order or subpoena pursuant to a bona fide confidential investigation, or in response to a request duly authorized by the head of the DoD Component or his or her designee; and
    - ii. You must take appropriate steps to protect this sensitive information.
2. Duration of Government access rights. We have the access rights described in paragraph F.1 of this Section as long as you retain the records.
3. Public access.
  - a. You must comply with requirements to protect information that Federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export controlled information), to include both information generated under this award and information provided to you and identified as being subject to protection. Other than those limitations on dissemination of information, we place no restrictions on you that limit public access to your records pertinent to this award.
  - b. We do not place any requirements on you to permit public access to your records separate from any Federal, State, local, or tribal statute that may require you to do so.

- c. The Freedom of Information Act (FOIA, 5 U.S.C. 552) does not apply to records in your possession but records you provide to us generally will be subject to FOIA, with the applicable exemptions.

### **Article III. Remedies and termination. (Mar 2015)**

#### **Section A. Remedies for noncompliance.**

1. If you materially fail to comply with a term or condition of this award or an applicable Federal statute or regulation, we may amend this award to impose specific additional conditions as described in OMB guidance in 2 CFR 200.207. If we determine that the imposition of those additional conditions is insufficient to remedy the noncompliance, we may take one or more of the following actions that we deem appropriate to the circumstances:
  - a. Temporarily withhold cash payments pending:
    - i. Your correction of the deficiency; or
    - ii. Our taking more severe enforcement action.
  - b. Disallow (that is, deny both use of funds and any applicable cost sharing or matching credit for) all or part of the cost of the activity or action not in compliance;
  - c. Suspend or terminate this award, in whole or in part (suspension of an award is a separate and distinct action from suspension of a person under 2 CFR parts 180 and 1125, as noted in paragraph A.3 of this Article);
  - d. Withhold further awards to you for the project or program that is not in compliance;
  - e. Take any other action legally available to us under the circumstances.
2. You may raise an objection to our taking any remedy we take under paragraph A.1 of this Section and will be given an opportunity to provide information and documentation challenging the action. The procedures are those specified in OAR Article IV for claims and disputes.
3. Our use of any remedy under paragraph A.1 of this Section, including suspension or termination of the award, does not preclude our referring the noncompliance to a suspension and debarment official and asking that official to consider initiating a suspension or debarment action under 2 CFR Part 1125, the DoD implementation of OMB guidance at 2 CFR Part 180.

#### **Section B. Termination.**

1. This award may be terminated in whole or in part as follows:

- a. Unilaterally by the Government. We will provide a notice of termination if we unilaterally terminate this award in whole or in part, which we may do for either of the following reasons:
    - i. Your material failure to comply with the award terms and conditions. If we terminate the award for that reason, we will report the termination to the Federal Awardee Performance and Integrity Information System (FAPIIS). In accordance with 41 U.S.C. §2313, each Federal awarding official must review and consider the information in FAPIIS with regard to any proposal or offer before awarding a grant or contract.
    - ii. The program office does not have funding for an upcoming increment if this award is incrementally funded. In that case, the Government's financial obligation does not exceed the amount currently obligated under the award.
  - b. By mutual agreement. With your consent, we may terminate this award, in whole or in part, for any reason. In that case, you and we must agree to:
    - i. The termination conditions, including the effective date; and
    - ii. In the case of a partial termination, the portion to be terminated.
  - c. Unilaterally by the recipient. You may unilaterally terminate this award, in whole or in part, by sending us written notification that states:
    - i. The reasons for the termination;
    - ii. The effective date; and
    - iii. In the case of partial termination, the portion to be terminated. In that case, however, we may terminate the award in its entirety if we determine that the remaining portion of the award will not accomplish the purposes for which we made the award.
2. If this award is terminated in its entirety before the end of the performance period, you must complete the closeout actions for which you are responsible under OAR Article VI. The due date for each action is to be measured relative to the date of termination.
  3. If this award is only partially terminated before the end of the performance period, with a reduced or modified portion of the award continuing through the end of the performance period, then closeout actions will occur at the end of the performance period as specified in Part 8, Article VI.
  4. You will continue to have all of the post-closeout responsibilities that OAR Article VII specifies for you if this award is wholly or partially terminated before the end of the performance period.



**Section C. Effects of suspension or termination of the award on allowability of costs.** If we suspend or terminate this award prior to the end of the period of performance, costs resulting from obligations that you incurred:

1. Before the effective date of the suspension or termination are allowable if:
  - a. You properly incurred those obligations;
  - b. You did not incur the obligations in anticipation of the suspension or termination;
  - c. In the case of termination, the costs resulted from obligations that were non-cancellable after the termination; and
  - d. The costs would have been allowable if we had not suspended or terminated the award and it had expired normally at the end of the period of performance.
2. During the suspension or after the termination are not allowable unless we expressly authorize them, either in the notice of suspension or termination or subsequently.

**Article IV. Claims, disputes and appeals. (Mar 2015)**

**Section A. Grant Appeal Authority.** The Grant Appeal Authority is as determined by the Chief, National Guard Bureau.

**Section B. Submission of claims.**

1. Your claims. To submit a claim arising out of this award, you must submit it in writing to the grants officer for decision, specify the nature and basis for the relief you are requesting, and include all data that supports your claim.
2. Government claims. You will receive a written grants officer's decision if a DoD claim arises out of this award.

**Section C. Alternative dispute resolution.**

1. We encourage resolution of all issues related to this award by mutual agreement between you and the grants officer.
2. If you and the grants officer are unable to resolve an issue through unassisted negotiations, we encourage use of Alternative Dispute Resolution (ADR) procedures to try to do so. ADR procedures are any voluntary means, such as mini-trials or mediation, used to resolve issues in controversy. ADR procedures may be used prior to submission of a claim or at any other time prior to the Grant Appeal Authority's decision on any appeal you submit.

**Section D. Grants officer decisions for claims you submit.**

1. Within 60 calendar days of receiving your claim, the grants officer will either:
  - a. Transmit a written decision that:
    - i. Identifies data on which the decision is based; and
    - ii. Identifies and provides the mailing address for the Grant Appeal Authority to whom you would submit an appeal of the decision if you elect to do so; or
  - b. If more time is required to render a written decision, notify you of a specific date when he or she will render the decision and inform you of the reason for delaying it.
2. The grants officer's decision will be final unless you decide to appeal, in which case we encourage use of ADR procedures as noted in Section C of this Article.

