

DEPARTMENT OF COMMERCE  
FINANCIAL ASSISTANCE  
GENERAL TERMS AND CONDITIONS



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# DEPARTMENT OF COMMERCE

## FINANCIAL ASSISTANCE GENERAL TERMS AND CONDITIONS

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## PREFACE

This document sets out the general terms and conditions (GT&Cs) applicable to this U.S. Department of Commerce (DOC or Commerce) financial assistance award (hereinafter referred to as the DOC GT&Cs or General Terms). A recipient<sup>1</sup> receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) Circulars, provisions of the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 Code of Federal Regulations (CFR) Part 200) (OMB Uniform Guidance), provisions of these General Terms, and any other terms and conditions incorporated into this DOC financial assistance award. In addition, unless otherwise provided by the terms and conditions of this DOC financial assistance award, Subparts A through E of 2 CFR Part 200 and the General Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award.<sup>2</sup>

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: Federal laws and regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, DOC GT&Cs, agency standard award conditions (if any), and specific award conditions. A specific award condition may amend or take precedence over a General Term on a case-by-case basis, when indicated by the specific award condition.

Some of the general terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or CFR, E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (e.g., SF-424s) or through DOC forms (e.g. Form CD-511). To the extent that it is a summary, such general term provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB Circular, certification, or assurance.

DOC commenced implementation of the Research Terms and Conditions (RT&Cs) for Federal

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<sup>1</sup>These DOC GT&Cs apply to recipients rather than subrecipients, or vice versa. These DOC GT&Cs use the terms “pass-through entity”, “non-Federal entity,” “recipient,” and “subrecipient” consistent with their meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance uses the term “pass-through entity” to refer to a non-Federal entity that makes a subaward. As defined at 2 CFR § 200.1:

“Non-Federal entity” is “a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

“Recipient” is “an entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award.”

“Subrecipient” is “an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency.”

“Pass-through entity” is “a recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program. The authority of the pass-through entity under this part flows through the subaward between the pass-through entity and subrecipient”

<sup>2</sup> See 2 CFR § 200.1 for the definitions of “foreign public entity” and “foreign organization.”

awards effective October 1, 2017; the RT&Cs address and implement the Uniform Guidance issued by OMB. For awards designated on the Notice of Award (NOA) as Research, both the DOC GT&Cs and the RT&Cs as implemented by DOC apply to the award. The RT&Cs as well as the DOC implementation statement, agency specific requirements, prior approval matrix, subaward requirements, and national policy requirements are posted on the National Science Foundation's website – <https://www.nsf.gov/awards/managing/rtc.jsp>. The DOC GT&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the DOC GT&Cs and the RT&Cs differ in a Research award, the RT&Cs prevail, unless otherwise indicated in a specific award condition.

## **A. PROGRAMMATIC REQUIREMENTS**

### **.01 Reporting Requirements**

a. Recipients must submit all reports as required by DOC, electronically or, if unable to submit electronically, in hard copy, as outlined below and as may be supplemented by the terms and conditions of a specific DOC award.

b. Performance (Technical) Reports. Recipients must submit performance (technical) reports to the Program Officer. Performance (technical) reports should be submitted in the same frequency as the Form SF-425 (Federal Financial Report), unless otherwise directed by the Grants Officer.

1. Performance (technical) reports must contain the information prescribed in 2 CFR § 200.329 (Monitoring and reporting program performance), unless otherwise specified in the award conditions.

2. As appropriate and in accordance with the format provided by the Program Officer (or other OMB-approved information collections, including the Research Program Performance Report [RPPR] as adopted by DOC for use in research awards), recipients are required to relate financial data to the performance accomplishments of this Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance will be measured in a way that will help DOC to improve program outcomes, share lessons learned, and spread the adoption of best or promising practices. As described in 2 CFR § 200.211 (Information contained in a Federal award), DOC will identify the timing and scope of expected performance by the recipient as related to the outcomes intended to be achieved by the Federal program.

3. Recipients (or pass-through entities as applicable) must submit a final performance report within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its final performance report to the pass-through entity within 90 calendar days unless an extension has been granted.

c. Financial Reports. In accordance with 2 CFR § 200.328 (Financial reporting), the recipient must submit a Form SF-425 (Federal Financial Report) or any successor form on a

semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports must be submitted to DOC as directed by the Grants Officer, in accordance with the award conditions and are due no later than 30 calendar days following the end of each reporting period. Recipients (or pass-through entities as applicable) must submit a final Form SF-425 within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its financial report to the pass-through entity within 90 calendar days unless an extension has been granted. A recipient may submit a final financial report in lieu of an interim financial report due at the end of the period of performance (e.g., in lieu of submitting a financial report for the last semi-annual or other reporting under an award, a recipient may submit a final (cumulative) financial report covering the entire award period).

d. Real Property, Tangible Personal Property and Intangible Property Reports and Requests for Dispositions. Unless otherwise required by the terms and conditions of a DOC financial assistance award, where real property, tangible personal property or intangible property is acquired or improved (in the case of real property or tangible personal property), or produced or acquired (in the case of intangible property), pursuant to a DOC award, recipients or subrecipients are required to submit the following real property, tangible personal property and intangible property reports (as appropriate):

1. Real Property Status Reports and Requests for Dispositions: Recipients or subrecipients must submit reports using Form SF-429 (Real Property Status Report) or any successor form, including appropriate attachments thereto, at least annually disclosing the status of real property that is Federally-owned property or real property in which the Federal Government retains a Federal Interest, unless the Federal Interest in the real property extends 15 years or longer. In cases where the Federal Interest attached is for a period of 15 years or more, DOC or pass-through entity, at its option, may require the recipient or subrecipient to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or, DOC or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). In addition, DOC or a pass-through entity may require a recipient or subrecipient to submit Form SF-429, with appropriate attachments, relating to a recipient's or subrecipient's request to acquire, improve or contribute real property under a DOC financial assistance award. Recipients or subrecipients wishing to dispose of real property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 CFR § 200.311(d). *See also* the real property standards set forth in Section C. Property Standards of these terms.

2. Tangible Personal Property Status Reports and Requests for Dispositions: DOC or a pass-through entity may also require a recipient or subrecipient to submit periodic reports using Form SF-428 (Tangible Personal Property Report) or any successor form, including appropriate attachments thereto, concerning tangible personal property that is Federally-owned or tangible personal property in which the Federal Government retains an interest. In addition, DOC or a pass-through entity may require a recipient or subrecipient to submit Form SF-428 in connection with a recipient's or subrecipient's request to dispose of tangible



personal property acquired under a DOC financial assistance award. Recipients or subrecipients wishing to dispose of tangible personal property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 CFR § 200.313(e). *See also* the tangible property standards set forth in Section C. Property Standards of these terms.

