DoD R&D General Terms and Conditions
JULY 2018

Preamble

Introduction

This award is subject to the following Department of Defense (DoD) Research and Development (R&D) General Terms and Conditions. These general terms and conditions implement Office of Management and Budget (OMB) guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," published in the Code of Federal Regulations (CFR) at 2 CFR part 200 and implemented by the DoD at 2 CFR part 1103, "Interim Grants and Cooperative Agreements Implementation of Guidance in 2 CFR part 200" (79 FR 76047, December 19, 2014).

Applicability

These general terms and conditions apply to DoD grants and cooperative agreements for R&D with institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. They also apply when incorporated into DoD grants or cooperative agreements for R&D with foreign organizations or foreign public entities (as defined in Sections 36 and 37 of Part 1 to these general terms and conditions). These general terms and conditions do not apply to DoD grants and cooperative agreements for R&D made directly to individuals or for-profit entities. However, portions of these general terms and conditions do apply to recipient's subawards for R&D made to for-profit entities. Certain provisions within these general terms and conditions may indicate that they apply to certain types of recipients only. An example of this is FMS Article V for non-Federal audits.

Order of Precedence

Any inconsistencies in the requirements of this award will be resolved in the following order:

a. Federal statutes
b. Federal regulations
c. 2 CFR part 200*, as modified and supplemented by DoD's interim implementation found in 2 CFR part 1103
d. Award-specific terms and conditions
e. General Terms and Conditions, which include this document, the DoD Component's Addendum to this document, and the DoD Component's Programmatic Requirements.

* OMB amended 2 CFR 200.110(a) on May 17, 2017 to permit recipients to continue to comply with the procurement standards in previously applicable OMB guidance, rather than the procurement standards in 2 CFR 200.317-200.326, for three full recipient fiscal years that begin on or after December 26, 2014.

For example, the third full fiscal year for a recipient with a June 30th fiscal year end would be the year ending June 30, 2018. DoD implemented those previous procurement standards in Department of Defense Grant and Agreement Regulations (DoDGARs) part 32 (32 CFR part 32) for institutions of higher education, hospitals, and other nonprofit organizations and in DoDGARs part 33 (32 CFR part 33) for States and local and Indian tribal governments. If you choose to use those previous procurement standards during all or any part of the period specified in 2 CFR 200.110(a), rather than the standards in PROC Articles I and II of these general terms and conditions, you must document that decision in your internal procurement policies.

Award Acceptance

The DoD Component will select which of the following methods of acceptance it requires:

(1) If you receive an award from a DoD Component that is signed by a grants officer without your entity having also signed the award, that means the award does not require your signature to indicate acceptance of the award. Rather, your acceptance of the award in such instances, including the terms and conditions, occurs when you initiate performance under this award. Therefore, if you disagree with any requirements of this award, you must contact the grants officer prior to initiating performance in order to resolve the issue.
(2) If you receive an unsigned award from a DoD Component, that means that you are required to sign the award to indicate acceptance of the award, including the terms and conditions, prior to initiating performance. The grants officer will sign the award upon receipt of your signature.

English Language

You must translate any of the award content (including attachments to it and any material incorporated into the award by reference) into another language only to the extent that your compliance with the award's terms and conditions depends upon a significant number of your employees who are not fluent in English being able to read and comprehend that content. If you translate any award content into another language, the original award content in the English language will take precedence in the event of an inconsistency between the award requirements in the English and translated versions.

Plain Language

These general terms and conditions use plain language, with use of personal pronouns such as "you" to denote the recipient and "we" to mean the Federal Government. Use of personal pronouns is a recognized means to help a reader understand to whom the language is addressed and assist in determining responsibilities.

Reserved Provisions

If the words "RESERVED – Not Applicable" are used at the section or paragraph level of an article without additional explanation, it means that this particular section or paragraph does not apply in any

manner to this award. If the word "RESERVED" is used with additional explanation (in bold red-colored font), it will describe whether the particular provisions either will or may be included in a DoD Component addendum to these terms and conditions.

Feedback on the Terms and Conditions

As you gain operating experience with these general terms and conditions, you may find areas requiring clarification or correction. Alerting us to potential issues will help us improve both these general terms and conditions and DoD's regulatory implementation of the OMB guidance at 2 CFR part 200.

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Part 1: Definitions

Section A. Purpose of this part.

This part provides definitions of terms used in the DoD R&D General Terms and Conditions.

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

Part 8 of these general terms and conditions may use a term in relation to compliance with a national policy requirement in a statute, Executive order, or other source that defines the term differently than it is defined in Section D of this part. For purposes of that particular national policy requirement, the definition of a term provided by the source of the requirement and any regulation specifically implementing it takes precedence over the definition in this part.

Section C. Definitions of terms used in the Governmentwide cost principles or single audit requirements.

Some award provisions state that you must comply with single audit or cost principles requirements in a Governmentwide issuance and include the requirements by reference to the issuance without restating them. For any term defined in one of those issuances, this part includes the definition only if the term is used in these general terms and conditions.

Otherwise, this part does not include a definition and a user of these terms and conditions should consult definitions in the pertinent Governmentwide source, as follows:

1. The requirements for audits of recipients and subrecipients that are in Subpart F of OMB guidance in 2 CFR part 200, which implements the Single Audit Act;

2. The Governmentwide cost principles for institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes that are contained in Subpart E of OMB guidance in 2 CFR part 200; and

3. The cost principles for for-profit entities at Subpart 31.2 of the Federal Acquisition Regulation (48 CFR part 31), as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement at Subpart 231.2 of 48 CFR part 231.

Section D. Definitions.

1. Acquire.

Acquire means to:

a. When the term is used in connection with a DoD Component action at the prime tier, obtain property or services by purchase, lease, or barter for the direct benefit or use of the United States Government.

b. When the term is used in connection with a recipient action or a subrecipient action at a tier under a DoD Component's award:

(1) Purchase services;

(2) Obtain property under the award by:

(a) Purchase;

(b) Construction;

(c) Fabrication;

(d) Development;

(e) The recipient or subrecipient entity's donation of the property to the project or program under the award to meet a cost sharing or matching requirement (i.e., including within the entity's share of the award's project costs the value of the remaining life of the property or its fair market value, rather than charging depreciation); or

(f) Other means.

2. Acquisition.

Acquisition means the process of acquiring as described in:

a. Paragraph D.1.a of this part when used in connection with DoD Component actions at the prime tier.

b. Paragraph D.1.b of this part when used in connection with recipient or subrecipient actions at a lower tier under a DoD Component's award.

3. Acquisition cost.

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

a. For example, when used in conjunction with:

(1) The purchase of equipment, the term means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired.

(2) Equipment that a recipient or subrecipient constructs or fabricates—or software that it develops—under an award, the term includes, when capitalized in accordance with generally accepted accounting principles (GAAP):

(a) The construction and fabrication costs of that equipment; and

(b) The development costs of that software.

b. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from, the acquisition cost in accordance with the recipient's or subrecipient's regular accounting practices.

4. Administrative offset.

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

5. Advance payment.

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

6. Advanced research.

Advanced research means advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector (i.e., early phases of research and development on which commercial competitors are willing to collaborate, because the work is not so coupled to specific products and processes that the results of the work must be proprietary). It does not include development of military systems and hardware where specific requirements have been defined. It is typically funded in Advanced Technology Development (Budget Activity 3) programs within DoD's Research, Development, Test and Evaluation (RDT&E) appropriations.

7. Applied research.

Applied research means efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology, such as new materials, devices, methods and processes. It typically is funded in Applied Research (Budget Activity 2) programs within DoD's Research,

Development, Test and Evaluation (RDT&E) appropriations. Applied research often follows basic research but may not be fully distinguishable from the related basic research. The term does not include efforts whose principal aim is the design, development, or testing of specific products, systems or processes to be considered for sale or acquisition, efforts that are within the definition of "development."

8. Approved budget.

Approved budget means, in conjunction with a DoD Component award to a recipient, the most recent version of the budget the recipient submitted and the DoD Component approved (either at the time of the initial award or subsequently) to summarize planned expenditures for the project or program under the award. It includes:

a. All Federal funding made available to the recipient under the award to use for project or program purposes.

b. Any cost sharing or matching that the recipient is required to provide under the award.

c. Any options that have been exercised but not any options that have not yet been exercised.

9. Assistance.

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

10. Award.

Award means a grant or cooperative agreement.

11. Award administration office.

Award administration office means a DoD Component office that performs assigned post-award functions related to the administration of grants and cooperative agreements.

12. Basic research.

Basic research means efforts directed toward increasing knowledge and understanding in science and engineering, rather than the practical application of that knowledge and understanding. It typically is funded within Basic Research (Budget Activity 1) programs within DoD's Research, Development, Test and Evaluation (RDT&E) appropriations. Basic research includes:

a. Research-related, science and engineering education and training, including graduate fellowships and research traineeships; and

b. Research instrumentation and other activities designed to enhance the infrastructure for science and engineering research.

13. Capital asset.

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

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

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

14. Claim.

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

15. Cognizant agency for indirect costs.

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

a. For an institution of higher education, nonprofit organization, State, local government, or Indian tribe, is assigned as described in the appendices to OMB guidance in 2 CFR part 200. See 2 CFR 200.19 for specific citations to those appendices.

b. For a for-profit entity, normally will be the agency with the largest dollar amount of pertinent business, as described in the Federal Acquisition Regulation at 48 CFR 42.003.

16. Contract.

Contract means a procurement transaction, as that term is defined in paragraph D.59 of this part. A contract is a transaction into which a recipient or subrecipient enters. It is therefore distinct from the term "procurement contract," which is a transaction that a DoD Component awards at the prime tier.

17. Contractor.

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

18. Cooperative agreement.

Cooperative agreement means a legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of "grant" in this part), except that substantial involvement is expected between the DoD and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include "cooperative research and development agreements" as defined in 15 U.S.C. 3710a.