**Section E. Formal administrative appeals.**

1. Right to appeal. You have the right to appeal a grants officer's decision to the Grant Appeal Authority identified in Section A of this Article.
2. Notice of appeal. You may appeal a grants officer's decision within 90 calendar days of receiving the decision by submitting a written notice of appeal to the Grant Appeal Authority and grants officer. If you elect to use ADR procedures, you are allowed an additional 60 calendar days to submit the written notice of appeal to them.
3. Appeal file. Within 30 calendar days of the grants officer's receipt of your notice of appeal, you should receive the appeal file with copies of all documents relevant to the appeal. You may supplement the file with other documents you deem relevant and with a memorandum in support of your position for the Grant Appeal Authority's consideration. The Grant Appeal Authority may request additional information from you.
4. Decision. Unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal, the appeal will be decided solely on the basis of the written record. Any fact-finding or hearing will be conducted using procedures that the Grant Appeal Authority deems appropriate.

**Section F. Representation.** You may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding, as long as the representative is not otherwise prohibited by law or regulation from appearing before the DoD Component concerned.

**Section G. Non-exclusivity of remedies.** Nothing in this Article is intended to limit your right to any remedy under the law.

**Article V. Collection of amounts due. (Mar 2015)**

**Section A. Establishing a debt.**

1. Any amount paid to you in excess of the amount to which you are determined to be entitled under the terms and conditions of this award constitutes a debt to the Federal Government.
2. A grants officer will attempt to resolve any claim of your indebtedness arising out of this award by mutual agreement.
3. If the grants officer fails to resolve the claim in that manner, you will receive a written notice of the grants officer's decision formally determining the debt, as described in paragraph B.2 of OAR Article IV. The notice will describe the debt, including the amount, name and address of the official who determined the debt, and a copy of that official's determination.

**Section B. Debt delinquency and appeals.**

1. Within 30 calendar days of the grants officer's decision, you must either pay the amount owed to the address provided in the written notice or inform the grants officer that you intend to appeal the decision. Appeal procedures are described in OAR Article IV.
2. If you elect not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.
3. If you elect to appeal the grants officer's decision, you will have 90 calendar days after receipt of the grants officer's decision to file your appeal unless Alternative Dispute Resolution (ADR) procedures are used, as described in section C of OAR Article IV, in which case you will have 150 calendar days.

**Section C. Demand letter, interest, and debt collection.**

1. If within 30 calendar days of the grants officer's decision, you neither pay the amount due nor provide notice of your intent to appeal the grants officer's decision, the grants officer will send you a demand letter identifying a payment office that will be responsible for any further debt collection activity.
2. If you do not pay by the due date specified in the written demand letter, the Federal Government may collect part or all of the debt by:
  - a. Making an administrative offset against your requests for reimbursements under Federal awards;
  - b. Withholding advance payments otherwise due to you; and

- c. Any other action permitted by Federal statute.
3. The debt will bear interest, and may include penalties and other administrative costs, in accordance with applicable provisions of the DoD Financial Management Regulation (DoD 7000.14-R), which implements the Federal Claims Collection Standards. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

#### **Article VI. Closeout. (Mar 2015)**

**Section A. Liquidation of obligations.** Unless the award administration office authorizes an extension of the due date, you must liquidate all obligations that you incurred under this award not later than 120 calendar days after the end date of the period of performance.

**Section B. Refunds of unobligated balances.** You must promptly refund to the award administration office any balances of unobligated cash that we have advanced or paid to you.

**Section C. Final reports.** You must submit the:

1. Final performance report under this award no later than the date specified in Section A of Part 7, Article I, subject to any extensions granted under Section B of that article; and
2. Final financial report under this award no later than the date specified in Section C of Part 7, Article II, subject to any extensions granted under Section D of that article.
3. Other final reports that are required under this award no later than 90 calendar days after the end date of the period of performance, unless you request an extension of the due date and the award administration office approves the request.

**Section D. Accounting for property.** You must account for any real property, equipment, supplies, and intangible property that you and any subrecipients acquired or improved under the award, in accordance with Part 5, Articles I through V.

#### **Article VII. Post-closeout adjustments and continuing responsibilities. (Mar 2015)**

**Section A. Adjustments.** The closeout of this award does not affect:

1. Our right to disallow costs and recover funds on the basis of a later audit or other review, as long as we make the determination that the costs are disallowed and notify you about that determination within the extended records retention period specified in paragraph B.2 of Part 8, Article II of these terms and conditions.
2. Your obligation to return any funds due to the Federal Government as a result of later refunds, corrections, or other transactions (to include any adjustments in final indirect cost rates).

**Section B. Continuing responsibilities.** After closeout of this award, you must continue to comply with terms and conditions of this award that have applicability beyond closeout, including requirements concerning:

1. Audits, as specified in FMS Article V, which cover periods of time during which you expended funds under this award.
2. Management, use, and disposition of any real property or equipment acquired under this award in which we continue to have a Federal interest after closeout, as specified in PROP Articles I through IV.
3. Retention of, and access to, records related to this award, as specified in OAR Article II.

## **PART 9: REQUIREMENTS RELATED TO SUBAWARDS**

### **Article I. Distinguishing subawards and procurements. (Mar 2015)**

**Section A. Required recipient determination.** For each transaction into which you enter with another entity at the next tier below this award, you must determine whether the transaction is a subaward or procurement.

#### **Section B. Considerations in making the determination.**

1. The primary purpose of the transaction between you and the other entity is the key factor you must use to determine whether the transaction is a subaward or a procurement.
  - a. The transaction is a subaward and the other entity therefore a subrecipient if the transaction's primary purpose is for you to transfer--for performance by the other entity--a portion of the substantive program for which we are providing financial assistance to you through this award. You will continue to be accountable to us for performance of the project or program under the award, including portions performed by any subrecipients.
  - b. The transaction is a procurement and the other entity therefore your contractor if the transaction's primary purpose is for you to purchase goods or services that you need to perform the substantive program supported by this award. The distinction from a subaward is the contractor is not performing a portion of the substantive program as a result of the transaction.
2. What you call the transaction is not a factor in distinguishing a subaward from a procurement. If the transaction meets the criterion in paragraph B.1.a of this Article, it is a subaward for purposes of the requirements of this award even if you call and consider the transaction a "contract."