3. **Intangible Property Status Reports and Requests for Dispositions:** The specific requirements governing the development, reporting, and disposition of rights to intangible property, including inventions and patents resulting from DOC awards, are set forth in 37 CFR Part 401, which is hereby incorporated by reference into this award. Recipients or subrecipients are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at [www.iedison.gov](http://www.iedison.gov). Recipients or subrecipients may obtain a waiver of this electronic submission requirement by providing to the Grants Officer compelling reasons for allowing the submission of paper reports. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 CFR § 200.313(e). *See also* the intangible property standards set forth in Section C. Property Standards of these terms.

e. **Subawards and Executive Compensation Reports.** For reporting requirements on subawards and Executive Compensation, see paragraph G.05.o of these General Terms (The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)).

f. **Recipient Integrity and Performance Matters.** For reporting requirements pertaining to integrity and performance matters, see paragraph G.05.p of these General Terms (Recipient Integrity and Performance Matters (Appendix XII to 2 CFR Part 200)).

g. **Research Performance Progress Reports.** All research awards shall submit the Research Performance Progress Report (RPPR) in accordance with instructions set forth in the following link: [RPPR Instructions](#).

## **.02 Revisions of Program Plans**

In accordance with 2 CFR § 200.308 (Revision of budget and program plans) and 2 CFR § 200.407 (Prior written approval (prior approval)), the recipient or subrecipient must obtain prior written approval from the DOC Grants Officer for certain proposed programmatic change requests, unless otherwise provided by the terms and conditions of a DOC award. Requests for prior approval for changes to program plans must be submitted to the Federal Program Officer. Requests requiring prior DOC approval are not effective unless and until approved in writing by the DOC Grants Officer.

## **.03 Other Federal Awards with Similar Programmatic Activities**

The recipient must immediately provide written notification to the DOC Program Officer and the DOC Grants Officer if, subsequent to receipt of the DOC award, other financial assistance is

received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

#### **.04 Prohibition against Assignment by a Recipient or Subrecipient**

A recipient or subrecipient must not transfer, pledge, mortgage, assign, encumber or hypothecate a DOC financial assistance award or subaward, or any rights to, interests therein or claims arising thereunder, to any party or parties, including but not limited to banks, trust companies, other financing or financial institutions, or any other public or private organizations or individuals without the express prior written approval of the DOC Grants Officer or the pass-through entity (which, in turn, may need to obtain prior approval from the DOC Grants Officer).

#### **.05 Disclaimer Provisions**

a. The United States expressly disclaims all responsibility or liability to the recipient, subrecipient, or third persons (including but not limited to contractors) for the actions of the recipient, subrecipient, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

b. The acceptance of this award or any subaward by the recipient or subrecipient does not in any way constitute an agency relationship between the United States and the recipient or subrecipient or the recipient's or subrecipient's contractors or subcontractors.

#### **.06 Unsatisfactory Performance or Non-Compliance with Award Provisions**

a. Failure to perform the work in accordance with the terms of the award and maintain satisfactory performance as determined by DOC may result in the imposition of additional award conditions pursuant to 2 CFR § 200.208 (Specific conditions) or other appropriate enforcement action as specified in 2 CFR § 200.339 (Remedies for noncompliance).

b. Failure to comply with the provisions of an award will be considered grounds for appropriate enforcement action pursuant to 2 CFR § 200.339 (Remedies for noncompliance), including but not limited to: the imposition of additional award conditions in accordance with 2 CFR § 200.208 (Specific conditions); temporarily withholding award payments pending the correction of the deficiency; changing the payment method to reimbursement only; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 CFR Parts 180 and 1326; and such other remedies as may be legally available.

c. 2 CFR §§ 200.340 (Termination) through 200.343 (Effects of suspension and termination) apply to an award that is terminated prior to the end of the period of performance due to the recipient's or subrecipient's material failure to comply with the award terms and conditions. In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a recipient's or subrecipient's eligibility for future DOC or Federal awards.

## **B. FINANCIAL REQUIREMENTS**

### **.01 Financial Management**

a. In accordance with 2 CFR § 200.302(a) (Financial Management), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's funds. All recipient and subrecipient's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by the terms and conditions; and tracking expenditures to establish that funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See* 2 CFR § 200.450 (Lobbying) for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.

b. The financial management system of each recipient and subrecipient must provide all information required by 2 CFR § 200.302(b). *See also* 2 CFR §§ 200.334 (Record retention requirements); 200.335 (Requests for transfer of records); 200.336 (Methods for collection, transmission and storage of information); 200.337 (Access to records); and 200.338 (Restrictions on public access to records).

### **.02 Award Payments**

a. Consistent with 2 CFR § 200.305(a) (Federal payment), Payments for states are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR Part 205 (Rules and Procedures for Efficient Federal-State Funds Transfers) and Treasury Financial Manual Volume I, 4A-2000 (Overall Disbursing Rules for All Federal Agencies).

b. Consistent with 2 CFR § 200.305(b), for recipients and subrecipients other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the Federal Agency or the pass-through entity and the disbursement of funds by the recipient or subrecipient.

1. The Grants Officer determines the appropriate method of payment and, unless otherwise stated in a specific award condition, the advance method of payment must be authorized. Advances must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient or subrecipient in carrying out the purpose of the approved program or project. Unless otherwise provided by the terms and conditions of a DOC award, non-Federal entities must time advance payment requests so that Federal funds are on hand for a maximum of 30 calendar days before being disbursed by the non-Federal entity for allowable award costs.

2. If a recipient or subrecipient demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the recipient or subrecipient or if a recipient or subrecipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer or the pass-through entity may change the method of payment to reimbursement only.

c. Unless otherwise provided for in the award terms, payments from DOC to recipients under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the recipient's bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. To receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP:

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;
2. Agency Location Code (ALC); and
3. Region Code.

d. Recipients enrolled in the ASAP system do not need to submit a Form SF-270 (Request for Advance or Reimbursement) for payments relating to their award. Awards paid under the ASAP system will contain a specific award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

e. When the Form SF-270 or successor form is used to request payment, the recipient must submit the request no more than monthly, and advances must be approved for periods to cover only expenses reasonably anticipated over the next 30 calendar days. Prior to receiving payments via the Form SF-270, the recipient must complete and submit to the Grants Officer the Form SF-3881 (ACH Vendor Miscellaneous Payment Enrollment Form) or successor form along with the initial Form SF-270. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

f. The Federal award identification number must be included on all payment-related correspondence, information, and forms.

g. Recipients or subrecipients receiving advance award payments must adhere to the depository requirements set forth in 2 CFR §§ 200.305(b)(9) through (b)(13). Interest amounts up to \$500 per the recipient's or subrecipient's fiscal year may be retained by the recipient or subrecipient for administrative expenses.

### **.03 Federal and Non-Federal Sharing**

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares must be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total approved budget, the Federal share must not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or third-party in-kind contributions, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or third-party in-kind contributions. In any case, the recipient must meet its cost share commitment as set forth in the terms and conditions of the award; failure to do so may result in the assignment of specific award conditions or other further action as specified in General Term A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). The recipient or subrecipient must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits; see Section D. Audits of these terms for audit requirements. *See* 2 CFR § 200.306 for additional requirements regarding cost sharing.