19. Co-principal investigator.

Co-principal investigator means any one of a group of individuals whom an organization that is carrying out a research project with DoD support designates as sharing the authority and responsibility for leading and directing the research intellectually and logistically, other than the one among the group identified as the primary contact for scientific, technical, and related budgetary matters (see the definition of "principal investigator").

20. Cost allocation plan.

Cost allocation plan means either a:

a. Central service cost allocation plan, as defined at 2 CFR 200.9 and described in Appendix V to 2 CFR part 200; or

b. Public assistance cost allocation plan as described in Appendix VI to 2 CFR part 200.

21. Cost sharing or matching.

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

22. Cost-type contract.

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

23. Cost-type subaward.

Cost-type subaward means a subaward that:

a. A recipient or subrecipient makes to another entity at the next lower tier; and

b. Provides for the other entity to be paid on the basis of the actual, allowable costs it incurs in carrying out the subaward.

24. Debarment.

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

a. Nonprocurement instruments, which are in OMB guidance at 2 CFR part 180, as implemented by the DoD at 2 CFR part 1125; or

b. Procurement contracts, which are in the Federal Acquisition Regulation at 48 CFR Subpart 9.4.

25. Debt.

Debt means any amount of money or any property owed to a Federal agency by any person, organization, or entity except another United States Federal agency. Debts include any amounts due from insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, or overpayments, penalties, damages, interest, fines and forfeitures, and all other claims and similar sources. For the purposes of this award, amounts due a non-appropriated fund instrumentality are not debts owed the United States.

26. Delinquent debt.

Delinquent debt means a debt:

a. That the debtor fails to pay by the date specified in the initial written notice from the agency owed the debt, normally within 30 calendar days, unless the debtor makes satisfactory payment arrangements with the agency by that date; and

b. With respect to which the debtor has elected not to exercise any available appeals or has exhausted all agency appeal processes.

27. Development.

Development means, when used in the context of "research and development," the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of potential new products, processes, or services to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing. It typically is funded within programs in Budget Activities 4 through 7 of DoD's Research, Development, Test and Evaluation (RDT&E) appropriations.

28. Direct costs.

Direct costs means any costs that are identified specifically with a particular final cost objective, such as an award, in accordance with the applicable cost principles.

29. DoD Components.

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

30. Equipment.

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

a. $5,000; or

b. The recipient's or subrecipient's capitalization threshold for financial statement purposes.

31. Exempt property.

a. *Exempt property* means tangible personal property acquired in whole or in part with Federal funds under a DoD Component's awards, for which the DoD Component:

(1) Has statutory authority to vest title in recipients (or allow for vesting in subrecipients) without further obligation to the Federal Government or subject to conditions the DoD Component considers appropriate; and

(2) Elects to use that authority to do so.

b. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306) for tangible personal property acquired under an award to conduct basic or applied research by a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research.

32. Expenditures.

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

a. The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

b. For reports prepared on a cash basis, expenditures are the sum of:

(1) Cash disbursements for direct charges for property and services;

(2) The amount of indirect expense charged;

(3) The value of third-party in-kind contributions applied; and

(4) The amount of cash advance payments and payments made to subrecipients.

c. For reports prepared on an accrual basis, expenditures are the sum of:

(1) Cash disbursements for direct charges for property and services;

(2) The amount of indirect expense incurred;

(3) The value of third-party in-kind contributions applied; and

(4) The net increase or decrease in the amounts owed by the recipient or subrecipient for:

(a) Goods and other property received;

(b) Services performed by employees, contractors, subrecipients, and other payees; and

(c) Programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

33. Federal interest.

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

a. Federal share of total project costs; and

b. Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

34. Federal share.

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

35. Fixed-amount subaward.

Fixed-amount subaward means a subaward:

a. That a recipient or subrecipient makes to another entity at the next lower tier; and

b. Under which the total amount to be paid to the other entity is based on performance and results, and not on the actual, allowable costs that entity incurs.

36. Foreign organization.

Foreign organization means an entity that is:

a. A public or private organization that is located in a country other than the United States and its territories and is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

b. A private nongovernmental organization located in a country other than the United States and its territories that solicits and receives cash contributions from the general public;

c. A charitable organization located in a country other than the United States and its territories that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entity organized primarily for religious purposes; or

d. An organization located in a country other than the United States and its territories that is not recognized as a foreign public entity.

37. Foreign public entity.

Foreign public entity means:

a. A foreign government or foreign governmental entity;

b. A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);

c. An entity owned (in whole or in part) or controlled by a foreign government; or

d. Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

38. Grant.

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

a. Of which the principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the DoD's direct benefit or use.

b. In which substantial involvement is not expected between DoD and the recipient when carrying out the activity contemplated by the award.

39. Grants officer.

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

40. Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b (e)). See the annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

41. Indirect costs (also known as "Facilities and Administration," or F&A, costs).

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

42. Institution of higher education.

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

43. Intangible property.

Intangible property means*:*

a. Property having no physical existence, such as trademarks, copyrights, patents, and patent applications; and

b. Property such as loans, notes and other debt instruments, lease agreements, stock, and other instruments of property ownership, whether the property is considered tangible or intangible.

44. Local government.

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

a. County;

b. Borough;

c. Municipality;

d. City;

e. Town;

f. Township;

g. Parish;

h. Local public authority, including any public housing agency under the United States Housing Act of 1937;

i. Special district;

j. School district;

k. Intrastate district;

l. Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

m. Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

45. Management decision.

Management decision means a written decision issued to an audited entity by a DoD Component, another Federal agency that has audit or indirect cost cognizance or oversight responsibilities for the audited entity, or a recipient or subrecipient from which the audited entity received an award or subaward. The DoD Component, cognizant or oversight agency, recipient, or subrecipient issues the management decision to specify the corrective actions that are necessary after evaluating the audit findings and the audited entity's corrective action plan.

46. Nonprocurement instrument.

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

47. Nonprofit organization.

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

a. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

b. Is not organized primarily for profit; and

c. Uses net proceeds to maintain, improve, or expand the operations of the organization.

48. Obligation.

Obligation means:

a. When used in conjunction with a DoD Component's award, a legally binding agreement that will result in outlays, either immediately or in the future. Examples of actions through which a DoD Component incurs an obligation include the grants officer's signature of an award (or modification of such awards) authorizing the recipient to use funds under the award.

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

49. Office of Management and Budget.

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

50. Outlays.

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

51. Participant support costs.

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

52. Period of performance.

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

53. Personal property.

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

54. Principal investigator.

Principal investigator means either:

a. The single individual whom an organization that is carrying out a research project with DoD support designates as having an appropriate level of authority and responsibility for leading and directing the research intellectually and logistically, which includes the proper conduct of the research, the appropriate use of funds, and compliance with administrative requirements such as the submission of performance reports to DoD; or

b. If the organization designates more than one individual as sharing that authority and responsibility, the individual within that group identified by the organization as the one with whom the DoD Component's program manager generally should communicate as the primary

contact for scientific, technical, and related budgetary matters concerning the project (others within the group are "co-principal investigators," as defined in this part).

55. Procurement contract.

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

56. Procurement transaction.

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

57. Program income.

Program income means gross income earned by a recipient or subrecipient that is directly generated by a supported activity or earned as a result of an award or subaward (during the period of performance unless the award or subaward specifies continuing requirements concerning disposition of program income after the end of that period).

a. Program income includes, but is not limited to, income from:

(1) Fees for services performed;

(2) The use or rental of real or personal property for which the recipient or subrecipient is accountable under the award or subaward (whether acquired under the award or subaward, or other Federal awards from which accountability for the property was transferred);

(3) The sale of commodities or items fabricated under the award or subaward;

(4) License fees and royalties on patents and copyrights; and

(5) Payments of principal and interest on loans made with award or subaward funds.

b. Program income does not include:

(1) Interest earned on advances of Federal funds;

(2) Proceeds from the sale of real property or equipment under the award; or

(3) Unless otherwise specified in Federal statute or regulation, or the terms and conditions of the award or subaward:

(a) Rebates, credits, discounts, and interest earned on any of them; or

(b) Governmental revenues, taxes, special assessments, levies, fines, and similar revenues raised by the recipient or subrecipient.

58. Project costs.

Project costs means the total of:

a. Allowable costs incurred under an award by the recipient, including costs of any subawards and contracts under the award; and

b. Cost sharing or matching contributions that are required under the award, which includes voluntary committed (but not voluntary uncommitted) contributions and the value of any third-party in-kind contributions.

59. Property.

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

60. Real property.

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

61. Recipient.

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

62. Research.

Research means basic, applied, and advanced research.

63. Simplified acquisition threshold.

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

64. State.

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

65. Subaward.

Subaward means a legal instrument by which a recipient or subrecipient at any tier, transfers--for performance by an entity at the next lower tier--a portion of the substantive program for which the DoD Component made an award.

66. Subrecipient.

Subrecipient means an entity that receives a subaward.

67. Supplies.

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

68. Suspension.

Suspension means either:

a. When used in the context of a specific award or subaward, the temporary withdrawal of authority for the recipient or subrecipient to obligate funds under the award or subaward, pending its taking corrective action or a decision to terminate the award or subaward.

b. When used in the context of an entity, an action by a DoD Component's suspending official under 2 CFR part 1125, DoD's regulation implementing OMB guidance on nonprocurement debarment and suspension in 2 CFR part 180, to immediately exclude the entity from participating in covered Federal Government transactions, pending completion of an investigation and any legal or debarment proceedings that ensue.

69. Termination.

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

70. Third-party in-kind contribution.

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

a. A non-Federal third party contributes, without charge, either to a recipient or subrecipient at any tier under a DoD Component's award; and

b. Is identified, and included in the approved budget of the DoD Component's award, as a contribution being used toward meeting the award's cost sharing or matching requirement (which includes voluntary committed, but not voluntary uncommitted, contributions).

71. Total value.

Total value of a DoD grant, cooperative agreement, or TIA means the total amount of costs that are currently expected to be charged to the award over its life, which includes amounts for:

a. The Federal share and any non-Federal cost sharing or matching required under the award; and

b. Any options, even if not yet exercised, for which the costs have been established in the award.