#### **Section C. Effect of the determination on the next-tier transaction.**

1. Process for awarding the transaction. One important consequence of your determining whether a next-tier transaction is a subaward or procurement is that there are different requirements governing the pre-award and time of award processes that you use to award the transaction.
  - a. Part 9, Article II of this award specifies pre-award and time of award responsibilities for subawards.
  - b. Part 6, Articles I and II of this award govern pre-award and time of award process for awarding procurement transactions.
2. Transaction terms and conditions. A second important consequence of your determining whether a next-tier transaction is a subaward or procurement is that the terms and

conditions you include in a subaward differ from those you include in a procurement transaction.

- a. Section C of Part 9, Article II of this award addresses requirements you must include in subaward terms and conditions. Those requirements are generally either identical with or directly related to requirements in the general terms and conditions of this award with which you must comply. They include national policy requirements as well as administrative requirements in areas such as financial and programmatic management, property administration, procurement, and reporting.
- b. PROC Article III of this award lists requirements you must include in a procurement transaction when applicable to the procurement.

## **Article II. Pre-award and time of award responsibilities. (Mar 2015)**

### **Section A. Requirements for unique entity identifiers.**

1. Definition of “entity.” For purposes of the unique entity identifier requirements in paragraphs A.2 and 3 of this Section, “entity” has the meaning given in paragraph C.3 of the Appendix to OMB guidance in 2 CFR Part 25.
2. Pre-notification of potential subrecipients. You must notify potential subrecipients that no entity may receive a subaward from you under this award unless it has provided its unique entity identifier to you.
3. Restriction on making subawards.
  - a. General. You may not make a subaward to an entity unless the prospective subrecipient:
    - i. Is an eligible entity, as defined in 10 U.S.C. 2411; and
    - ii. Has provided its unique entity identifier to you.
  - b. Exception. You may make a subaward to an entity that has not provided its unique entity identifier to you in rare cases in which you requested and we approved an exemption from the requirement for the entity to provide a unique entity identifier, based on the criteria in paragraph 25.110(d) of OMB guidance in 2 CFR Part 25.

### **Section B. Pre-award risk assessment.**

1. Before making a subaward to an entity, you must perform a risk assessment of the prospective subrecipient, as described in 2 CFR 200.331(b). OMB guidance in 2 CFR 200.205(c) provides examples of factors you may consider in evaluating risk.
2. As part of the risk assessment under paragraph B.1 of this Article, you must:

- a. Verify that neither the prospective subrecipient nor its principals under the subaward are excluded or disqualified from participating in the transaction, in accordance with requirements in Subpart C of OMB guidance in 2 CFR Part 180, as implemented by DoD at 2 CFR Part 1125; and
- b. If warranted by risks you identify, determine whether to impose award-specific terms and conditions in the subaward to mitigate the risks.
  - i. These award-specific terms and conditions may be in addition to, or differ from, the terms and conditions that SUB Articles IV through IX of this award require you to include in subawards.
  - ii. They may include items such as those listed in OMB guidance in 2 CFR 200.207(a)(1) through (6).
  - iii. Your procedures for imposing and removing the additional or different requirements must comply with the procedural guidance in 2 CFR 200.207(b) and (c).

### **Section C. Subaward content.**

1. Cost-type subawards.
  - a. Part 9, Article III of this award specifies informational content that you must include in each cost-type subaward.
  - b. Part 9, Articles IV through VIII specify administrative requirements that you must include, as applicable, in each cost-type subaward.
  - c. Part 9, Article IX of this award specifies national policy requirements that you must include, as applicable, in each cost-type subaward.
2. Fixed amount type subawards. SUB Article XII of this award specifies informational content and administrative and national policy requirements that you must include in any fixed amount subaward that you make.
3. Additional subaward terms and conditions. You may include other requirements in your subawards that you need in order to meet your responsibilities under this award for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.

**Section D. Subaward and executive compensation reporting.** You must report subaward obligating actions and information on subrecipients' executive compensation as required by REP Article IV of this award.

### **Article III. Informational content of subawards. (Mar 2015)**



**Section A. Informational content in general.** You must include in each subaward (and each subsequent amendment to a subaward that alters the amount of the subaward) the information specified in OMB guidance in 2 CFR 200.331(a)(1), “Federal Award Identification,” with the clarifications provided in Sections B through G of this Article.

**Section B. Federal award identification number and award date.** The “Federal Award Identification Number” and “Federal Award Date” described in 2 CFR 200.331(a)(1)(iii) and (iv), respectively, are the award number and award date for this award to you. You must provide the information in a way that makes it clear that the subaward is under this DoD award.

**Section C. Amount of Federal funds obligated.**

1. The “Amount of Federal Funds Obligated by this action” that is described in 2 CFR 200.331(a)(1)(vi) is either:
  - a. The amount of your obligation to the subrecipient, if the terms and conditions of this award do not require you to provide any cost sharing or matching for the project or program the award supports; or
  - b. The amount of the Federal share of your subaward obligation if this award does require cost sharing or matching, which in that case is the product of:
    - i. The Federal share of total project costs under this DoD award to you, as a percentage of those total project costs; and
    - ii. The total amount of project costs obligated for the subaward action.
2. Note that the total project costs of the award and subaward, as used in paragraphs C.1.b.i and ii of this Section include any cost sharing or matching that you or the subrecipient provides if you are counting it toward the cost sharing or matching required under this award.

**Section D. Total amount obligated to the subrecipient.** The “Total Amount of Federal Funds Obligated to the Subrecipient,” as described in 2 CFR 200.331(a)(1)(vii), is the cumulative amount to date of the amounts described in Section C of this Article.

**Section E. Total Amount of the Federal Award.** The “Total Amount of the Federal Award,” as described in 2 CFR 200.331(a)(1)(viii), is the total amount through the end of the subaward that you and the subrecipient mutually agreed upon, to include: funding obligated to date, any future anticipated funding increments, and any options you may exercise in the future.

**Section F. Federal awarding agency, pass-through entity, and awarding official.** The “Name of Federal awarding agency” and “pass-through entity,” as those terms are used in 2 CFR 200.331(a)(1)(x) are the Department of Defense and the business name associated with your registration in the System for Award Management. In that same paragraph of 2 CFR

Part 200, the “awarding official” is the individual in your organization who made the subaward.