#### **.04 Budget Changes and Transfer of Funds among Categories**

a. Recipients or subrecipients are required to report deviations from the approved award budget and request prior written approval from DOC in accordance with 2 CFR § 200.308 (Revision of budget and program plans) and 2 CFR § 200.407 (Prior written approval (prior approval)). Requests for such budget changes must be submitted to the Grants Officer who will notify the recipient or subrecipient of the final determination in writing. Requests requiring prior DOC approval do not become effective unless and until approved in writing by the DOC Grants Officer.

b. In accordance with 2 CFR § 200.308(i), transfers of funds among direct cost categories are permitted for awards in which the Federal share of the Federal award is equal to or less than the simplified acquisition threshold. Transfers of funds among direct cost categories must be approved in writing by the Grants Officer for awards in which the Federal share of the project exceeds the simplified acquisition threshold, and the cumulative amount of the transfer exceeds or is expected to exceed 10 percent of the total budget, including cost share, as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose is not and will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 CFR § 200.308 (Revision of budget and program plans) (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

#### **.05 Program Income**

Unless otherwise indicated in the award terms, program income may be used for any required cost sharing or added to the project budget, consistent with 2 CFR § 200.307 (Program income).

## .06 Indirect or Facilities and Administrative Costs

a. Indirect costs (or facilities and administration costs (F&A)) for major institutions of higher education and major nonprofit organizations can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

b. Unrecovered indirect costs, including unrecovered indirect costs on cost sharing, may be included as part of cost sharing as allowed under 2 CFR § 200.306(c) (Cost sharing) or the terms and conditions of a DOC award.

c. Cognizant Agency for Indirect Costs. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves recipients' indirect cost rates. In accordance with Appendices III – VII to 2 CFR Part 200 the cognizant agency for indirect costs reviews and approves recipients' indirect cost rates. With respect to for-profit organizations, the term cognizant Federal agency generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 CFR § 42.003. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for indirect cost negotiations.

### 1. General Review Procedures Where DOC is the Cognizant Agency.

i. Within 90 calendar days of the award start date, the recipient must submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow DOC to perform the indirect cost rate proposal review. The Department of Labor developed guidance on how to put an indirect cost plan together located at <https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm>.

ii. The recipient or subrecipient may use the rate proposed in the indirect cost plan as a provisional rate until DOC provides a response to the submitted plan.

iii. The recipient or subrecipient is required to annually submit indirect cost proposals no later than six months after the recipient's fiscal year end, except as otherwise provided by 2 CFR § 200.414(g).

2. When DOC is not the oversight or cognizant Federal agency, the recipient or subrecipient must provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement within 30 calendar days of receipt of a negotiated rate agreement or submission of a negotiated rate proposal.

3. If the recipient or subrecipient is proposing indirect costs as part of a project budget, but is not required to have a negotiated rate agreement pursuant to 2 CFR Part 200, Appendix

VII, Paragraph D.1.b (*i.e.*, a governmental department or agency that receives \$35 million or less in direct Federal funding), the recipient or subrecipient may be required to provide the Grants Officer with a copy of its Certificate of Indirect Costs as referenced in 2 CFR Part 200, Appendix VII, Paragraph D.3. or such other documentation, acceptable in form and substance to the Grants Officer, sufficient to confirm that proposed indirect costs are calculated and supported by documentation in accordance with 2 CFR Part 200, Appendix VII. In cases where DOC is the recipient's or subrecipient's cognizant Federal agency, DOC reserves the right, pursuant to 2 CFR Part 200, Appendix VII, Paragraph D.1.b, to require the recipient or subrecipient to submit its indirect cost rate proposal for review by DOC.

d. If the recipient or subrecipient fails to submit required documentation to DOC within 90 calendar days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's or subrecipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient or subrecipient is the lesser of:

1. The line-item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or
2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, in accordance with 2 C.F.R 200 Appendix III, C.7, provided that the rate is approved on or before the award end date.

f. In accordance with 2 CFR § 200.414(c)(3), DOC set forth policies, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates. These policies and procedures are applicable to all Federal financial assistance programs awarded and administered by DOC bureaus as Federal awarding agencies and may be found at <https://www.commerce.gov/oam/policy/financial-assistance-policy>

g. In accordance with 2 CFR § 200.414(g), any recipient or subrecipient with a current Federal negotiated indirect cost rate may apply to the cognizant agency for indirect costs for a one-time extension of a current Federal negotiated indirect cost rate for up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

h. In accordance with 2 CFR § 200.414(f), any recipient and subrecipient that do not have a current Federal negotiated indirect cost rate (including provisional rate) may elect to charge a de minimis rate of up to 15 percent of modified total direct costs. No documentation is required to justify the 15 percent de minimis indirect cost rate.



## **.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance**

a. In accordance with 2 CFR § 200.309 (Modifications to Period of Performance) and the terms and conditions of a DOC award, a recipient may charge to the Federal award only allowable costs incurred during the period of performance, which is established in the award document. As defined at 2 CFR § 200.1, the “period of performance” means the time interval between the start and end date a Federal award which may include one or more budget periods. Identification of the Period of Performance in the Federal award consistent with § 200.211(b)(5) does not commit the Federal agency to fund the award beyond the currently approved budget period.” The period of performance may sometimes be referred to as the project period or award period. This General Term is subject to exceptions for allowable costs pertaining to: (i) pre-award costs (*see* 2 CFR § 200.458); (ii) publication and printing costs (*see* 2 CFR § 200.461); and administrative costs incurred relating to the close-out of an award (*see* 2 CFR § 200.344).

b. Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 120 calendar days following the conclusion of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer. A recipient or subrecipient may request an extension of the 120-day closeout period, as provided in 2 CFR § 200.344 (Closeout).

c. Unless authorized by a specific award condition, any extension of the period of performance may only be authorized by the Grants Officer in writing. This is not a delegable authority. Verbal or written assurances of funding from anyone other than the Grants Officer does not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.

d. DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

## **.08 Tax Refunds**

The recipient or subrecipient shall contact the Grants Officer immediately upon receipt of the refund of any taxes, including but not limited to Federal Insurance Contributions Act (FICA) taxes, Federal Unemployment Tax Act (FUTA) taxes, or Value Added Taxes (VAT) that were allowed as charges to a DOC award, regardless of whether such refunds are received by the recipient or subrecipient during or after the period of performance. The Grants Officer will provide written disposition instructions to the recipient or subrecipient, which may include the refunded taxes being credited to the award as either a cost reduction or a cash refund or may allow the recipient or subrecipient to use such refunds for approved activities and costs under a DOC award. *See* 2 CFR § 200.470 (Taxes (including Value Added Tax)).