72. Unique entity identifier.

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

73. Unobligated balance.

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

74. Voluntary (committed or uncommitted) cost sharing.

a. *Voluntary cost sharing* means cost sharing that an entity pledges voluntarily in its application or proposal (i.e., not due to a stated cost-sharing requirement in the notice of funding opportunity to which the entity's application or proposal responds).

b. *Voluntary committed* cost sharing means voluntary cost sharing that a DoD Component accepts through inclusion in the approved budget for the project or program and as a binding requirement of the terms and conditions of the award made to the entity in response to its application or proposal.

c. *Voluntary uncommitted* cost sharing means voluntary cost sharing that does not meet the criterion in paragraph b of this definition.

75. Working capital advance.

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

Part 2: Financial and Program Management

(articles from this part are designated with "FMS" in the article title)

FMS Article I. Financial management system standards. (SEPTEMBER 2017)

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

1. Applicable State laws; and

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

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

1. Inclusion, in your accounts, of the following information about each DoD grant or cooperative agreement that you receive:

   a. That you received the award from the Department of Defense;

   b. The number and title listed in the Catalog of Federal Domestic Assistance for the DoD program under which the award was made;

   c. The DoD award number; and

   d. The year (your fiscal year) in which you received the award.

2. Accurate, current, and complete disclosure of the financial results of the award needed to comply with financial and programmatic reporting requirements that are specified in REP Articles I and II of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements. If you are asked at any time under this award to report financial information on an accrual basis, you:

   a. Need not establish an accrual accounting system if you maintain your records on a different basis; and

   b. May develop the accrual data based on an analysis of the data you have on hand.

3. Records that identify adequately the sources of funds for all activities funded by DoD awards, including any required cost sharing or matching, and the application of those funds. This includes funding authorizations; your obligations and expenditures of the funds; unobligated balances; property and other assets under the award; program income; and interest.

4. Effective control over, and accountability for, all funds, property, and other assets under this award. You must adequately safeguard all assets and assure they are used solely for authorized purposes (see Section C of this article for additional requirements concerning internal controls).

5. Comparison of expenditures under this award for project or program purposes with amounts in the approved budget for those purposes.

6. **RESERVED – Not Applicable.**

7. Written procedures:

   a. To implement requirements specified in FMS Article II, "Payments;"

   b. For determining the allowability of costs, which for this award are determined in accordance with FMS Article III, "Allowable costs, period of availability of funds, and fee or profit," of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award that relate to allowability of costs.

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

FMS Article II. Payments. (SEPTEMBER 2017)

Section A. Awards to States. If the award-specific terms and conditions of this award do not identify it as an award subject to Subpart A of 31 CFR part 205 (Department of the Treasury regulations implementing the Cash Management Improvement Act), then this award is subject to Subpart B of that part. Consistent with Subpart B of 31 CFR part 205:

1. Payment method, timing, and amounts. You must:

   a. Minimize the time between your receipt of a payment under this award and your disbursement of those funds for project or program purposes.

   b. Limit the amount of each advance payment request to the minimum amount you need to meet your actual, immediate cash requirements for carrying out the project or program.

   c. Submit each advance payment request approximately 10 days before you anticipate disbursing the requested amount for project or program purposes, so that your receipt of the funds will be as

close in time as is administratively feasible to your actual cash outlay for direct project or program costs and the proportionate share of any allowable indirect costs.

2. Interest. Unlike awards subject to Subpart A of 31 CFR part 205, neither you nor we will incur any interest liability due to a difference in timing between your receipt of payments under this award and your disbursement of those funds for project or program purposes.

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

1. **Payment method**. Unless the award-specific terms and conditions of this award provide otherwise, you are authorized to request advance payments under this award. That authorization is contingent on your continuing to maintain, or demonstrating the willingness to maintain, written procedures that minimize the time elapsing between your receipt of each payment and your disbursement of the funds for project or program purposes. Note that you are not required to request advance payments and may instead, at your option, request reimbursements of funds after you disburse them for project or program purposes.

2. **Amounts requested**. You must:

a. Limit the amount of any advance payment request to the minimum amount needed to meet your actual, immediate cash requirements for carrying out the purpose of the approved project or program, including direct project costs and a proportionate share of any allowable indirect costs.

b. Exclude from any payment request amounts you are withholding from payments to contractors to assure satisfactory completion of the work. You may request those amounts when you make the payments to the contractors or to escrow accounts established to assure satisfactory completion of the work.

c. Exclude from any payment request amounts from any of the following sources that are available to you for project or program purposes under this award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for project or program purposes before requesting additional funds from us.

3. **Timing of requests**. For any advance payment you request, you should submit the request approximately 10 days before you anticipate disbursing the requested amount for project or program purposes. With time for agency processing of the request, that should result in payment as close as is administratively feasible to your actual disbursements for project or program purposes.

4. **Frequency of requests**. You may request payments as often as you wish unless you have been granted a waiver from requirements to receive payments by electronic funds transfer (EFT). If you have been granted a waiver from EFT requirements, the award-specific terms and conditions of this award specify the frequency with which you may submit payment requests.

5. **Withholding of payments**. We will withhold payments for allowable costs under the award at any time during the period of performance only if one or more of the following applies:

a. We suspend either payments or the award, or disallow otherwise allowable costs, as a remedy under OAR Article III due to your failure to comply with Federal statutes, regulations, or the terms and conditions of this award. If we suspend payments and not the award, we will release withheld payments upon your subsequent compliance. If we suspend the award, then amounts of payments are subject to adjustment in accordance with the terms and conditions of OAR Article III.

b. You are delinquent in a debt to the United States, in which case we may, after reasonable notice, inform you that we will not make any further payments for costs you incurred after a specified date until you correct the conditions or liquidate the indebtedness to the Federal Government.

c. The award-specific terms and conditions include additional requirements that provide for withholding of payments based on conditions identified during our pre-award risk evaluation, in which case you should have been notified about the nature of those conditions and the actions needed to remove the additional requirements.

6. **Depository requirements**.

a. There are no eligibility requirements for depositories you use for funds you receive under this award.

b. You are not required to deposit funds you receive under this award in a depository account separate from accounts in which you deposit other funds. However, FMS Article I requires that you be able to account for the receipt, obligation, and expenditure of all funds under this award.

c. You must deposit any advance payments of funds you receive under this award in insured accounts whenever possible and, unless any of the following apply, you must deposit them in interest-bearing accounts:

i. You receive a total of less than $120,000 per year under Federal grants and cooperative agreements.

ii. You would not expect the best reasonably available interest-bearing account to earn interest in excess of $500 per year on your cash balances of advance payments under Federal grants and cooperative agreements.

iii. The best reasonably available interest-bearing account would require you to maintain an average or minimum balance higher than it would be feasible for you to do within your expected Federal and non-Federal cash balances.

iv. A foreign government or banking system precludes your use of interest-bearing accounts.

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

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

1. **Electronic funds transfer**. Unless the award-specific terms and conditions of this award provide otherwise, you will receive payments under this award by electronic funds transfer.

2. **RESERVED – Language in DoD Component addendum to these terms and conditions.**

FMS Article III. Allowable costs, period of availability of funds, and fee or profit. (SEPTEMBER 2017)

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

1. **General case**. If you, your subrecipient, or your contractor is:

a. **An institution of higher education**, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendix III to that part.

b. **A hospital**, the allowability of costs must be determined in accordance with provisions of appendix IX to 2 CFR part 200, which currently specifies the cost principles in appendix IX to 45 CFR part 75 as the applicable cost principles.

c. **A nonprofit organization other than a hospital or institution of higher education**, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices IV and VIII to that part. In accordance with guidance in 2 CFR 200.401(c), a nonprofit organization

listed in appendix VIII to 2 CFR part 200 is subject to the cost principles for for-profit entities specified in paragraph 1.e of this section.

d. **A State, local government, or Indian tribe**, the allowability of costs must be determined in accordance with applicable provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices V through VII to that part.

e. **A for-profit entity (other than a hospital) or a nonprofit organization listed in appendix VIII to 2 CFR part 200:**

i. The allowability of costs must be determined in accordance with:

(A) The cost principles for commercial organizations in the Federal Acquisition Regulation (FAR) at Subpart 31.2 of 48 CFR part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement (DFARS) at Subpart 231.2 of 48 CFR part 231; and

(B) For a for-profit entity, the additional provisions on allowability of audit costs, in 32 CFR 34.16(f).

ii. The indirect cost rate to use in that determination is:

(A) The for-profit entity's federally negotiated indirect cost rate if it has one.

(B) Subject to negotiation between you and the for-profit entity if it does not have a federally negotiated indirect cost rate. The rate that you negotiate may provide for reimbursement only of costs that are allowable in accordance with the cost principles specified in paragraph A.1.e.i of this article.

2. **Exception.** You may use your own cost principles in determining the allowability of a contractor's costs charged to a cost-type procurement transaction under this award—or in pricing for a fixed-price contract based on estimated costs—as long as your cost principles comply with the Federal cost principles that paragraph A.1 of this section identifies as applicable to the contractor.

Section B. Clarifications concerning charges for professional journal publications.
RESERVED – Not Applicable.

Section C. Period of availability of funds. You may charge to this award only:

1. Allowable costs incurred during the period of performance specified in this award, including any subsequent amendments to it;

2. Any pre-award costs that you are authorized (by either the terms and conditions of FMS Article IV or the DoD awarding official) to incur prior to the start of the period of performance, at your own risk, for purposes of the project or program under this award; and

3. Costs of publishing in professional journals incurred after the period of performance, as permitted under 2 CFR 200.461(b)(3), if:

a. We receive the request for payment for such costs no later than the date on which REP Article II requires you to submit the final financial report to us (or, if we grant your request for an extension of the due date, that later date on which the report is due); and

b. Your reported expenditures on the final financial report include the amount you disbursed for those costs.

Section D. Fee or profit.

1. You may not receive any fee or profit under this award.

2. You may not use funds available to you under this award to pay fee or profit for an entity of any type to which you make a subaward.