**Section G. Indirect cost rate.** With respect to the requirement in 2 CFR 200.331(a)(1)(xiii) for the subaward to include the “Indirect cost rate for the Federal award”:

1. The rate the subaward must include is the subrecipient’s rate, whether it is a rate set by negotiation with a Federal Government agency or you, or is the de minimis rate described in 2 CFR 200.414(f).
2. You are required to include the indirect cost rate only if the subrecipient is willing to share that information with you and assents that information about its rate is not proprietary. If a subrecipient is not willing to share information about its indirect cost rate with you, consult the grants officer for this award to explore alternative ways to assess the reasonableness of costs of the subaward.

#### **Article IV. Financial and program management requirements for subawards. (Mar 2015)**

##### **Section A. Purposes of this Article in relation to other Articles.**

1. This Article specifies administrative requirements concerning financial and program management that you must include in the terms and conditions of each cost-type subaward that you make under this award.
2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under Part 4, Articles I through VII of this award.
3. Part 9, Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if we approve you making any fixed-amount subawards under this award.

**Section B. Financial management standards.** You must include in any subaward you make under this award the requirements of:

1. Sections A through C of Part 4, Article I of this award if the subrecipient is a state;
2. Sections B and C of Part 4, Article I if the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe; or
3. 32 CFR 34.11 if the subrecipient is a for-profit entity.

##### **Section C. Payments.**

1. Subawards to States. You must include the provisions of Section A of Part 4, Article II of this award in each subaward you make to a State;

2. Subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes. The following paragraphs specify requirements you must include in subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.
  - a. Payment method.
    - i. If you are authorized to request advance payments under this award, you must authorize a subrecipient to request advance payments unless:
      - A. It does not maintain, or demonstrate the willingness to maintain, written procedures that minimize the time elapsing between its receipt of each payment and its disbursement of the funds for project or program purposes;
      - B. You impose a requirement for the subrecipient to be paid by reimbursement as a result of your risk evaluation of the subrecipient under Part 9, Article II of this award.
    - ii. If you do not authorize advance payments for one of the reasons given in paragraph C.2.a.i of this Article, you must specify either reimbursement or working capital advances as the payment method in accordance with OMB guidance in 2 CFR 200.305(b)(3) and (4).
  - b. Payment timing and amount.
    - i. Advances. You must limit advance payments to the minimum amounts needed and time the payments to be in accordance with the subrecipient's actual, immediate cash requirements in carrying out the project or program under the subaward. The timing and amount of your advance payments to the subrecipient must be as close as is administratively feasible to the subrecipient's actual disbursements for direct project costs and the proportionate share of any allowable indirect costs. Your subawards also must include the requirements of paragraphs B.2.b and c of Part 4, Article II to specify costs subrecipients must exclude from amounts of their advance payment requests.
    - ii. Reimbursements or working capital advances. You must follow OMB guidance in 2 CFR 200.305(b)(3) and (4) concerning timing and amount of reimbursements or working capital advances.
  - c. Frequency of requests. You must allow the subrecipient to request advance payments or reimbursements, including those associated with the working capital advance payment method, as often as it wishes if you pay using electronic funds transfers and at least monthly otherwise.
  - d. Other requirements.

- i. You must include the requirements of paragraph B.5 of Part 4, Article II of this award concerning withholding of payments.
  - ii. You must include the provisions of paragraph B.6 of Part 4, Article II concerning depositories in each subaward that authorizes the subrecipient to request advance payments.
3. Subawards to for-profit entities. In each subaward that you make to a for-profit entity, you must include terms and conditions that provide for payment to the subrecipient consistent with 32 CFR 34.12.

**Section D. Allowable costs, period of availability of funds, and fee and profit.**

1. You must include in each cost-type subaward a requirement that the allowability of costs under the subaward (and any lower-tier subawards or procurement contracts into which the subrecipient enters) must be determined in accordance with the applicable cost principles identified in Section A of Part 4, Article III of this award.
2. You must specify in each subaward the period of availability of funds for any project or program purpose so that the period neither begins before nor ends after the period during which you may use funds available to you under this award for that same project or program purpose.
3. You must include in each subaward the provisions concerning fee or profit that are in Section C of Part 4, Article III of this award.

**Section E. Revision of budget and program plans.** You must include in each subaward provisions requiring the subrecipient to request your approval for any change in the subaward budget or program that would cause a budget or program change under this award for which Section A of Part 4, Article IV requires you to first obtain our prior approval. You may not approve any budget or program revision that is inconsistent with the purpose or terms and conditions of this award.

**Section F. Non-Federal audits.** You must include a provision in each subaward that you make under this award to require the subrecipient entity to comply with the audit requirements applicable to that entity, as specified in either Section A or Section B of Part 4, Article V.

**Section G. Cost sharing or matching requirements.** If you make a subaward under which the subrecipient may provide contributions or donations of cash or third-party in-kind contributions to be counted toward any cost sharing or matching that is required under this award, you must include provisions in that subaward to specify:

1. The criteria governing the allowability as cost sharing or matching of the types of cash or third-party in-kind contributions that the subrecipient may contribute or donate. Those criteria are specified in:

- a. Sections B through C of Part 4, Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.
  - b. Paragraph 32 CFR 34.13(a) if the subaward is to a for-profit entity.
2. The methods for determining and documenting the values of those contributions or donations to be counted as cost sharing or matching. Those methods are specified in:
    - a. Sections D and E of Part 4, Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.
    - b. 32 CFR 34.13(b) if the subaward is to a for-profit entity.

**Section H. Program income.** You must include requirements concerning program income in subawards, as follows:

1. You must require the subrecipient to account to you when it earns any program income under the subaward or uses it, so that you can prepare reports you are required to submit to us.
2. You must include the provisions of Sections A through C of Part 4, Article VII of this award.
3. You must specify the deduction or addition alternative, or a combination of these alternatives, for the subrecipient's use of any program income it earns. A subrecipient that you require to use the deduction alternative, as opposed to the addition alternative described in Section D of Part 4, Article VII of this award, will subtract program income from the total allowable costs under the subaward to determine net allowable costs for purposes of determining the amount of your obligation to the subrecipient and any cost sharing or matching you require of the subrecipient.

In any case, you must still use the addition alternative described in Section D of Part 4, Article VII of this award for the total amount of program income earned, which includes amounts earned by you and your subrecipients. That is, while you may require a particular subrecipient to use the deduction alternative for the purpose of the subaward, program income earned under that subaward will still increase the total amount of this award (i.e., the sum of the Federal share and any cost sharing or matching).