## **.09 Internal Controls**

In accordance with 2 CFR § 200.303 (Internal controls), each recipient and subrecipient must establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should align with the guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States, or the “Internal Control-Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

## **C. PROPERTY STANDARDS**

### **.01 Standards**

Each recipient and subrecipient must comply with the Property Standards set forth in 2 CFR §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship).

### **.02 Real and Personal Property**

a. In accordance with 2 CFR § 200.316 (Property trust relationship), real property, equipment, and other personal property acquired or improved with a Federal award must be held in trust by the recipient or subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the recipient or subrecipient must comply with all use and disposition requirements and restrictions as set forth in 2 CFR §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

b. The Grants Officer may require a recipient or subrecipient to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The statement of interest, financing statement (Form UCC 1), lien, mortgage or other public notice must be acceptable in form and substance to DOC and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the recipient or subrecipient to provide DOC with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney’s statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the recipient or subrecipient from these obligations, the recipient or subrecipient, by execution of the financial assistance award or by

expending Federal financial assistance funds (in the case of a subrecipient), authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the recipient or subrecipient has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

### **.03 Intellectual Property Rights**

a. General. The rights to any work or other intangible property produced or acquired under a Federal award are determined by 2 CFR § 200.315 (Intangible property). The recipient or subrecipient owns any work produced or purchased under a Federal award subject to DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a recipient or subrecipient under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq.*, and modified by E.O. 12591 (52 FR 13414), as amended by E.O. 12618 (52 FR 48661). 35 U.S.C. § 201(h) defines "small business firm" as "a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration." Section 1(b)(4) of E.O. 12591 extended the Bayh-Dole Act to recipients and subrecipients "regardless of size" to the extent permitted by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 CFR Part 401, which implements 35 U.S.C. 202 through 204 and includes standard patent rights clauses in 37 CFR § 401.14, which is hereby incorporated by reference into this award.

The Bayh-Dole regulations set forth in 37 CFR parts 401 and 404 were amended by 83 FR 15954, with an effective date of May 14, 2018 (Amended Bayh-Dole Regulations). The Amended Bayh-Dole Regulations apply to all new financial assistance awards issued on or after May 14, 2018. The Amended Bayh-Dole Regulations do not apply to financial assistance awards issued prior to May 14, 2018, including amendments made to such awards, unless an award amendment includes a specific condition incorporating the Amended Bayh-Dole Regulations into the terms and conditions of the subject award.

1. Ownership. A recipient or subrecipient may have rights to inventions in accordance with 37 CFR Part 401. These requirements are technical in nature and recipients and subrecipients are encouraged to consult with their Intellectual Property counsel to ensure the proper interpretation of and adherence to the ownership rules. Unresolved questions pertaining to a recipients' or subrecipients' ownership rights may further be addressed to the Grants Officer.
2. Responsibilities - iEdison. The recipient or subrecipient must comply with all the requirements of the standard patent rights clause and 37 CFR Part 401, including the standard patent rights clause in 37 CFR § 401.14. Recipients and subrecipients are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S.

manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at [www.iedison.gov](http://www.iedison.gov). Recipients and subrecipients may obtain a waiver of this electronic submission requirement by providing the Grants Officer with compelling reasons for allowing the submission of paper reports.

c. **Patent Notification Procedures.** Pursuant to E.O. 12889 (58 FR 69681), DOC is required to notify the owner of any valid patent covering technology whenever DOC or a recipient or subrecipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient or subrecipient uses or has used patented technology under this award without a license or permission from the owner, the recipient or subrecipient must notify the Grants Officer.

This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.

d. A recipient or subrecipient may copyright any work produced under a Federal award, subject to DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and recipient or subrecipient employees may be copyrighted, but only the part of such works authored by the recipient or subrecipient is protectable in the United States because, under 17 U.S.C. § 105, copyright protection is not available within the United States for any work of the United States Government. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the recipient or subrecipient to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.

e. **Freedom of Information Act (FOIA).** In response to a FOIA request for research data relating to published research findings (as defined by 2 CFR § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, DOC will request, and the recipient or subrecipient must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

## **D. AUDITS**

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of DOC, or any of his or her duly authorized representatives, must have the right to access any pertinent books, documents, papers, and records of the recipient or subrecipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity's personnel for interview and discussion related to such documents. *See* 2 CFR § 200.337 (Access to records). When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG

personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

## **.01 Single and Program-Specific Audits**

a. A non-Federal entity must, within 90 days of the end of its fiscal year, notify the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, that the non-Federal entity expended during its fiscal year.

b. A non-Federal entity subject to the provisions of Subpart F of 2 CFR Part 200 that expends \$1,000,000 or more in a year in Federal awards during the non-Federal entity's fiscal year must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 CFR Part 200. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) located at [www.FAC.gov](http://www.FAC.gov). In accordance with 2 CFR § 200.425 (Audit services), the non-Federal entity may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.

c. Unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 CFR Part 200 (e.g., for-profit entities, foreign public entities and foreign organizations) and that expend \$1,000,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 CFR § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 CFR § 200.425, the non-Federal entity may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 CFR Part 200 and that expend less than \$1,000,000 in DOC funds in a given fiscal year are not required to submit an audit(s) for that year but must make their award-related records available to DOC or other designated officials for review and audit.

d. Non-Federal entities are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

e. In accordance with 2 CFR § 200.332(e)(3), pass-through entities are responsible for issuing a management decision for audit findings pertaining only to the Federal award provided by the pass-through entity to a subrecipient.

## **.02 Audit Resolution Process**

a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. A recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. The recipient has 30 calendar days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
2. The recipient has 30 calendar days from the date of the transmittal of the final audit report to submit written comments and documentary evidence.
3. DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in a *Management Decision Letter*. The recipient has 30 calendar days from the date of receipt of the *Management Decision Letter* to submit a written appeal, unless this deadline is extended in writing by DOC. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence to DOC to dispute the validity of the audit resolution determination.
4. An appeal of the Management Decision does not prevent the establishment of the audit-related debt nor does it prevent the accrual of applicable interest, penalties and administrative fees on the debt in accordance with 15 CFR Part 19. If the Management Decision is overruled or modified on appeal, appropriate corrective action will be taken retroactively.
5. DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

## **E. DEBTS**

### **.01 Payment of Debts Owed to the Federal Government**

a. The recipient or subrecipient must promptly pay any debts determined to be owed to the Federal Government. Any funds paid to a recipient or subrecipient in excess of the amount to which the recipient or subrecipient is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 CFR § 200.346 (Collection of amounts due), DOC must collect all debts arising out of its Federal awards in accordance with the Standards for the Administrative Collection of Claims (31 CFR part 901).