3. You may pay fee or profit to an entity with which you enter into a procurement transaction to purchase goods or general support services for your use in carrying out the project or program under the award.

FMS Article IV. Revision of budget and program plans. (SEPTEMBER 2017)

Section A. Approved budget. The approved budget of this award:

1. Is the most recent version of the budget that you submitted and we approved (either at the time of the initial award or a more recent amendment), to summarize planned expenditures for the project or program.

2. Includes all Federal funding that we make available to you under this award to use for project or program purposes and any cost sharing or matching that you are required to provide under this award for those same purposes.

Section B. Revisions requiring prior approval.

1. **Non-construction activities**. You must request prior approval from us for any of the following program or budget revisions in non-construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. A change in a key person identified in the award cover pages.

c. The approved principal investigator's or project director's disengagement from the project for more than three months, or a 25 percent reduction in his or her time devoted to the project.

d. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

   i. The requirement for prior approval of capital expenditures for equipment that is to be used primarily in carrying out the project or program supported by the award is waived for equipment with a unit cost of $25,000 or less.

e. **RESERVED – Only applicable if provided in DoD Component addendum to these terms and conditions**.

f. A subaward to another entity under which it will perform a portion of the substantive project or program under the award, if it was not included in the approved budget. This does not apply to your contracts for acquisition of supplies, equipment, or general support services you need to carry out the program.

g. Any change in the cost sharing or matching you provide under the award, as included in the approved budget, for which FMS Article VI requires prior approval.

h. **RESERVED – Not Applicable**.

i. The need arises for additional Federal funds to complete the project or program.

2. **Construction activities**. You must request prior approval from us for any of the following program or budget revisions in construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. The need arises for additional Federal funds to complete the project.

c. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

3. **Funding transfers between construction and non-construction activities**. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions**.

Section C. Pre-award costs, carry forward of unobligated balances, and one-time no-cost extensions. You are authorized, without requesting prior approval from us, to:

1. Charge to this award after you receive it pre-award costs that you incurred, at your own risk, up to 90 calendar days before the start date of the period of performance, as long as they are costs that would be allowable charges to the project or program under the terms and conditions of FMS Article III if they were incurred during the period of performance.

2. Carry forward an unobligated balance to a subsequent period of performance under this award.

3. **RESERVED – Only applicable if provided in DoD Component addendum to these terms and conditions.**

Section D. Procedures.

1. We will review each request you submit for prior approval for a budget or program change and, within 30 calendar days of our receipt of your request, we will respond to you in writing to either:

a. Notify you whether your request is approved; or

b. Inform you that we still are considering the request, in which case we will let you know when you may expect our decision.

2. **RESERVED - Language in DoD Component addendum to these terms and conditions**.

FMS Article V. Non-Federal audits. (JULY 2018)

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

Section B. Requirements for for-profit entities. Any for-profit entity that receives a subaward from you under this award is subject to the audit requirements specified in 32 CFR 34.16. In accordance with the Class Deviation for the Single Audit Act for For-Profit Assistance Awards, dated 29 June 2018, the audit requirement threshold has been increased to $750,000. Your subaward terms and conditions will require the subrecipient to provide the reports to you if it is willing to do so, so that you can resolve audit findings that pertain specifically to your subaward (e. g., disallowance of costs). If the for-profit entity is unwilling to agree to provide the auditor's report to you, contact the grants officer for this award to discuss an alternative approach for carrying out audit oversight of the subaward. If the grants officer does not provide an alternative approach within 30 days of receiving your request, you may determine an approach to ensure the for-profit subrecipient's compliance with the subaward terms and conditions, as described in OMB guidance at 2 CFR 200.501(h).

FMS Article VI. Cost sharing or matching. (SEPTEMBER 2017)

Section A. Required cost sharing or matching.

1. If any cost sharing or matching is required under this award, the total amount or percentage required is shown in the award cover pages and included in the approved budget. That cost sharing or matching includes all:

a. Cash and third-party in-kind contributions.

b. Contributions to the project or program made either by or through (if made by a third party) you and any subrecipients.

2. You must obtain our prior approval if you wish to:

a. Change the amount or percentage of cost sharing or matching required under this award.

b. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions**.

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

1. You (or the subrecipient, if it is a subrecipient contribution) maintain records from which one may verify that the contribution was made to the project or program and, if it is a third-party in-kind contribution, its value.

2. The contribution is not counted as cost sharing or matching for any other Federal award.

3. The contribution is:

a. Allowable under the cost principles applicable to you (or the subrecipient, if it is a subrecipient contribution) under FMS Article III of these terms and conditions; and

b. Allocable to the project or program and reasonable.

4. The Government does not pay for the contribution through another Federal award, unless that award is under a program that has a Federal statute authorizing application of that program's Federal funds to other Federal programs' cost sharing or matching requirements.

5. The value of the contribution is not reimbursed by the Federal share of this award as either a direct or indirect cost.

6. The contribution conforms to the other terms and conditions of this award, including the award-specific terms and conditions.

Section C. Allowability of unrecovered indirect costs as cost sharing or matching. You may use your own or a subrecipient's unrecovered indirect costs as cost sharing or matching under this award. Unrecovered indirect costs means the difference between the amount of indirect costs charged to the award and the amount that you and any subrecipients could have charged in accordance with your respective approved indirect cost rates, whether those rates are negotiated or de minimis (as described in 2 CFR 200.414(f)).

Section D. Allowability of program income as cost sharing or matching. If FMS Article VII of these general terms and conditions or the award-specific terms and conditions of this award specify that you are to use some or all of the program income you earn to meet cost-sharing or matching requirements under the award, then program income is allowable as cost sharing or matching to the extent specified in those award terms and conditions.

Section E. Valuation of services or property that you or subrecipients contribute or donate. You must establish values for services or property contributed or donated toward cost sharing or matching by you or subrecipients in accordance with the provisions of this section. These contributions or donations are distinct from third-party contributions or donations to you or subrecipients, which are addressed in Section F of this article.

1. **Usual valuation of services or property that you or subrecipients contribute or donate**. Values established for contributions of services or property by you or a subrecipient must be the amounts allowable in accordance with the cost principles applicable to the entity making the contribution (i.e., you or the subrecipient), as identified in FMS Article III. For property, that generally is depreciation.

2. **Needed approvals for, and valuation of, property that you or subrecipients donate**.

   a. **Types of property that may be donated**.

      i. **Buildings or land**. If the purposes of this award include construction, facilities acquisition, or long-term use of real property, you may donate buildings or land to the project if you obtain our prior approval. Donation of property to the project, as described in PROP Article I, means counting the value of the property toward cost sharing or matching, rather than charging depreciation.

      ii. **Other capital assets**. If you obtain our prior approval, you may donate to the project other capital assets identified in 2 CFR 200.439(b)(1) through (3).

b. **Usual valuation of donated property**. Unless you obtain our approval as described in paragraph E.2.c of this article, the value for the donated property must be the lesser of:

   i. The value of the remaining life of the property recorded in your accounting records at the time of donation, or

   ii. The current fair market value.

c. **Approval needed for alternative valuation of property**. If you obtain our approval as reflected in the approved budget, you may count as cost sharing or matching the current fair market value of the donated property even if it exceeds the value of the remaining life of the property recorded in your accounting records at the time of donation.

d. **Federal interest in donated property**. Donating buildings, land, or other property to the project, rather than charging depreciation, results in a Federal interest in the property in accordance with PROP Article I of these terms and conditions.

Section F. Valuation of third-party in-kind contributions.

1. **General**. If a third party furnishes goods or services to you or subrecipients that are to be counted toward cost sharing or matching under this award, the entity to which the third party furnishes the goods or services (i.e., you or a subrecipient) must document the fair market value of those in-kind contributions and, to the extent feasible, support those values using the same methods the entity uses internally.

2. **Valuation of third-party services**. You must establish values for third-party volunteer services and services of third parties' employees furnished to you or subrecipients as follows:

a. **Volunteer services.** Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor must be valued in accordance with 2 CFR 200.306(e).

b. **Services of third parties' employees**. When a third-party organization furnishes the services of its employees to you or a subrecipient, values for the contributions must be established in accordance with 2 CFR 200.306(f).

c. **Additional requirement for donations to nonprofit organizations**. For volunteer services or services of third parties' employees furnished to a nonprofit organization:

   i. OMB guidance in 2 CFR 200.434(e) also applies and may require the nonprofit organization to allocate a proportionate share of its applicable indirect costs to the donated services.

   ii. The indirect costs that the nonprofit organization allocates to the donated services in that case must be considered project costs and may be either reimbursed under the award or counted toward required cost sharing or matching, but not both.

3. **Valuation of third-party property**. You must establish values for third-party property furnished to you or subrecipients as follows:

a. **Supplies donated by third parties**. When a third-party organization donates supplies (e.g., office, laboratory, workshop, or classroom supplies), the value that may be counted toward cost sharing or matching may not exceed the fair market value of the supplies at the time of donation.

b. **Equipment, buildings, or land donated by third parties**.

i. The value of third-party donations of equipment, buildings, or land that may be counted toward cost sharing or matching when the third party transferred title to you or a subrecipient depends on the purpose of the award in accordance with the following:

(A) If one of the purposes of the award is to assist you or the subrecipient in the acquisition of equipment, buildings, or land, you may count the aggregate fair market value of the donated property toward cost sharing or matching.

(B) If the award's purposes instead include only the support of activities that require the use of equipment, buildings, or land, you may only charge depreciation unless you obtain our prior approval to count as cost sharing or matching the fair market value of equipment or other capital assets and fair rental charges for land.

ii. The values of the donated property must be determined in accordance with the usual accounting policies of the entity to which the third party transferred title to the property, with the qualifications specified in 2 CFR 200.306(i)(1) and (2) for donated land and buildings and donated equipment, respectively.

c. **Use of space donated by third parties**. If a third party makes space available for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed the fair rental value of comparable space as established by an independent appraisal, as described in 2 CFR 200.306(i)(3).

d. **Equipment loaned by third parties**. If a third party loans equipment for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed its fair rental value.