## **Article V. Property requirements for subawards. (Mar 2015)**

### **Section A. Purposes of this Article in relation to other Articles.**

1. This Article specifies administrative requirements concerning property that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under Part 5, Articles I through V of this award.

**Section B. Title to property.**

1. Subawards to institutions of higher education, nonprofit organizations, States, local governments, or Indian tribes. You must include terms and conditions in each subaward to flow down to the subrecipient the provisions of:
  - a. Section A of Part 5, Article I concerning vesting of title to property acquired under the subaward.
  - b. Sections B and C of Part 5, Article I that are applicable to types of property that the subrecipient may acquire, improve, or for which it may otherwise be accountable under the subaward.
2. Subawards to for-profit entities.
  - a. Real property and equipment. You must obtain the prior approval of the DoD grants officer before permitting any for-profit subrecipient to acquire or improve real property or equipment in whole or in part with Federal funds.
    - i. If the grants officer does not grant the approval, you must include a subaward provision that prohibits the firm from using Federal funds provided under the subaward to acquire or improve real property or equipment.
    - ii. If the approval is granted, you must include a subaward provision specifying that title vesting and Federal interest are governed by provisions of 32 CFR 34.21(b) and (c).
  - b. Supplies. You must include a subaward provision specifying that vesting of title to supplies is governed by provisions of 32 CFR 34.24(a), subject to the use and disposition requirements of 32 CFR 34.24(b).

**Section C. Property management system.** If you make a subaward under which the subrecipient either may acquire or improve equipment, you must include in the subaward:

1. If the subrecipient is a State, applicable provisions of:
  - a. Section A of Part 5, Article II concerning insurance for real property and equipment.
  - b. Section B of Part 5, Article II concerning other property management system standards.
2. If the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe, applicable provisions of:

- a. Section A of Part 5, Article II concerning insurance for real property and equipment.
  - b. Section C of Part 5, Article II concerning other property management system standards.
3. Applicable provisions of 32 CFR 34.22(a) and 34.23 if the subrecipient is a for-profit entity and you obtained the grants officer's prior approval for the firm's acquisition of equipment under the subaward.

**Section D. Use and disposition of real property.** If the subrecipient of a subaward you make under this award may acquire or improve real property, then you must include in the subaward:

1. Use. The requirements concerning use of real property:
  - a. In Section A of Part 5, Article III if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, unless the award-specific terms and conditions of this award provide otherwise; and
  - b. In 32 CFR 34.21(d) if the subaward is to a for-profit entity and you obtained the grants officer's prior approval for the firm's acquisition of real property under the subaward.
2. Disposition. Provisions to require the subrecipient to request disposition instructions through you when the property is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B of Part 5, Article III to address the Federal interest in the property.

**Section E. Use and disposition of equipment and supplies.** If you make a subaward under which the subrecipient may acquire or improve equipment, or acquire supplies, you must include in the subaward, as applicable:

1. If the subaward is to a State:
  - a. The requirements in Sections B and E of Part 5, Article IV concerning use and disposition of equipment and supplies, except that you must require the State to contact you instead of the award administration office when it is ready to arrange disposition of equipment or address the Federal interest in supplies; and
  - b. Provisions such as those in Section A of Part 5, Article IV that make clear the applicability of those requirements.
2. If the subaward is to an institution of higher education, nonprofit organization, local government, or Indian tribe:

- a. The requirements in Sections C and E of Part 5, Article IV concerning use of equipment and use and disposition of supplies;
  - b. Provisions such as those in Section A of Part 5, Article IV that make clear the applicability of those requirements; and
  - c. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B or D of Part 5, Article IV to address the Federal interest in the equipment.
3. If the subaward is to a for-profit entity:
- a. The requirements concerning use and disposition of supplies in 32 CFR 34.24(b);
  - b. And you obtained the grants officer's prior approval for the firm's acquisition of equipment under the subaward:
    - i. The requirements concerning use of equipment in 32 CFR 34.21(d);
    - ii. Provisions such as those in Section A of Part 5, Article IV that make clear the applicability of those requirements; and
    - iii. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B or D of Part 5, Article IV to address the Federal interest in the equipment.

**Section F. Intangible property.** You must include in a subaward provisions specifying the requirements of:

1. Sections A through C of Part 5, Article V if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe.
2. Section A of Part 5, Article V as it applies to works developed under the subaward and Section B of Part 5, Article V if the subaward is to a for-profit entity.

**Article VI. Procurement procedures to include in subawards. (Mar 2015)**

**Section A. Purposes of this Article in relation to other Articles.**

1. This Article specifies administrative requirements concerning procurement procedures that you must include in the terms and conditions of each subaward that you make under this award.
2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under Part 6, Articles I through III of this award.



**Section B. Subaward to a State.** In any subaward that you make to a State, you must include the requirements of Part 6, Article I and applicable sections of PROC Article III of this award.

**Section C. Subaward to an institution of higher education, nonprofit organization, local government, or Indian tribe.** In any subaward that you make to an institution of higher education, nonprofit organization, local government, or Indian tribe:

1. You must include the requirements of Sections A through G of Part 6, Article II and applicable sections of Part 6, Article III of this award.
2. You must include the requirement for the subrecipient to make available to you, upon request:
  - a. Technical specifications of proposed procurements, under the conditions described in OMB guidance at 2 CFR 200.324(a); and
  - b. Other procurement documents for pre-procurement review, under the conditions described in 2 OMB guidance at CFR 200.324(b).

**Section D. Subaward to a for-profit entity.** In each subaward that you make to a for-profit entity, you must include terms and conditions for the subrecipient's compliance with the requirements in 32 CFR 34.31.

**Article VII. Financial, programmatic, and property reporting requirements for subawards. (Mar 2015)**

**Section A. Purposes of this Article in relation to other Articles.**

1. This Article specifies administrative requirements concerning reporting that you must include in the terms and conditions of each subaward that you make under this award.
2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under Part 7, Articles I through III of this award.

**Section B. Performance reporting.**

1. You must include terms and conditions in each subaward to require the subrecipient to provide any performance information you need, by the time you need it, to comply with the performance reporting requirements in Part 7, Article I and other terms and conditions of this award.
2. You may specify a form, format, or data elements the subrecipient uses to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that Part 7, Article I specifies for your reporting to us).

**Section C. Financial reporting.**

1. You must include terms and conditions in each subaward to require the subrecipient to provide any financial information you need, by the time you need it, to comply with the financial reporting requirements in Part 7, Article II and other terms and conditions of this award.
2. You may specify a form, format, or data elements the subrecipient uses to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that Part 7, Article II specifies for your reporting to us).