The foregoing does not waive any claim on a debt that DOC may have against another entity, and all rights and remedies to pursue other parties are preserved.

b. DOC debt collection procedures are set out in 15 CFR Part 19. In accordance with 15 CFR Part 19 and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government must result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 CFR § 901.9. Commerce entities will transfer any Commerce debt that is delinquent for more than 120 calendar days to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as cross-servicing, pursuant to 31 U.S.C. § 3711(g), 31 CFR § 285.12, and 15 CFR § 19.9. DOC may also take further action as specified in DOC GT&C A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). Funds for payment of a debt must not come from other Federally-sponsored programs, and DOC may conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt. See also 2 CFR § 200.346 (Collection of amounts due).

## **.02 Late Payment Charges**

a. Interest will be assessed on the delinquent debt in accordance with section 11 of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3717(a)). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at [https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr\\_home.htm](https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm) and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate must remain fixed for the duration of the indebtedness.

b. Penalties will accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, will be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

## **.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees**

Pursuant to 31 U.S.C. § 3720B and 31 CFR § 901.6, unless waived by DOC, DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

## **.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs**

Pursuant to 28 U.S.C. § 3201(e), unless waived by DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive any grant or



loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

## **F. CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS**

### **.01 Conflict of Interest and Code of Conduct**

a. **DOC Conflict of Interest Policy.** In accordance with 2 CFR § 200.112 (Conflict of interest), the recipient or subrecipient must disclose in writing any potential conflict of interest to DOC or pass-through entity. In addition, a recipient or subrecipient will establish and maintain written standards of conduct that include safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of an award. It is DOC's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with DOC financial assistance awards.

b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render impartial assistance, services or advice to the recipient, a participant in the project or to the Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the DOC Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a recipient or subrecipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

c. **Procurement-related conflict of interest.** In accordance with 2 CFR § 200.318 (General procurement standards), recipients and subrecipients must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. *See* paragraph F.04 of these General Terms (Requirements for Procurements).

## **.02 Nonprocurement Debarment and Suspension**

Recipients and subrecipients must comply with the provisions of 2 CFR Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

## **.03 Requirements for Subawards**

a. The recipient or pass-through entity must require all subrecipients, including lower tier subrecipients, to comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 CFR Part 200), and all associated Terms and Conditions set forth herein. *See* 2 CFR § 200.101(b)(2) (Applicability to Federal financial assistance), which describes the applicability of 2 CFR Part 200 to various types of Federal financial assistance and §§ 200.331-333 (Subrecipient monitoring and management).

b. The recipient or pass through entity may have more restrictive policies for the RTC *waived* prior approvals (no-cost extensions, re-budgeting, etc.) for their subaward recipients. Such restrictive policies must be addressed in their subaward agreements and in accordance with 2 CFR § 200.331.

## **.04 Requirements for Procurements**

a. States and Indian Tribes. Pursuant to 2 CFR § 200.317 (Procurements by States and Indian Tribes), when procuring property and services under this Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State and Indian Tribe must comply with 2 CFR §§ 200.321 (Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms), 200.322 (Domestic preferences for procurements), and 200.323 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 CFR § 200.327 (Contract provisions).

b. Other Recipients and Subrecipients. All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in 2 CFR §§ 200.318 (General procurement standards) through 200.327 (Contract provisions) which include the requirement that recipients and subrecipients maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.



## **.05 Whistleblower Protections**

This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a recipient or subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Recipients, subrecipients, and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

## **.06 Small Businesses, Minority Business Enterprises and Women's Business Enterprises**

In accordance with 2 CFR § 200.321 (Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms), the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are used when possible. DOC encourages non-Federal entities to use small businesses, minority business enterprises, women's business enterprises, and veteran-owned businesses in contracts under financial assistance awards. The Minority Business Development Agency (MBDA) within DOC will assist non-Federal entities in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA's website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce  
Minority Business Development Agency  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230  
(202) 482-0101

## **G. NATIONAL POLICY REQUIREMENTS**

### **.01 United States Laws and Regulations**

This award is subject to the laws and regulations of the United States. The recipient and subrecipient must comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

### **.02 Non-Discrimination Requirements**

No person in the United States may, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. The recipient and subrecipient agrees to comply with the non-discrimination requirements below:

#### **a. Statutory Provisions**

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 CFR Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 CFR § 8b.18(c), recipients and subrecipients must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 CFR part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 CFR part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and DOC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and
6. Any other applicable non-discrimination law(s).

#### **b. Other Provisions**

1. Parts II and III of E.O. 11246 (Equal Employment Opportunity, 30 FR 12319),<sup>3</sup> which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 CFR § 60-1.4(b)).
2. E.O. 13166 (65 FR 50121, Improving Access to Services for Persons with Limited English Proficiency), requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that recipients and subrecipients provide meaningful access to their LEP applicants and beneficiaries.
3. In accordance with E.O. 13798 and Office of Management and Budget, M-20-09 – Guidance Regarding Federal Grants, states or other public recipients may not condition sub-awards of Federal money in a manner that would disadvantage applicants based on their religious character.

#### **c. Title VII Exemption for Religious Organizations**

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion, "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

### **.03 LOBBYING RESTRICTIONS**

#### **a. Statutory Provisions**

Recipients and subrecipients must comply with 2 CFR § 200.450 (Lobbying), which incorporates the provisions of 31 U.S.C. § 1352; and OMB guidance and notices on lobbying

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<sup>3</sup> As amended by E.O. 11375(32 FR 14303), E.O. 11478 (34 FR 12985), E.O. 12086 (43 FR 46501), E.O. 12107 (44 FR 1055), E.O. 13279 (F67 FR 77141), E.O. 13665 (79 FR 20749), and E.O. 13672 (79 FR 42971).

restrictions. In addition, recipients and subrecipients must comply with DOC regulations published at 15 CFR Part 28, which implement the New Restrictions on Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award and require the disclosure of the use of non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. *See* 2 CFR § 200.450(b) and (c).

#### **b. Disclosure of Lobbying Activities**

Any recipient or subrecipient that receives more than \$100,000 in Federal funding and conducts lobbying with non-federal funds relating to a covered Federal action must submit a completed Form SF-LLL (Disclosure of Lobbying Activities). The Form SF-LLL must be submitted within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit any required SF-LLL forms, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

### **.04 Environmental Requirements**

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each recipient and subrecipient must comply with all environmental standards, to include those prescribed under the following statutes and E.O.s and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the recipient or subrecipient to submit additional environmental compliance information sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

#### **a. The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*)**

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Recipients and subrecipients are required to identify to the awarding agency any direct, indirect or cumulative impact an award will have on the quality of the human environment and assist the agency in complying with NEPA. Recipients and subrecipients may also be requested to assist DOC in drafting an environmental assessment

or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the recipient and subrecipient to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

#### **b. The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*)**

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation (ACHP) implementing regulations (36 CFR Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally-recognized Indian Tribes, Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Recipients and subrecipients are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients and subrecipients may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the recipient and subrecipient to submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, recipients and subrecipients are required to assist DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 *et seq.*, formerly 16 U.S.C. § 469a-1 *et seq.*); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

#### **c. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)**

Recipients and subrecipients must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to decide whether there is an alternative to minimize any potential harm.