FMS Article VII. Program income. (SEPTEMBER 2017)

Section A. Definition. The term "program income" as used in this award:

1. Is gross income that:

a. You earn that is directly generated by a supported activity or earned as a result of this award; or

b. A subrecipient earns as a result of a subaward you make under this award.

2. Includes, but is not limited to, income earned under this award from:

a. Fees for services performed;

b. The use or rental of real or personal property acquired under any Federal award and currently administered under this award;

c. The sale of commodities or items fabricated under this award; and

d. License fees and royalties on patents and copyrights;

e. Payments of principal and interest on loans made with Federal award funds.

3. Does not include for purposes of this award any:

a. Interest earned on advance payments, disposition of which is addressed in FMS Article II;

b. Proceeds from the sale of real property, equipment or supplies, which is addressed in PROP Articles III and IV;

c. Rebates, credits, discounts, and interest earned on any of them; and

d. Governmental revenues, including any taxes, special assessments, levies, fines and similar revenues you raise.

Section B. Encouragement to earn program income. You are encouraged to earn program income under this award when doing so does not interfere with the project or program the award supports.

Section C. Costs of generating program income. You may deduct costs incidental to the generation of program income from the amount that you use in accordance with Section E of this Article, as long as those costs are not charged to this award (which includes their being counted toward any cost sharing or matching you are required to provide).

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

Section E. Use of program income.

1. You must use any program income that you earn during the period of performance under this award to increase the amount of the award (the sum of the Federal share and any cost sharing or matching you are required to provide), thereby increasing the amount budgeted for the project or program. The program income must be used for the purposes and under the terms and conditions of the award.

2. Your use of the additional funding is subject to the terms and conditions of this award, including:

   a. FMS Article II concerning your use of balances of program income before you request additional funds from us; and

   b. FMS Article III concerning allowability of costs for which the funds may be used.

3. You must report on each Federal Financial Report (SF-425) that you submit in accordance with REP Article II the program income that you earn and any that you use during the reporting period covered by that SF-425.

Section F. Duration of accountability for program income.

The requirements concerning disposition of program income in Section E of this Article apply only to program income you or your subrecipients earn during the period of performance. There are no requirements under this award applicable to program income you or your subrecipients earn after the end of the period of performance.

Part 3: Property Administration

(articles from this part are designated with "PROP" in the article title)

PROP Article I. Title to property. (SEPTEMBER 2017)

Section A. Title to property acquired under this award.

1. **General**. Other than any property identified in paragraph A.2 of this section as exempt property:

   a. Title to real property, equipment, and supplies that you acquire (whether by purchase, construction or fabrication, development, or otherwise) and charge as direct project costs under this award vests in you, the recipient. Title to intangible property that you acquire (other than by developing or producing it) under this award also vests in you.

   b. That title is a conditional title, subject to the terms and conditions in PROP Articles II-IV, Section D of PROP Article VI, and REP Article III of this award.

   c. There is a Federal interest in the property, other than intangible property that you develop or produce under the award. For real property, equipment, and intangible property, we retain this Federal interest until final disposition of the property under PROP Article III (for real property), PROP Article IV (for equipment), or Section D of PROP Article VI (for intangible property that is acquired, other than by developing or producing it), a period that in some cases may extend beyond closeout of this award.

2. **Exempt property.** For an award to conduct basic or applied research with a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research, title to all equipment and supplies acquired under the award and charged as direct costs to the project or program shall vest with you upon acquisition subject only to the following three conditions:

   a. You use the equipment for the authorized purposes of the project or program until the property is no longer needed for those purposes.

   b. You manage the equipment as provided in PROP Article II of these general terms and conditions. This includes maintaining property records that include the percentage of Federal participation in the costs of the project or program under which you acquired the exempt property, so that you may deduct the Federal share if you wish to use the property in future contributions for cost sharing or matching purposes on Federal awards.

c. The DoD Component reserves the right to transfer title to the equipment to another recipient entity if the Principal Investigator relocates his or her research program to that entity.

Section B. Property trust relationship.

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

2. **Notices of record**. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions.**

Section C. Federally owned property. Title to any federally owned property that we provide to you under this award (or such property for which accountability is transferred to this award from another Federal award) remains with the Government.

Section D. Federal interest in donated real property or equipment.

If real property or equipment is acquired under this award through your donation of the property to the project or program (i.e., counting the value of the remaining life of the property recorded in your accounting records or the fair market value as permitted under FMS Article VI of this award as part of your share of project costs to meet any cost sharing or matching requirements, rather than charging depreciation):

1. The Government acquires a Federal interest in the real property or equipment that is donated for use in the project or program.

2. The real property or equipment is subject to Section B of this article and the terms and conditions of PROP Articles II-IV and REP Article III that are applicable to property acquired under the award.

3. The Federal interest in the real property or equipment must be addressed at the time of property disposition.

Section E. Federal interest in property improved under the award.

1. The Government has an interest in improvements (as distinct from ordinary repairs and maintenance) you make to an item of real property or equipment if you charge the costs of the improvements as direct costs to this award.

2. We thereby acquire an interest in the property if the Government did not previously have one. If the Government already had an interest in the property, the value of that Federal interest in the property increases by the amount of the Federal interest in the improvements.

3. The property is subject to Section B of this article and the terms and conditions of PROP Articles II-IV and REP Article III that are applicable to real property or equipment acquired under the award.

4. The Federal interest must be addressed at the time of property disposition.

PROP Article II. Property management system. (SEPTEMBER 2017)

Section A. Insurance coverage for real property and equipment. You must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved under this award as you provide for real property and equipment that you own.

Section B. Other management system standards for a State.

1. **Equipment.** Your property management system for equipment acquired or improved in whole or in part under this award must be in accordance with your State laws and procedures.

2. **Federally owned property.** You may use your own property management system for any federally owned property for which you are accountable, as long as it meets the following minimum standards:

a. **Records.** Your records must include for each item of federally owned property:

   i. A description of the item.

   ii. The location of the item.

   iii. The serial or other identification number.

   iv. Which Federal agency holds title.

   v. The date you received the item.

   vi. Any data on the ultimate disposition of the item, such as the date of disposal.

   vii. The Federal award identification number of the award under which you are accountable for the item.

b. **Inventory.** You must take a physical inventory of federally owned property at least biennially and reconcile the results with your records.

c. **Control system.** You must:

   i. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of federally owned property.

ii. Investigate any loss, damage, or theft of federally owned property and promptly notify the award administration office.

d. **Maintenance.** You must maintain the property in good condition.

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

1. **Records**. You must maintain records that include for each item of equipment or federally owned property:

a. A description of the item.

b. The serial or other identification number.

c. Who holds title (e.g., you or the Government and, if the latter, which Federal agency).

d. The source of funding for the equipment, including the award number, or the source of the federally owned property, including the award number of the award under which you are accountable for the property.

e. The acquisition date and cost of the equipment (or improvement to the equipment) or the date you received the federally owned property.

f. The location, use, and condition of the equipment or federally owned property.

g. Information from which one can calculate the amount of the Federal interest in the acquisition or improvement of the item (this amount is zero after you compensate us for the Federal interest in the item or improvement).

h. Any data on the ultimate disposition of the item including the date of disposal and sale price.

2. **Labelling**. You must ensure that property owned by the Federal Government is labeled to identify it as federally owned property.

3. **Inventory**. You must take a physical inventory of equipment in which there is a Federal interest and reconcile the results with your records at least once every 2 years.

4. **Control system**. You must:

a. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of equipment and federally owned property.

b. Investigate any loss, damage, or theft and notify the award administration office if it involved equipment in which there is a Federal interest under the award or federally owned property.

5. **Maintenance**. You must maintain equipment acquired or improved in whole or in part under the award and federally owned property in good condition.

PROP Article III. Use and disposition of real property. (SEPTEMBER 2017)

Section A. Use of real property.

1. You must use real property acquired or improved under this award for the originally authorized purpose as long as needed for that purpose. During that time, you may not:

a. Dispose of the property except, with the prior approval of the award administration office, to acquire replacement property under this award, in which case you may use the proceeds from the disposition as an offset to the cost of the replacement property; or

b. Encumber the title or other interests in the property without the prior approval of the award administration office.

2. **RESERVED – Not Applicable.**

3. **RESERVED – Not Applicable.**

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

1. Retain title after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of "Federal interest."

2. Sell the property and compensate us for the Federal interest in the property, as described in 2 CFR 200.311(c)(2).

3. Transfer title to us or a third party we designate, as described in 2 CFR 200.311(c)(3).

PROP Article IV. Use and disposition of equipment and supplies. (SEPTEMBER 2017)

Section A. Property subject to this article. This article specifies requirements for use and disposition of equipment and supplies. If a provision of PROP Article I of this award identifies any type of equipment or supplies as exempt property, requirements of this Article apply to that exempt property only to the extent specified in that provision of PROP Article I or an award-specific term or condition. The types of non-exempt property to which this article applies are:

1. Supplies that you acquire either by purchase or by donation as cost sharing or matching under this award; and

2. Equipment for which title is vested conditionally in you. That includes equipment with a conditional title resulting from your having, either under this award or under a previous award from which you transferred accountability for the equipment to this award:

a. Directly charged as project costs, in whole or in part, the acquisition (by purchase, construction or fabrication, or development) of equipment;

b. Donated the equipment to the project or program by counting the value of the remaining life of the property recorded in your accounting records or the fair market value toward any cost sharing or matching requirements under the award, rather than charging depreciation (see PROP Article I, Section D); or

c. Directly charged as project costs improvements to the equipment that meet the criteria given in paragraph E.1 of PROP Article I.

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

1. Must use the equipment for the authorized purposes of the project or program during the period of performance, or until the property is no longer needed for those purposes.

2. May not encumber the property without the prior approval of the award administration office.

3. Must use and dispose of the equipment in accordance with your State laws and procedures.

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

1. Must use the equipment for the authorized purposes of the project or program under this award until the equipment is no longer needed for those purposes, whether or not the project or program continues to be supported by this award.