**Section D. Reporting on property.**

1. Each subaward you make under this award must include provisions concerning property reporting as described in paragraph D.2 of this Section if the subrecipient may, under the subaward:
  - a. Acquire or improve real property or equipment; or
  - b. Acquire supplies or intangible property.
2. The subaward provisions must require the subrecipient to give you the information you need about the property in order to meet your responsibilities to us under Sections A through C of Part 7, Article III and Part 6, Articles II through V.

**Article VIII. Other administrative requirements for subawards. (Mar 2015)**

**Section A. Purposes of this Article in relation to other Articles.**

1. This Article specifies other administrative requirements that you either must or should include in the terms and conditions of each subaward that you make under this award.
2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under Part 8, Articles I through VII of this award.

**Section B. Maintenance of subrecipient information.** Your subaward terms and conditions do not need to include any of the requirements of Part 8, Article I, as those requirements do not flow down to subrecipients.

**Section C. Records retention and access.** In each subaward you make under this award:

1. If the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe:
  - a. You must include the requirements of Section A of Part 8, Article II with the additional condition that, for any subrecipient under this award that does not have a

federally approved rate for indirect or facilities and administrative costs and that does not use the de minimis rate described in 2 CFR 200.414(f), you must:

- i. Require the subrecipient to keep records that support its indirect or facilities and administrative costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply; and
  - ii. Keep any plan or computation the subrecipient submits to you to serve as a basis for your determining the reasonableness and allowability of indirect or facilities and administrative costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.
- b. You must include the requirements of Sections B, C, and F of Part 8, Article II.
  - c. You must include provisions that enable you to comply with the requirements of Section D of Part 8, Article II concerning records for joint or long-term use.
  - d. You must include provisions that establish the same rights and responsibilities for the subrecipient under the subaward that Section E of Part 8, Article II establishes for you under this award.
  - e. You may not impose any other record retention or access requirements on the subrecipient.
2. If the subaward is to a for-profit entity, the records retention and access provisions of 32 CFR 34.42.

**Section D. Remedies and termination.** The terms and conditions of each subaward you make under this award should specify your rights and responsibilities and those of the subrecipient if you take a remedial action to address a subrecipient's noncompliance with an applicable Federal statute or regulation or the terms and conditions of your subaward. Each subaward's terms and conditions should:

1. Identify remedial actions you may take to address the subrecipient's noncompliance. Available remedies are described in:
  - a. OMB guidance in 2 CFR 200.338 for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and
  - b. 32 CFR 34.52 for a subaward to a for-profit entity.
2. With respect to termination specifically:
  - a. Identify conditions under which you, the subrecipient, or both (by mutual agreement) may terminate the subaward, in whole or in part, as described in:

- i. OMB guidance in 2 CFR 200.339(a) for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and
    - ii. 32 CFR 34.51 for a subaward to a for-profit entity.
  - b. Inform the subrecipient that you will provide it with a notice of termination if you unilaterally terminate the award.
  - c. Specify that you and the subrecipient remain responsible for applicable requirements addressed in Sections G and H of this Article concerning closeout, post-closeout adjustments, and continuing responsibilities.
3. With respect to either suspension or termination of the subaward, inform the subrecipient about the criteria that you will use to either allow or disallow subaward costs, which are in:
- a. Section C of Part 8, Article III for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and
  - b. 32 CFR 34.52(c) for a subaward to a for-profit entity.

**Section E. Disputes, hearings, and appeals.** Each subaward's terms and conditions should specify any rights the subrecipient has to a hearing, appeal, or other administrative proceeding if it disputes a decision you render in administering its subaward. You must comply with any statute or regulation that affords the subrecipient an opportunity for a hearing, appeal, or other administrative proceeding and is applicable to the dispute.

**Section F. Collection of amounts due.** Although your subaward terms and conditions do not need to include any of the requirements of OAR Article V because those requirements do not flow down to subrecipients, you should consider including provisions to specify what you would need from the subrecipient if you owed a debt to the Government under this award that is related to its subaward.

**Section G. Closeout.**

1. In each subaward that you make to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, you must include provisions to require the subrecipient to:
  - a. Liquidate all obligations that it incurred under the subaward not later than 90 calendar days after the end date of the period of performance of either the subaward or this award, whichever is earlier, unless you grant an extension.
  - b. Promptly refund to you any balances of unobligated cash that you advanced or paid to the subrecipient.

- c. Submit to you:
  - i. Any information you need from the subrecipient to meet your responsibilities to us for an accounting of property, under Section D of Part 8, Article VI; and
  - ii. Not later than 90 calendar days after the end date of the period of performance of this award, unless you grant the subrecipient an extension, any information you need to meet your responsibilities to us for final reports, under Section C of Part 8, Article VI.
2. In each subaward that you make to a for-profit entity, you must include the terms and conditions that you deem necessary for you to be able to comply with the requirements in Part 8, Article VI.

**Section H. Post-closeout adjustments and continuing responsibilities.**

You must include provisions in each subaward to require the subrecipient to provide what you need in order to comply with the requirements of Part 8, Article VII.

**SUB Article IX. National policy requirements for subawards. (Mar 2015)**

**Section A. General.**

1. You must include provisions in the terms and conditions of each subaward you make to require the subrecipient entity's compliance with each of the national policy requirements in Sections B through D of this Article that you determine is applicable, given the type of entity receiving the subaward and activities it will be carrying out under the subaward.
2. If an entity to which you are about to make a subaward will not accept an award provision requiring its compliance with a national policy requirement that you determine to be applicable, you must alert the award administration office immediately. You may not omit an applicable national policy requirement in order to make the subaward.
3. If at any time during the performance of a subaward, you learn that--or receive a credible allegation that--the subrecipient is not complying with an applicable national policy requirement, you must alert the award administration office immediately.

**Section B. Nondiscrimination national policy requirements.** You must include provisions in each subaward to require the subrecipient's compliance with the nondiscrimination national policy requirements specified in NP Article I, as applicable.

**Section C. Environmental national policy requirements.** You must include provisions in each subaward to require that:

1. The subrecipient comply with the Clean Air and Clean Water Acts specified in paragraph 1 of NP Article II, as applicable.

2. Provide any information you need, when you need it, in order to comply with the requirement to immediately notify us of potential environmental impacts specified in paragraph 2 of NP Article II, as applicable, due to activities under the award (which includes subaward activities).