**d. Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”)**

Recipients and subrecipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and E.O. 11738 (38 FR 25161), and must not use a facility on the Excluded Parties List (EPL) (located on the System for Award Management (SAM) website, SAM.gov) in performing any award that is nonexempt under 2 CFR § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPL or knows that the facility has been recommended to be placed on the EPL.

**e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 *et seq.*)**

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 CFR § 200.447(a), the cost of required flood insurance is an allowable expense, if it is reflected in the approved project budget.

**f. The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*)**

Recipients and subrecipients must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

**g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*)**

Funded projects must be consistent with a coastal State’s approved management program for the coastal zone.

**h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 *et seq.*)**

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

**i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 *et seq.*)**

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**j. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f *et seq.*)**

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer which threatens public health.



**k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*)**

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and provides that recipients and subrecipients give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

**l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 *note et seq.*)**

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**m. Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations”)**

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

**n. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)**

Recipients and subrecipients must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

**o. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)**

CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

**p. Rivers and Harbors Act (33 U.S.C. § 407)**

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients and subrecipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

**q. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)**

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

**r. Executive Order 13112 (Invasive Species, February 3, 1999)**

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

**s. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*)**

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S. Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are “proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license.

**.05 OTHER NATIONAL POLICY REQUIREMENTS**

**a. Buy-American Preferences**

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients or subrecipients of covered programs (as defined in Executive Order 13858, 31 January 2019, and 2 CFR §200.322 (Domestic preferences for procurements)) are hereby notified that they are encouraged to use, to the greatest extent practicable and consistent with law, iron and aluminum as well as steel, cement, and other manufactured products produced in the United



States in every contract, subcontract, purchase order, or subaward that is chargeable under this Award.

## **b. Criminal and Prohibited Activities**

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States must be subject to imprisonment of not more than five years and must be subject to a fine in the amount provided by 18 U.S.C. § 287.
3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
4. The Copeland Anti-Kickback Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland Anti-Kickback Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.
5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and implementing regulations issued at 15 CFR Part 11, which provides for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
6. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.
7. To ensure compliance with Federal law pertaining to financial assistance awards, an authorized representative of a recipient or subrecipient may be required to periodically provide certain certifications to DOC regarding Federal felony and Federal criminal tax convictions, unpaid federal tax assessments, delinquent Federal tax returns and such other certifications that may be required by Federal law.

## **c. Drug-Free Workplace**

The recipient and subrecipient must comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at

2 CFR Part 1329 (Requirements for Drug-Free Workplace (Financial Assistance)), which require that the recipient and subrecipient take certain actions to provide a drug-free workplace.

#### **d. Foreign Travel**

1. Each recipient and subrecipient must comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.

2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable or use of U.S. flag air carrier service will not accomplish the agency's mission.

3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA Fly America website: [Fly America Act | GSA](#). Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's [website](#).

4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the recipient or subrecipient must receive prior approval from the Grants Officer. When requesting such approval, the recipient or subrecipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.142, which requires the recipient or subrecipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient or subrecipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient or subrecipient must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer must make the final determination and notify the recipient in writing (which may be done through the recipient in the case of subrecipient travel). Failure to adhere to the provisions of the Fly America Act will result in the recipient or subrecipient not being reimbursed for any transportation costs for which any recipient or subrecipient improperly used a foreign air carrier.

Note: When using code-sharing flights (two or more airlines having flight numbers assigned to the same flight) involving U.S. flag carriers and non-U.S. flag carriers, the airline

symbol and flight number of the U.S. flag carrier must be used on the ticket to qualify as a U.S. flag carrier (e.g. "*Delta Airlines Flight XXXX, operated by KLM*"). Conversely, if the ticket shows "[*Foreign Air Carrier*] XXX, operated by Delta," that travel is using a foreign air carrier and is subject to the Fly America Act and must receive prior approval from the Grants Officer as outlined in paragraph G.05.d.4.

#### **e. Increasing Seat Belt Use in the United States**

Pursuant to E.O. 13043 (62 FR 19217), recipients and subrecipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

#### **f. Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies**

1. Use of award funds (Federal or non-Federal) or the recipient's or subrecipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from recipients or subrecipients regardless of the source. Therefore, before award funds may be used by Federal employees, recipients or subrecipients must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the recipient or subrecipient in writing (generally through the recipient) of the final determination.
2. A recipient or subrecipient or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

#### **g. Minority Serving Institutions Initiative**

Pursuant to E.O.s 13555 (White House Initiative on Educational Excellence for Hispanics) (75 FR 65417), 13592 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities) (76 FR 76603), and 13779 (White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities) (82 FR 12499), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC's goals include achieving full participation of MSIs to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants, recipients, and subrecipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

## **h. Research Misconduct**

DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipients and subrecipients that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipients and subrecipients also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Recipients and subrecipients must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

## **i. Research Involving Human Subjects**

1. All proposed research involving human subjects must be conducted in accordance with 15 CFR Part 27 (Protection of Human Subjects). No research involving human subjects is permitted under this award unless expressly authorized by specific award condition, or otherwise in writing by the Grants Officer.
2. Federal policy defines a human subject as a living individual about whom an investigator (whether professional or student) conducting research (1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
3. DOC regulations at 15 CFR Part 27 require that recipients and subrecipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient and subrecipient (generally through the recipient) must submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. As applicable, this documentation must include:
  - i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency guidelines (*see also* 15 CFR § 27.103);

- ii. Documentation to support an exemption for an activity in the project under 15 CFR § 27.104(d);
- iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;
- iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and
- v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 CFR § 27.118, if research involving human subjects is proposed after an award is made, the recipient or subrecipient (generally through the recipient) must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

#### **j. Care and Use of Live Vertebrate Animals**

Recipients and subrecipients must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 CFR Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

#### **k. Management and Access to Data and Publications**

1. In General. The recipient and subrecipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients and subrecipients, may be used by DOC in conducting reviews and evaluations of its financial assistance programs. For this purpose, recipient and subrecipient information and data may be accessed, reviewed and evaluated by DOC employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of who enter into appropriate or are otherwise subject to confidentiality and nondisclosure agreements covering the use of

such information. Recipients and subrecipients are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with DOC and external program evaluators. In accordance with 2 CFR § 200.303(e), recipients and subrecipients are reminded that they must take reasonable cybersecurity and other measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained relating to a DOC financial assistance award.