2. May not encumber the equipment without the prior approval of the award administration office.

3. During the time that the equipment is used for the project or program under this award:

a. You must make the equipment available for use on other projects or programs but only if that use will not interfere with the equipment's use as needed for the project or program supported by this award.

i. First preference must be given to other projects or programs supported or previously supported by DoD Components and second preference to those supported or previously supported by other Federal agencies.

ii. Third preference is for other projects or programs not supported by the Federal Government. You should charge user fees for use of the equipment in those cases, if it is at all practicable.

b. You may use the equipment, if you need to acquire replacement equipment, as a trade-in or sell it (using sales procedures designed to ensure the highest possible return) and use the proceeds from the sale to offset the cost of the replacement equipment.

4. When the equipment is no longer needed for the project or program under this award, you may defer final disposition of the equipment and continue to use it on other federally sponsored projects or programs. You must give first priority to other projects or programs supported by DoD Components.

5. Notwithstanding the encouragement in FMS Article VII to earn program income, you may not use equipment in which there currently is a Federal interest--whether you acquired it under this award or are otherwise accountable for it under this award--to provide services for a fee that is less than private companies charge for equivalent services.

Section D. Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe. You must request disposition instructions from the award administration office when either original or replacement equipment acquired under this award with a current fair market value that exceeds $5,000 is no longer needed for the original project or program or for other federally sponsored activities as described in paragraph C.4 of this article. For each item of equipment with a current fair market value of $5,000 or less, you may retain, sell, or otherwise dispose of the item with no further obligation to the Federal Government.

1. We may issue disposition instructions that:

a. Allow you to retain or sell any item of equipment after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of "Federal interest;" or

b. Require you to transfer title to the equipment to a Federal agency or a third party, in which case you are entitled to compensation from us for the non-Federal interest in the equipment, plus any reasonable shipping or interim storage costs incurred.

2. If we fail to provide disposition instructions for any item of equipment within 120 calendar days of receiving your request, you may retain or sell the equipment but you must compensate us for the amount of the Federal interest in the equipment.

3. If you sell the equipment:

a. You must use sales procedures designed to ensure the highest possible return; and

b. You may deduct and retain for selling and handling expenses either $500 or ten percent of the proceeds, whichever is less.

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

1. Use. As long as we retain a Federal interest in supplies acquired under this award either by purchase or by donation as cost sharing or matching, you may not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services, notwithstanding the encouragement in FMS Article VII to earn program income.

2. Disposition. If you have a residual inventory of unused supplies with aggregate value exceeding $5,000 at the end of the period of performance under this award, and the supplies are not needed for any other Federal award, you may retain the supplies or sell them but must in either case compensate us for the amount of the Federal interest in the supplies. You may deduct and retain for selling and handling expenses either $500 or ten percent of the proceeds, whichever is less.

PROP Article V. Use and disposition of federally owned property. (SEPTEMBER 2017)

Section A. Use. During the time that federally owned property for which you are accountable under this award is used for the project or program supported by the award, you:

1. Also may make the property available for use on other federally supported projects or programs, but only if that use will not interfere with the property's use for the project or program supported by this award. You must give first priority to other projects or programs supported by DoD Components.

2. May use the property for purposes other than federally supported projects or programs only with the prior approval of the awarding office or, if you request approval after the award is made, the award administration office.

Section B. Disposition. You must request disposition instructions from the award administration office for any federally owned property under this award, including any property for which a subrecipient is accountable under a subaward you make under this award, either:

1. At any time during the period of performance if the property is no longer needed for the project or program supported by this award; or

2. At the end of the period of performance.

PROP Article VI. Intangible property. (SEPTEMBER 2017)

Section A. Assertion of copyright.

1. You may assert copyright in any work that is eligible for copyright protection if you acquire ownership of it under this award, either by developing it or otherwise.

2. With respect to any work in which you assert copyright, as described in paragraph A.1 of this section, DoD reserves a royalty-free, nonexclusive and irrevocable license to:

a. Reproduce, publish, or otherwise use the work for Federal Government purposes; and

b. Authorize others to reproduce, publish, or otherwise use the work for Federal Government purposes.

Section B. Inventions developed under the award.

1. **Applicability of Governmentwide clause for research awards**. You must comply with the Governmentwide patent rights award clause at 37 CFR 401.14, with the modifications described in paragraph B.2 of this section. DoD adopts that Governmentwide clause for the following entities, thereby broadening the applicability beyond types of entities included in the definition of "contractor" in 37 CFR part 401:

a. Any institution of higher education, non-profit organization, State, local government, Indian tribe, foreign organization, or foreign public entity receiving a DoD award for the performance of experimental, research, or developmental work;

b. Any type of entity described in paragraph B.1.a of this section or for-profit entity receiving a subaward to perform experimental, research, or developmental work.

2. **Modifications to the wording of the Governmentwide clause**. DoD adopts the Governmentwide clause at 37 CFR 401.14, as described in paragraph B.1 of this section, with the following modifications:

a. **Terminology**. Throughout the Governmentwide award clause:

i. Insert the terms "recipient" and "subrecipient (or contractor to the recipient or to a subrecipient)" to replace the terms "contractor" and "subcontractor," respectively.

ii. Insert the terms "award" and "subaward (or contract under either the award or a subaward)" to replace the terms "contract" and "subcontract," respectively.

b. **Final report**. Add a new subparagraph (f)(5) to read, "The recipient must submit a final report listing all subject inventions made under the award or stating that there were none. The final report is due 120 calendar days after the end date of the period of performance unless you request and we grant an extension of the due date."

c. **Broadening applicability to all entities**. Delete paragraphs (g)(2) and (3) of the Governmentwide clause, redesignate paragraph (g)(1) as paragraph (g), and delete the phrase "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g) as redesignated.

Section C. Data produced under the award.

1. **Data in general**. The Federal Government has the right to:

a. Obtain, reproduce, publish, or otherwise use the data produced under this award; and

b. Authorize others to receive, reproduce, publish, or otherwise use the data produced under this award for Federal Government purposes.

2. **Research data requested under the Freedom of Information Act (FOIA).**

a. If we receive a request under the FOIA for "research data" that are related to "published research findings" produced under this award and that were "used by the Federal Government in developing an agency action that has the force and effect of law," you must provide the data to us within a reasonable time after we request it from you, so that the data can be made available to the public through procedures established under the FOIA.

b. For purposes of the requirement in paragraph C.2.a of this section, 2 CFR 200.315(e) provides definitions of the phrases "published research findings," "used by the Federal Government in developing an agency action that has the force and effect of law," and "research data."

Section D. Use and disposition of intangible property acquired, but not developed or produced, under the award.

1. **Applicability**. This section applies to a patent, patent application, copyright, or other intangible property acquired, but not developed or produced, under this award.

2. **Use**. You:

a. Must use the intangible property for the authorized purpose under this award until the intangible property is no longer needed for that purpose, whether or not that purpose is still being supported by this award.

b. May not encumber the intangible property without the prior approval of the award administration office.

3. **Disposition.** When the intangible property is no longer needed for the originally authorized purpose, you must contact the award administration office to arrange for disposition in accordance with the procedures specified for disposition of equipment in either Section B or D of PROP Article IV, as applicable.

Part 4: Procurement

(articles from this part are designated with "PROC" in the article title)

PROC Article I. Procurement standards for States. (SEPTEMBER 2017)

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

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

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

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

PROC Article II. Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes. (JULY 2018)

Section A. General procurement standards.

1. For procurement under this award, you must comply with the OMB guidance in 2 CFR 200.318.

2. You must do business only with responsible contractors who are able to perform, as described in OMB guidance in 2 CFR 200.318(h). Related to that, you must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

Section B. Competition. You must award procurement transactions under this award in accordance with the competition requirements described in OMB guidance in 2 CFR 200.319.

Section C. Procurement methods. You must award procurement transactions under this award using methods described in OMB guidance in 2 CFR 200.320. However, in accordance with OMB Memorandum M-18-18 dated 20 June 2018, the threshold for using the procedures for micro-purchases identified in the OMB guidance at 2 CFR 200.320(a) is $10,000, in lieu of any other micro-purchase

threshold amount referenced in 2 CFR 200.67, unless you received written approval for a higher threshold from your Federal cognizant agency for indirect costs.

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

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

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

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

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

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

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

Section I. Bonding requirements. RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions.

PROC Article III. Contract provisions for recipient procurements. (SEPTEMBER 2017)

Section A. Contract provisions for administrative requirements.

1. **Remedies**. In any contract under this award for an amount in excess of the simplified acquisition threshold, you must provide for administrative, contractual, or legal remedies, including any appropriate sanctions and penalties, when the contractor violates or breaches the contract terms.

2. **Termination**. In any contract for an amount in excess of $10,000, you must specify: conditions under which you may terminate the contract for cause or convenience; the procedures for termination; and the basis to be used for settlement.

3. **Allowable costs under cost-type contracts**. In any cost-type contract with an entity, you must include a clause to permit the entity to charge to the contract only costs that are allowable under the cost principles that FMS Article III identifies as applicable to that type of entity, as supplemented by any award-specific terms and conditions related to allowability of costs that are included in this award. Your contract clause may permit the contractor to use its own cost principles in determining the allowability of its costs charged to the contract, as long as its cost principles comply with those Federal cost principles supplemented by any award-specific terms and conditions of this award.

4. **Rights in copyright and data**. You must include in each contract under this award a provision requiring that the contractor:

a. Grant the Government a royalty-free, nonexclusive and irrevocable right to:

i. Reproduce, publish, or otherwise use for Federal purposes any work that is subject to copyright and that the contractor develops, or acquires ownership of, under this award;

ii. Authorize others to reproduce, publish, or otherwise use such work for Federal purposes; and

b. Grant the Government the right to:

i. Obtain, reproduce, publish, or otherwise use data produced under this award;

ii. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes; and

c. Include the Government rights described in subparagraphs 4.a. and 4.b. of this section in any subcontracts.