**Section D. Other national policy requirements.** You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements in the following portions of NP Article III of this award, as applicable:

1. Paragraph 1 on debarment and suspension.
2. Paragraphs 3.a and b on lobbying.
3. Paragraphs 4 through 13 on officials not to benefit, Hatch Act, Native American graves, fly America, United States flag vessels, military recruiters and Reserve Officers Training Corps, historic preservation, Constitution Day, trafficking in persons, and whistleblower protections.

**SUB Article X. Subrecipient monitoring and other post-award administration. (Mar 2015)**

**Section A. General requirement for subrecipient monitoring.** You must do the post-award monitoring of the subrecipient's activities under each subaward that is needed in order for you to ensure, to the best of your ability to do so, that:

1. The subrecipient carries out the portion of the substantive project or program under this award that, as described in paragraph B.1.a of SUB Article I:
  - a. Your subaward transferred for the subrecipient's performance, which is the subaward's primary purpose; and
  - b. For which you are accountable to us.
2. The subrecipient is using project funds under the subaward (including any cost sharing or matching the subrecipient provides that is counted as project funds in the approved budget of this award) for authorized purposes.
3. The subrecipient's performance under the subaward is in compliance with applicable Federal statutes and regulations, and the terms and conditions of your subaward.

**Section B. Subrecipient monitoring actions.**

1. Required monitoring actions. You must, as part of your post-award monitoring of each subrecipient:
  - a. Review the financial and programmatic information that your subaward terms and conditions require the subrecipient to provide, in accordance with Sections B and C of Part 9, Article VII of this award.

- b. Follow up and ensure that the subrecipient takes timely and appropriate action to remedy deficiencies detected through any means, including audits and on-site reviews.
- c. With respect to audits of subrecipients that are required under Part 4, Article V of this award:
  - i. Verify that the subrecipient is audited in accordance with those requirements, as applicable (note that Section F of Part 9, Article IV requires you to include those audit requirements for the subrecipient in the subaward's terms and conditions).
  - ii. Resolve and issue a management decision for audit findings that pertain to your subaward. Doing so is a requirement under either Section A or B of Part 4, Article V of this award (Section B requires that explicitly and Section A does so by implementing OMB guidance in 2 CFR 200.521, as well as other portions of Subpart F of that Part).
  - iii. Consider whether you need to adjust your own records related to this award based on results of audits, on-site reviews or other monitoring of the subrecipient and, as applicable, notify the award administration office.
2. Other monitoring actions. OMB guidance in 2 CFR 200.331(e)(1) through (3) describes other actions that may be useful as part of your subrecipient monitoring program, depending on the outcomes of the pre-award risk assessment you conducted in accordance with Section B of Part 9, Article II.

**Section C. Remedies and subaward suspension or termination.** With respect to any subaward under this award, you must:

1. Consider whether you need to take any remedial action if you determine that the subrecipient is noncompliant with an applicable Federal statute or regulation or the terms and conditions of your subaward, as described in Section D of Part 9, Article VIII.
2. Provide a notice of termination to the subrecipient if you terminate its subaward unilaterally for any reason prior to the end of the period of performance.
3. In the case of either suspension or termination of a subaward prior to the end of the period of performance, allow or disallow subaward costs in accordance with Section C of Part 8, Article III.

**Section D. Subaward closeout.**

1. You must close out each subaward that you make under this award when you either:

- a. Determine that the subrecipient has completed its programmatic performance under the subaward and all applicable administrative actions; or
  - b. Terminate the subaward, if you do so prior to completion of the subrecipient's programmatic performance.
2. With respect to the closeout of each subaward:
- a. You must pay the subrecipient promptly for allowable and reimbursable costs.
  - b. Consistent with the terms and conditions of the subaward, you must make a settlement for any upward or downward adjustments to the Federal share of costs after you receive the information you need from the subrecipient to close out the subaward.
  - c. You should complete the closeout of the subaward no later than one year after you receive and accept the final reports and other information from the subrecipient that you need to close out the subaward.

**Article XI. Requirements concerning subrecipients' lower-tier subawards. (Mar 2015)**

**Section A. Purpose.** This Article specifies requirements you must include in any cost-type subaward under which you determine that the subrecipient of your subaward may make lower-tier cost-type subawards to other entities.

**Section B. Requirements for lower-tier subawards.** Your cost-type subaward terms and conditions must require your subrecipient, with respect to each lower-tier cost-type subaward that it makes, to:

1. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that Part 9, Article I of this award requires you to make for your subawards.
2. Conduct the pre-award risk assessment of its intended subrecipient that Section B of Part 9, Article II of this award requires you to make for your subawards.
3. Include in any cost-type subaward it makes at the next tier:
  - a. The informational content that Part 9, Article III specifies;
  - b. The administrative requirements that Part 9, Articles IV through VIII of this award specify;
  - c. The national policy requirements that Part 9, Article IX of this award specifies, as applicable; and



- d. The requirements of this Article if the next-tier subrecipient may make even lower-tier cost-type subawards to other entities.
4. Carry out the subrecipient monitoring and other post-award administration responsibilities specified in Part 9, Article X of this award.

## **Article XII. Fixed amount subawards. (Mar 2015)**

### **Section A. Limitations on use.**

1. You may not use a fixed amount subaward:
  - a. If the total award value over the life of the subaward will exceed the simplified acquisition threshold.
  - b. Unless the project or program scope is specific, with definite outcomes, and you are able to establish a reasonable estimate of the actual costs of accomplishing those outcomes.
  - c. If you will predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward.
  - d. If the subrecipient will be acquiring any real property or equipment under the subaward.
2. For fixed amount subawards not prohibited by paragraph 1 of this Section, you must obtain our prior approval before making a fixed amount type of subaward.
  - a. Section A of Part 4, Article IV requires you to obtain our prior approval before you make any subaward. If you do not identify the subaward as a fixed amount subaward when you obtain that approval, then you must subsequently request separate approval before awarding it as a fixed amount type of subaward.
  - b. If a subaward is identified as a fixed amount type of subaward in the budget you submit for our approval, then our approval of the budget is the required prior approval.