2. Scientific Data. Recipients and subrecipients must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

3. Publications, Videos, and Acknowledgment of Sponsorship.

i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (e.g., scientific research). Recipients and subrecipients must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

ii. Recipients and subrecipients may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.

iii. When releasing information related to a funded project, recipients and subrecipients must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.

iv. Recipients and subrecipients are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

*This [report/video/etc.] was prepared by [recipient or subrecipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.*

## **I. Homeland Security Presidential Directive**

If the performance of this DOC financial assistance award requires recipient or subrecipient personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 calendar days), such personnel must undergo the personal identity



verification credential process. In the case of foreign nationals, DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award must comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors), Federal Information Processing Standard (FIPS) PUB 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient must insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

*The subrecipient or contractor must comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.*

*The subrecipient or contractor must account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.*

#### **m. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations**

1. This clause applies to the extent that this financial assistance award encompasses activities that involve export-controlled items.
2. In performing this financial assistance award, a recipient or subrecipient may participate in activities involving items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The recipient and subrecipient must establish and maintain effective export compliance procedures at DOC and non-DOC facilities, including facilities located abroad, throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate restrictions on export-controlled items, to guard against any unauthorized exports, including in the form of

releases or transfers to foreign nationals. Such releases or transfers may occur through visual inspection, including technology transmitted electronically, and oral or written communications.

### 3. Definitions

i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 CFR §§ 730-774), implemented by DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.

ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 CFR § 734.13(a)(2) & (b)). A release may take the form of visual inspection or oral or written exchange of information. See 15 CFR § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. See 15 CFR § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. See 15 CFR § 734.15(b).

4. The recipient or subrecipient must secure all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that the export of such items, including in the form of release or transfer to foreign persons, is prevented, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.

5. As applicable, recipient and subrecipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items from unauthorized export.

6. To the extent the recipient or subrecipient wishes to release or transfer export-controlled items to foreign persons, the recipient or subrecipient will be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports. Failure to obtain any export licenses required under the EAR may subject the recipient or subrecipient to administrative or criminal enforcement. See 15 CFR part 764.



7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.

8. Compliance with this term will not satisfy any legal obligations the recipient or subrecipient may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports and re-exports of defense articles and services subject to the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120-130), including the release of defense articles to foreign persons in the United States and abroad.

9. The recipient must include the provisions contained in this term in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve research or other activities that implicate export-controlled items.

#### **n. Prohibiting Oppressive Child Labor**

Pursuant to the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), recipients, subrecipients, contractors, and subcontractors shall not employ any oppressive child labor.

“Oppressive child labor” means a condition of employment under which:

1. any employee under the age of 16 years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of 16 years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of 16 and 18 years or detrimental to their health or well-being) in any occupation, or
2. any employee between the ages of 16 and 18 years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age.

The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

*Exclusions.* Exclusions to Prohibiting Oppressive Child Labor can be found at 29 USC § 213(c).

**o. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 CFR Part 175**

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if any recipient or subrecipient engages in certain activities related to trafficking in persons. DOC hereby incorporates the following award term required by 2 CFR § 175:

***I. Trafficking in persons.***

***a. Provisions applicable to a recipient that is a private entity.***

*1. Under this award, the recipient, its employees, subrecipients under this award, and subrecipients' employees must not engage in:*

- i. Severe forms of trafficking in persons;*
- ii. The procurement of a commercial sex act during the period of time that this award or any subaward is in effect;*
- iii. The use of forced labor in the performance of this award or any subaward; or*
- iv. Acts that directly support or advance trafficking in persons, including the following acts:*
  - (A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;*
  - (B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:*
    - (1) Exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or*
    - (2) The employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;*
  - (C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;*
  - (D) Charging recruited employees as a placement or recruitment fee; or*

*(E) Providing or arranging housing that fails to meet the host country's housing and safety standards.*

*2. The Federal awarding agency may unilaterally terminate this award or take any remedial actions authorized by 22 USC 7104b(c), without penalty, if any private entity under this award:*

*i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or*

*ii. Has an employee that is determined to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—*

*(A) Associated with performance under this award; or*

*(B) Imputed to the recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – (Nonprocurement)", as implemented by DOC at 2 CFR Part 1326 (Nonprocurement Debarment and Suspension).*

*b. **Provision applicable to a recipient other than a private entity.** (1) We as the Federal awarding agency may unilaterally terminate this award or take any remedial actions authorized by 22 USC 7104b(c), without penalty, if a subrecipient that is a private entity under this award:*

*i. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or*

*ii. Has an employee that is determined to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—*

*(A) Associated with performance under this award; or*

*(B) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – (Nonprocurement)", as implemented by DOC at 2 CFR Part 1326, (Nonprocurement Debarment and Suspension).*

*c. **Provisions applicable to any recipient.***

*1. The recipient must inform the Federal agency and the Inspector General of the Federal Agency immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.*

*2. The Federal Agency's right to unilaterally terminate this award as described in paragraph a.2 or b.1 of this section:*

i. *Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and*

ii. *Is in addition to all other remedies for noncompliance that are available to the Federal agency under this award.*

3. *The recipient must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.*

4. *If applicable, the recipient must also comply with the compliance plan and certification requirements in 2 CFR 175.105(b).*

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

*Employee means either:*

1. *An individual employed by the recipient or a subrecipient who is engaged in the performance of the project or program under this award; or*

2. *Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.*

*Private entity means any entity, including for-profit organizations, nonprofit organizations, institutions of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR § 200.1.*

*The terms “severe forms of trafficking in persons,” “commercial sex act,” “sex trafficking,” “Abuse or threatened abuse of law or legal process,” “coercion,” “debt bondage,” and “involuntary servitude” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).*

**p. The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)**

1. **Reporting Subawards and Executive Compensation.** Under FFATA, recipients of financial assistance awards of \$30,000 or more are required to report periodically on executive compensation and subawards, as described in the following term from 2 CFR Part 170, Appendix A, which is incorporated into this award:

***Reporting Subawards and Executive Compensation***

a. ***Reporting of first-tier subawards***

*1. Applicability. Unless the recipient is exempt as provided in paragraph d. of this award term, the recipient must report each subaward that equals or exceeds \$30,000 in Federal funds for a subaward to an entity or Federal agency.*

*The recipient must also report a subaward if a modification increases the Federal funding to an amount that equals or exceeds \$30,000. All reported subawards should reflect the total amount of the subaward.*

*2. Reporting Requirements.*

*i. The entity or Federal agency must report each subaward described in paragraph a.1. of this award term to the Federal Funding Accountability And Transparency Act Subaward Reporting System (FSRS) at <http://www.fsrs.gov>.*

*ii. For subaward information, report no later than the end of the month following the month in which the subaward was issued. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025.)*

***b. Reporting Total Compensation of Recipient Executives for entities***

*1. Applicability. The recipient must report the total compensation for each of the recipient's five most highly compensated executives for the preceding completed fiscal year if:*

*i. the total Federal funding authorized to date under this Federal award equals or exceeds \$30,000;*

*ii. in the preceding fiscal year, the recipient received:*

*(A) 80 percent or more of the recipient's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act and*

*(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; 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 after receiving this subaward. (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. Reporting Requirements. The recipient must report executive total compensation described in paragraph b.1. of this award term:*

- i. As part of the recipient's registration profile found at the System for Award Management (SAM) website located at <https://www.sam.gov>.
- ii. No later than the month following the month in which this award is made, and annually after that. (For example, if this Federal award was made on November 7, 2025, the executive total compensation must be reported no later than December 31, 2025.)