5. **Access to records**.

a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for access to any of the contractor's books, documents, papers, and records that are directly pertinent to that contract, to enable and support audits, examinations, excerpts, and transcriptions. The contract provision must provide access to those records for all of the following and their duly authorized representatives:

i. You;

ii. Us as the Federal awarding agency, including our Inspector General; and

iii. The Comptroller General of the United States.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, you must provide for the access to audit documentation described in 2 CFR 200.517(b).

6. **Records retention**.

a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for retention of all records that are directly pertinent to that contract for 3 years after you make final payment and all pending matters are closed.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, you must provide for the retention of audit documentation described in 2 CFR 200.517(a).

7. **Reporting.** In any contract awarded under this award, you must include any provision for the contractor's reporting to you that may be needed in order for you to meet your requirements under this award to report to us.

Section B. Contract provisions for national policy requirements.

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

2. **Wage Rate Requirements (Construction). RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions**.

3. **Copeland Act prohibition on kickbacks**. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions.**

4. **Contract Work Hours and Safety Standards Act for work involving mechanics or laborers**. In each contract for an amount greater than $100,000 that involves the employment of mechanics or laborers and is not a type of contract excepted under 40 U.S.C. 3701, you must include the clauses specified in Department of Labor (DoL) regulations at 29 CFR 5.5(b) to require use of wage standards that comply with the Contract Work Hours and Safety Standards Act (40 CFR, Subtitle II, Part A, Chapter 37), as implemented by the DoL at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction."

5. **Patents and inventions**. If you procure the services of a nonprofit organization, small business firm, or other entity for the performance of experimental, developmental or research work, you must include in the contract the clause prescribed in Section B of PROP Article VI to establish contractual requirements regarding subject inventions resulting from the contract and provide for Government rights in those inventions.

6. **Clean air and water requirements**. You must:

a. In each contract for an amount greater than $150,000 under this award, include a clause requiring the contractor to comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401-7671q), Federal Water Pollution Control Act (33 U.S.C. 1251-1387), and standards, orders, or regulations issued under those acts; and

b. Report any violations of the Acts, standards, orders, or regulations to both the award administration office and the appropriate regional office of the Environmental Protection Agency.

7. **Nonprocurement suspension and debarment**. Unless you have an alternate method for requiring the contractor's compliance, you must include a clause in each contract for an amount equal to or greater than $25,000 and in each contract for federally required audit services to require the contractor to comply with OMB guidance on nonprocurement suspension and debarment in 2 CFR part 180, as implemented by DoD regulations at 2 CFR part 1125.

8. **Byrd Amendment anti-lobbying requirements**. In each contract for an amount exceeding $100,000, you must include a clause requiring the contractor to submit to you the certification and any disclosure forms regarding lobbying that are required under 31 U.S.C. 3152, as implemented by the DoD at 32 CFR part 28.

9. **Purchase of recovered materials by States or political subdivisions of States**. In each contract under which the contractor may purchase items designated in Environmental Protection Agency (EPA) regulations in 40 CFR part 247, Subpart B, you must include a clause requiring the contractor to comply with applicable requirements in those EPA regulations, which implement section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962).

10. **Fly America requirements.** In each contract under which funds provided under this award might be used for international air travel for the transportation of people or property, you must include a clause requiring the contractor to:

a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the "Fly America" Act), as implemented at 41 CFR 301-10.131 through 301-10.143. The law and regulations provide that U.S. Government-financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available; and

b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

11. **Cargo preference for United States flag vessels**. In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in

Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S.-flag commercial vessels, if available.

12. **Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements**. You must include the provision provided in Section B.1 of NP Article IV in Part 8 of these general terms and conditions in each contract under this award.

Part 5: Financial, Programmatic, and Property Reporting

(articles from this part are designated with "REP" in the article title)

REP Article I. Performance management, monitoring, and reporting. (SEPTEMBER 2017)

Section A. Required reporting form, format, or data elements for interim and final performance reports. **RESERVED - Language in DoD Component addendum to these terms and conditions.**

Section B. Frequency, reporting periods, and due dates for interim performance reports. **RESERVED - Language in DoD Component addendum to these terms and conditions.**

Section C. Due date and reporting period for final performance report.

1. **Due date**. You must submit the final performance report under this award no later than 120 calendar days after the end date of the period of performance unless we approve an extension of that due date as described in Section D of this article.

2. **Reporting period**. Final reports must be cumulative (i.e., each final report should cover the entire period of performance under the award and not just the period since the previous interim performance report).

Section D. Extensions of due dates. You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request and we will consider approving extensions that are adequately justified.

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

1. Problems, delays, or adverse conditions that will materially impair your ability to meet the objectives of this award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

2. Favorable developments which will enable you to meet schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

Section F. Performance reporting procedures. **RESERVED - Language in DoD Component addendum to these terms and conditions.**

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

REP Article II. Financial reporting. (SEPTEMBER 2017)

Section A. Required reporting form, format, or data elements for interim and final financial reports. **RESERVED - Language in DoD Component addendum to these terms and conditions.**

Section B. Interim financial reports: frequency, reporting periods, and due dates. **RESERVED - Language in DoD Component addendum to these terms and conditions.**

Section C. Final financial report. You must submit the final financial report under this award no later than 120 calendar days after the end date of the period of performance.

Section D. Extensions of due dates. You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request, and we will consider approving extensions that are adequately justified.

Section E. Where and how to submit financial reports. **RESERVED - Language in DoD Component addendum to these terms and conditions**.

REP Article III. Reporting on property. (SEPTEMBER 2017)

Section A. Real property. Paragraphs A.1 through A.4 apply to real property for which you are accountable under this award, for as long as there is a Federal interest in the property (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. **Periodic status reports.** You must submit periodic status reports, as follows:

    a. Frequency and duration of reporting requirement. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions.**

    b. Due dates. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions**.

    c. Other submission instructions. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions**.

2. **Notifications of critical changes**. You must notify the award administration office of any critical change in the status of real property as soon as feasible after you become aware of it. A critical change is any event with a significant adverse impact on the condition or value of the property, such as damage due to fire; flood, hurricane, or other severe weather; earthquake; or accident.

3. **Requests for disposition instructions**. You must comply with applicable requirements in PROP Article III to request disposition instructions, either during the period of performance or at closeout.

4. **Closeout accounting**. You must account to the award administration office for real property at the time of closeout of the award, as required by Section D of OAR Article VI.

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

1. **Periodic status report**. There is no requirement for periodic reporting during the period of performance.

2. **Notifications of loss, damage, or theft**. You must comply with applicable requirements in PROP Article II governing your property management system to promptly notify the award administration office of any loss, damage, or theft of equipment.

3. **Requests for disposition instructions**. You must comply with applicable requirements in PROP Article IV to request disposition instructions for equipment, either during the period of performance or at closeout.

4. **Closeout accounting**.

a. **Equipment**. You must account to the award administration office for equipment at the time of closeout of this award, as required by Section D of OAR Article VI.

b. **Supplies.** If you have a residual inventory of unused supplies that meets the criteria specified in paragraph E.2 of PROP Article IV, you must as part of your closeout accounting arrange with the award administration office for the compensation that paragraph specifies for the Federal interest in the supplies.

Section C. Federally owned property. Paragraphs C.1 through C.4 apply to federally owned property for which you are accountable under this award.

1. **Annual inventory**. You must submit annually to the award administration office an inventory of federally owned property.

2. **Notifications of loss, damage, or theft**. As provided in PROP Article II governing your property management system, you must promptly notify the award administration office of any loss, damage, or theft of federally owned property.

3. **Requests for disposition instructions**. You must comply with requirements in Section B of PROP Article V to request disposition instructions, either during the period of performance or at closeout.

4. **Closeout accounting**. Your requests for disposition instructions for federally owned property, as described in paragraph C.3 of this section, satisfy the need to account for federally owned property at closeout (see Section D of OAR Article VI).

Section D. Intangible property. Paragraphs D.1 through D.3 apply to intangible property for which you are accountable under this award.

1. **Inventions developed under the award**. You must submit all reports on subject inventions developed under this award that are required by the modified Governmentwide patent rights award provision specified in Section B of PROP Article VI, which include a disclosure of each subject invention and a final report listing all such subject inventions.

2. **Copyrights and data.** You are not required to submit periodic reports about data produced under the award or about works for which you acquired ownership under this award, either by development or otherwise, and in which copyright was asserted. However, because the Federal Government has the rights in the works and data that Sections A and C of PROP Article VI specify, you must provide information about the works and data if we request it.

3. **Intangible property acquired, but not developed or produced, under the award**. You must comply with requirements in Section D of PROP Article VI to request disposition instructions for intangible property acquired, but not developed or produced, under the award.

REP Article IV. Reporting on subawards and executive compensation. (SEPTEMBER 2017)

You must report information about subawards and executive compensation as specified in the award provision in appendix A to 2 CFR part 170, "Reporting subaward and executive compensation information," modified as follows:

1. To accommodate any future designation of a different Governmentwide Web site for reporting subaward information, the Web site "http://www.fsrs.gov" cited in paragraphs a.2.i. and a.3 of the award provision is replaced by the phrase "http://www.fsrs.gov or successor OMB-designated Web site for reporting subaward information;"

2. To accommodate any future designation of a different Governmentwide Web site for reporting executive compensation information, the Web site "http://www.sam.gov" cited in paragraph b.2.i. of the award provision is replaced by the phrase "https://www.sam.gov or successor OMB-designated Web site for reporting information on total compensation;" and

3. The reference to "Sec. ___.210 of the attachment to OMB Circular A-133, 'Audits of States, Local Governments, and Non-Profit Organizations'" in paragraph e.3.ii of the award provision is replaced by "2 CFR 200.330, as implemented in SUB Article I of this award."

Part 6: Other Administrative Requirements

(articles from this part are designated with "OAR" in the article title)

OAR Article I. Submitting and maintaining recipient information. (SEPTEMBER 2017)

Section A. System for Award Management.

1. Unless you are exempted from this requirement in accordance with OMB guidance in 2 CFR 25.110, you must maintain the currency of information about yourself in the system the Federal Government specifies as the repository for information about its business partners (currently the System for Award Management (SAM)).