**Section B. Use of fixed amount subawards.** A fixed amount type subaward might be appropriate if you obtain the prior approval required by paragraph A.2 of this Article and:

1. You determine that the portion of the project or program under this award which the subrecipient will be carrying out under the subaward has one or more specific outcomes with the following characteristics:
  - a. You can define the outcomes well enough to specify them at the time you make the subaward. Note that outcomes are distinct from inputs needed to achieve the

outcomes, such as amounts or percentages of time that subrecipient employees or other participants will spend on the project or program.

- b. The accomplishment of each outcome will be observable and verifiable by you when it occurs, so that you will not need to rely solely on the subrecipient's assurance of that accomplishment.
  - c. The subrecipient associates its projected costs with outcomes in the proposal it submits to you, and you are confident that the costs of accomplishment of the outcomes will equal or exceed the subaward amount. This requires either that you have a high degree of confidence:
    - i. In your estimate of the costs associated with accomplishing the well-defined and observable outcomes, based on the prospective subrecipient's proposal (and using the applicable cost principles in Part 4, Article III as a guide); or
    - ii. That those costs will be within a finite range, rather than a specific amount, so that you may provide an amount of funding under the subaward that does not exceed the lower end of the range, with the provision that the subrecipient agrees to provide any balance above that amount that ultimately is needed to accomplish the outcomes. Your subaward then would include a term or condition to reflect the subrecipient's agreement to provide that balance (which would be in an amount to be post-determined, when the outcomes are accomplished). Note that this is distinct from a situation in which you predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward, a situation in which paragraph A.1.c of this Article prohibits use of a fixed amount subaward.
2. The subaward is based on a fixed rate per unit of outcome (or "unit cost") and you have both the confidence:
    - a. That is described in paragraph B.1.c of this Article in the estimated costs associated with each unit of outcome; and
    - b. In the subrecipient's guarantee that it can accomplish at least the number of units of outcome on which your total subaward amount will be based (i.e., the product of the unit cost and the number of units of outcome the subrecipient guarantees to accomplish).
  3. Note, however, that not every fixed rate subaward is also a fixed amount subaward. If you have confidence in the unit cost but not also in the subrecipient's ability to guarantee the number of units of outcome that it will accomplish, then you should set a not-to-exceed award amount based on the number of units desired and reduce the subaward amount at the end if the subrecipient accomplishes fewer than that number.

**Section C. Informational content of fixed amount subawards.** You must include in each fixed amount subaward the informational content, other than the indirect cost rate, that is described in Part 9, Article III of this award.

**Section D. Terms and conditions addressing administrative requirements.**

1. General. This Section:
  - a. Specifies the minimum set of terms and conditions addressing administrative requirements that you must include in fixed amount subawards, in lieu of the more extensive set specified in Part 9, Articles IV through X for cost-type subawards.
  - b. Does not preclude your including other requirements that you need in order to meet your responsibilities under this award for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.
2. Financial and program management requirements.
  - a. Financial management system standards. For a subaward to other than a for-profit entity, your subaward must require the subrecipient to include the information specified in paragraph B.1 of Part 4, Article I in its financial management system, for the purposes of the non-federal audits required by paragraph 2.d of this Section.
  - b. Payments. Your payments must be based on accomplishment of the outcomes and associated costs that you used to establish the award amount, rather than on subrecipient expenditures for project or program purposes. Milestone payments before the end of the subaward's period of performance may be appropriate if there are outcomes that the subrecipient will accomplish at different times during that period.
  - c. Revision of budget and program plans. You must:
    - i. Request our prior approval for any change in principal investigator, project leader, project partner, or scope or objective of the subaward; and
    - ii. Therefore include a requirement in the subaward for the subrecipient to request that approval through you.
  - d. Non-federal audits. You must include the requirement for non-Federal audits described in Section F of Part 9, Article IV. The audits are intended to focus on compliance with the performance requirements in the subaward terms and conditions and not to review actual costs as they would for a cost-type subaward.
3. Intangible property. You must include the applicable requirements concerning intangible property, as described in Section F of Part 9, Article V.

4. Reporting requirements. You must include requirements for reporting that you need in order to meet your responsibilities under this award for reporting to us.
5. Other administrative requirements.
  - a. Records retention and access.
    - i. You must include the requirements for records retention and access in paragraph A.3 and Sections B and F of Part 8, Article II, as applicable, if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe. You may not impose any other records retention or access requirements on the subrecipient.
    - ii. You must include the corresponding requirements of 32 CFR 34.42 if the subaward is to a for profit entity.
  - b. Remedies and termination. You must include:
    - i. The requirements concerning remedies and termination that are described in paragraphs D.1 and 2 of Part 9, Article VIII;
    - ii. Provisions addressing any hearing and appeal rights the subrecipient has, as described in Section E of Part 9, Article VIII; and
    - iii. Terms and conditions addressing adjustment of the amount of the subaward based on review of the actual costs incurred if it is terminated before the subrecipient accomplishes all of the specified outcomes.
  - c. Continuing responsibilities. You must include requirements concerning continuing responsibilities for audits and records retention and access that are described in paragraphs B.1 and 3 of Part 8, Article VII.
  - d. Collection of amounts due. You should consider including requirements concerning collection of amounts due, as described in Section F of Part 9, Article VIII.
6. Required certification. You must:
  - a. Include a requirement for the subrecipient to provide to you the certification required by 2 CFR 200.201(b)(5); and
  - b. Include terms and conditions addressing adjustment of the amount of the subaward if the required level of activity or effort is not carried out.

**Section E. National policy requirements for fixed amount subawards.** You must include in the terms and conditions of each fixed amount subaward the national policy requirements that Part 9, Article IX of this award specifies, as applicable.

**Section F. Subrecipient monitoring and other post award administration.** You must carry out the subrecipient monitoring and post-award administration actions specified in Part 9, Article X, as applicable.

**Section G. Fixed amount subawards at lower tiers.**

1. Authority. If you wish to allow a subrecipient of a cost-type subaward to use fixed amount subawards at the next tier, your subaward terms and conditions must require the subrecipient to submit a request through you to obtain our prior approval for use of that type of subaward.
2. Subaward requirements. If your subrecipient is authorized to use lower-tier fixed amount subawards, as described in paragraph 1 of this Section, your subaward's terms and conditions must:
  - a. Require the subrecipient, before it makes any lower-tier fixed amount subaward, to:
    - i. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that Part 9, Article I of this award requires you to make for your subawards.
    - ii. Conduct the pre-award risk assessment of its intended subrecipient that Section B of Part 9, Article II of this award requires you to make for your subawards.
  - b. Include the requirements specified in Sections A through F of this Article.