**c. Reporting of Total Compensation of Subrecipient Executives.**

1. *Applicability.* Unless a first-tier subrecipient is exempt as provided in paragraph d. of this award term, the recipient must report the executive total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

- i. The total Federal funding authorized to date under the subaward equals or exceeds \$30,000;
- ii. 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 awards (and subawards) subject to the Transparency Act; and,
  - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal awards (and subawards) subject to the Transparency Act; 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 after receiving this subaward. (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. *Reporting Requirements.* Subrecipients must report to the recipient their executive total compensation described in paragraph c.1. of this award term. The recipient is required to submit this information to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at <http://www.fsrs.gov> no later than the end of the month following the month in which the subaward was made. (For example, if the subaward was made on November 7, 2025, the subaward must be reported no later than December 31, 2025).

**d. Exemptions.**

*1. A recipient with gross income under \$300,000 in the previous tax year is 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:*

*Entity includes:*

*1. Whether for profit or nonprofit:*

- i. A corporation;*
- ii. An association;*
- iii. A partnership;*
- iv. A limited liability company;*
- v. A limited liability partnership;*
- vi. A sole proprietorship;*
- vii. Any other legal business entity;*
- viii. Another grantee or contractor that is not excluded by subparagraph (2) and;*
- ix. Any State or locality;*

*2. Does not include:*

- i. An individual recipient of Federal financial assistance; or*
- ii. A Federal employee*

*Executive means an officer, managing partner, or any other employee holding a management position.*

*Subaward has the meaning given in 2 CFR 200.1.*

*Subrecipient has the meaning given in 2 CFR 200.1*

*Total Compensation means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR § 229.402(c)(2).*



**2. System for Award Management (SAM) and Universal Identifier Requirements** -- as described in 2 CFR Part 25, Appendix A, which is incorporated into this award:

***System for Award Management (SAM.gov) and Universal Identifier Requirements***

***a. Requirement for System for Award Management.***

*1. Unless exempt from this requirement under 2 CFR § 25.110, the recipient must maintain a current and active registration in SAM.gov. The recipient's registration must always be current and active until the recipient submits all final reports required under this Federal award or receives final payment, whichever is later. The recipient must review and update its information in SAM.gov at least annually from the date of its initial registration or any subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the recipient's immediate and highest-level owner and subsidiaries and providing information about the recipient's predecessors that have received a Federal award or contract within the last three years.*

***b. Requirement for Unique Entity Identifier (UEI).***

*1. If the recipient is authorized to make subawards under this Federal award, the recipient:*

*i. Must notify potential subrecipients that no entity may receive a subaward until the entity has provided its UEI to the recipient.*

*ii. Must not make a subaward to an entity unless the entity has provided its UEI to the recipient. Subrecipients are not required to complete full registration in SAM.gov to obtain a UEI.*

***c. Definitions:***

*For the purposes of this award term:*

*System for Award Management (SAM.gov) means the Federal repository into which a recipient must provide the information required for the conduct of business as a recipient. Additional information about registration procedures may be found in SAM.gov (currently at <https://www.sam.gov>).*

*Unique entity identifier means the universal identifier assigned by SAM.gov to uniquely identify an entity.*

*Entity is defined at 2 CFR § 25.400 and includes all of the following types as defined in 2 CFR 200.1:*

- 1. Non-Federal entity;*
- 2. Foreign organization;*
- 3. Foreign public entity;*
- 4. Domestic for-profit organization; and*
- 5. Federal agency.*

*Subaward has the meaning given in 2 C.F.R § 200.1.*

*Subrecipient has the meaning given in 2 C.F.R § 200.1.*

#### **q. Recipient Integrity and Performance Matters (Appendix XII to 2 CFR Part 200)**

##### ***Reporting of Matters Related to Recipient Integrity and Performance***

1. **General Reporting Requirement.** If the total value of your active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient must ensure the information available in the responsibility/qualification records through the System for Award Management (SAM.gov) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition is current and complete. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. **Proceedings About Which You Must Report.** Submit the information required about each proceeding that:

- i. Is relating to the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five-year period; and
- iii. Is one of the following:
  - (A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - (B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - (C) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either

a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(D) Any other criminal, civil, or administrative proceeding if:

- I. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
- II. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
- III. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures. Enter in the SAM.gov Entity Management area the information that SAM.gov requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM.gov because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency. During any period when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM.gov for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions. For purposes of this award term and condition:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- ii. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes:

(A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

- (B) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

**r. Never Contract with the Enemy (2 CFR Part 183; 2 CFR § 200.215)**

Under 2 CFR § 200.215 (Never contract with the enemy) Federal agencies and recipients and subrecipients, are subject to the guidance implementing Never Contract with the Enemy in 2 CFR Part 183. The guidance affects covered contracts, grants, and cooperative agreements that are expected to exceed \$50,000 during the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

1. **Applicability.** This term applies only to recipients and subrecipients of covered grants or cooperative agreements, as defined in 2 CFR § 183.35 Definitions.

2. **Requirements.** As applicable, recipients and subrecipients must fulfill the requirements as described in the following terms from 2 CFR Part 183, Appendix A, which is incorporated into this award:

**a. Term 1. Prohibition on Providing Funds to the Enemy.**

*1. The recipient must—*

- i. Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR Part 180.300 prior to issuing a subaward or contract and;*
- ii. Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.*

*2. The recipient may include the substance of this clause, including this paragraph (1), in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

*3. The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (1) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities*

***b. Term 2. Additional Access to Recipient Records.***

*1. In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations*

*2. The substance of this clause, including this paragraph (2), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

**s. Prohibition on certain telecommunications and video surveillance equipment or services (Public Law 115-232, section 889; 2 CFR § 200.216)**

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain covered telecommunications equipment or services;
- (2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

(b) As described in Public Law 115-232, section 889, “covered telecommunications equipment or services” means any of the following:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities;
- (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities;
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National

Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(c) For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(d) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

(e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

(f) For additional information, see section 889 of Public Law 115-232 and 2 CFR § 200.471.

#### **t. Cargo Preference Act of 1954 – 46 USC section 55305**

If applicable to this award, recipients and subrecipients must comply with the requirements of the Cargo Preference Act of 1954 (CPA), codified at [46 U.S.C. 55305](#), and promulgated by regulation under [46 CFR parts 381](#) and [382](#). The CPA requires that at least 50% of cargoes procured, furnished, or financed by the U.S. Government, which may be transported on ocean vessels, are transported on privately-owned U.S. commercial vessels, to the extent those vessels are available at fair and reasonable rates.

#### **u. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown**

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for a specific obligation, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in financial assistance award administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse.

Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

3. The ASAP system should remain operational during a government shutdown. Recipients that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. Unless otherwise provided by the terms and conditions of the DOC award, the 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown (see Section B.02.b.1 of these terms).