2. You must maintain the information in that system until you submit the final financial report required under this award or receive the final payment, whichever is later.

3. You must review and update the information at least annually after your initial registration in the system (unless you are subject to the requirements in Section B) and more frequently if required by changes in your information.

Section B. Reporting of Performance and Integrity Information.

1. General reporting requirement. If the total value of your currently 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 award, then during that period of time you must maintain in SAM the currency of information required by paragraph B.2 of this section. Note that:

a. This reporting is required under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313).

b. As required by section 3010 of Public Law 111-212, all performance and integrity information posted in the designated information system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

c. Recipient information is submitted to the OMB-designated integrity and performance system through the SAM, as described in paragraph B.3 of this section. The currently designated integrity and performance information system is the Federal Awardee Performance and Integrity Information System (FAPIIS).

2. Proceedings about which you must report. Submit the information that the designated information system requires about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent 5-year period; and

c. Is one of the following:

i. A criminal proceeding that resulted in a conviction, as defined in paragraph B.5. of this section;

ii. 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;

iii. An administrative proceeding, as defined in paragraph B.5. of this section, that resulted in a finding of fault and liability and your payment of either monetary fine or penalty of $5,000 or more or a reimbursement, restitution, or damages in excess of $100,000; or

iv. Any other criminal, civil, or administrative proceeding if:

(A) It could have led to an outcome described in paragraph B.2.c.i, ii, or iii of this section;

(B) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(C) The requirement in this section to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting procedures. Submit the information required in paragraph B.2 of this section to the Entity Management functional area of SAM.

a. Current procedures are to submit the information as part of the maintenance of your information in the SAM that Section A of this article requires.

b. You do not need to submit the information again under this award if you already reported current information to the SAM under another Federal grant, cooperative agreement, or procurement contract.

4. Reporting frequency. During any period of time when you are subject to the requirement in paragraph B.1 of this section, you must report to SAM at least semiannually following your initial report of any information required in paragraph B.2 of this section, either to provide new information not reported previously or affirm that there is no new information to report.

5. Definitions. For purposes of this section:

a. *Administrative proceeding* means a non-judicial process that is adjudicatory in nature in order 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, grant, or cooperative agreement. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. *Conviction* 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.

c. *Total value of currently active grants, cooperative agreements, and procurement contracts* includes:

   i. Only the Federal share of the funding under any Federal agency award with a recipient cost share or match; and

   ii. The value of all expected funding increments and options, even if not yet exercised, under each Federal agency award.

Section C. Disclosure of evidence of integrity-related issues.

1. **Disclosure requirement.** At any time during the period of performance of this award, if you have evidence that a covered person committed a covered action (see paragraphs C.2 and C.3 of this section) that may affect this award, you must disclose the evidence in writing to the Office of the Inspector General, DoD, with a copy to the grants officer identified in the award cover pages.

2. **Covered person.** As the term is used in this section, "covered person" means a principal, employee, or agent of either you or a subrecipient under this award, where:

a. "Principal" means:

   i. An officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities that relate to this award; or

   ii. A consultant or other person, whether or not employed by you or a subrecipient or paid with funds under this award, who:

      (A) Is in a position to handle funds under this award;

      (B) Is in a position to influence or control the use of those funds; or

(C) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the project or program under this award.

b. "Agent" means any individual who acts on behalf of, or who is authorized to commit you or the subrecipient, whether or not employed by you or the subrecipient.

3. **Covered action.** As the term is used in this section, "covered action" means a violation of Federal criminal law in Title 18 of the United States Code involving fraud, bribery, or a gratuity violation.

4. **Safeguarding of the information.**

a. To the extent permitted by law and regulation, we will:

i. Safeguard and treat information you disclose to us as confidential if you mark the information as "confidential" or "proprietary."

ii. Not release the information to the public in response to a Freedom of Information Act (5 U.S.C. 552) request without notifying you in advance.

b. We may transfer documents you provide to us to any other department or agency within the Executive Branch of the Federal Government if the information relates to matters within that organization's jurisdiction.

OAR Article II. Records retention and access. (SEPTEMBER 2017)

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

1. You must keep records related to any real property and equipment acquired, in whole or in part, using Federal funds under the award for 3 years after final disposition of the property. For any item of exempt property with a current fair market value greater than $5,000, and for which final disposition was not a condition of the title vesting, you must keep whatever records you need for as long as necessary to ensure that you can deduct the Federal share if you later use the property in contributions for cost sharing or matching purposes under any Federal award.

2. You must keep records related to rate proposals for indirect or facilities and administration costs, cost allocation plans, and supporting records such as indirect cost rate computations and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback or composite fringe benefit rates) as follows:

a. If you are required to submit a proposal, plan, or other computations to your Federal cognizant agency for indirect costs, as the basis for negotiation of a rate, you must keep the submissions and

all supporting records for 3 years from the date on which you were required to make the submissions.

b. If you are not required to submit a proposal, plan, or other computation as the basis for negotiation, you must keep the proposal, plan, other computation, and supporting records for 3 years from the end of the fiscal year or other accounting period covered by the proposal, plan, or other computation.

3. You must keep other financial records, supporting documents, statistical records, and other records pertinent to this award for a period of 3 years from the date you submit your final financial report under the award.

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

1. If any litigation, claim, or audit begins before the end of the 3-year retention period specified in Section A of this article and the final action related to the litigation, claim, or audit is not taken before the end of that 3-year period, you must retain all records related to this award that may be involved in the litigation, claim, or audit until all findings involving the records have been resolved and final action taken.

2. We may disallow costs and recover funds under this award based on an audit or other review of records during the record retention period, including any extension to that retention period that we required in a written notification to you.

Section C. Records for program income earned after the end of the performance period. In accordance with Section F of FMS Article VII, there are no requirements under this award applicable to program income you earn after the end of the period of performance and therefore no associated records retention requirements.

Section D. Records for joint or long-term use.

1. **Joint use**. To avoid duplicate recordkeeping for records that you and we both need to use on a continuous basis, we may ask you to make special arrangements with us, by mutual agreement, to make records available for joint and continuous use.

2. **Long-term use**. If we determine that some records will be needed longer than the 3-year period specified in Section A of this article, we may request that you either:

a. Retain the records for a longer period of time; or

b. Transfer the records to our custody for long-term retention.

3. **Retention requirements for transferred records**. For any records transferred to our custody, you are not subject to the records retention requirements in Section A of this article.

Section E. Methods for collecting, transmitting, and storing information.

1. You should, whenever practicable, collect, transmit, and store information related to this award in open and machine readable formats rather than in closed formats or on paper. However, if you request it, we will:

a. Provide award related-information to you on paper; and

b. Accept award related-information from you on paper. In that case, we will not require more than an original and two copies.

2. When your original records are in an electronic form that cannot be altered, you do not need to create and retain paper copies of those records.

3. When your original records are on paper, you may substitute electronic versions produced through duplication or using other forms of electronic media, provided that:

a. You conduct periodic quality control reviews of the records,

b. You provide reasonable safeguards against alteration of the records, and

c. The records remain readable.

Section F. Access to records.

1. **Scope of Government access rights**.

a. We as the awarding agency, the Federal Government Inspectors General, the Comptroller General of the United States, and any of our authorized representatives have the right of access to any documents, papers, or other records you have that are pertinent to this award, in order to make audits, examinations, excerpts, and transcripts.

b. This right also includes timely and reasonable access to your personnel for the purposes of interview and discussion related to the records.

c. As described in OMB guidance at 2 CFR 200.336(b), the access to records described in this section will include access to the true name of a victim of a crime only under extraordinary and rare circumstances.

i. You are required to provide that access only in response to a court order or subpoena pursuant to a bona fide confidential investigation, or in response to a request duly authorized by the head of the DoD Component or his or her designee; and

ii. You must take appropriate steps to protect this sensitive information.

2. **Duration of Government access rights**. We have the access rights described in paragraph F.1 of this section as long as you retain the records.

3. **Public access.**

a. You must comply with requirements to protect information that Federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export controlled information), to include both information generated under this award and information provided to you and identified as being subject to protection. Other than those limitations on dissemination of information, we place no restrictions on you that limit public access to your records pertinent to this award.

b. We do not place any requirements on you to permit public access to your records separate from any Federal, State, local, or tribal statute that may require you to do so.

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

OAR Article III. Remedies and termination. (SEPTEMBER 2017)

Section A. Noncompliance with award terms and conditions. If you fail to comply with a term or condition of this award or an applicable Federal statute or regulation, we may amend this award to impose award-specific conditions, as described in OMB guidance in 2 CFR 200.207. If imposing award-specific conditions, we will notify you before modifying the award and, once you have corrected the non-compliance, promptly remove the award-specific conditions. If we determine that the imposition of award-specific conditions is insufficient to correct the noncompliance or the non-compliance remains uncorrected despite the use of award-specific conditions, we may consider taking one or more of the remedies specified in Section B of this article.

Section B. Remedies for noncompliance.

1. If you fail to comply with a term or condition of this award or an applicable Federal statute or regulation, we may take one or more of the following actions that we deem appropriate to the circumstances:

a. Temporarily withhold cash payments pending:

i. Your correction of the deficiency; or

ii. Our taking more severe remedies.

b. Disallow (that is, deny both use of funds and any applicable cost-sharing or matching credit for) all or part of the cost of the activity or action not in compliance;

c. Suspend or, in accordance with paragraph C.1.a.i of this article, terminate this award, in whole or in part (suspension of an award is a separate and distinct action from suspension of a person under 2 CFR parts 180 and 1125, as noted in paragraph B.3 of this article);

d. Withhold further awards to you for the project or program that is not in compliance;

e. Take any other action legally available to us under the circumstances.

2. You may raise an objection to our taking any remedy we take under paragraph B.1 of this section and will be given an opportunity to provide information and documentation challenging the action. The procedures are those specified in OAR Article IV for claims and disputes.

3. Our use of any remedy under paragraph B.1 of this section, including suspension or termination of the award, does not preclude our referring the noncompliance to a suspension and debarment official and asking that official to consider initiating a suspension or debarment action under 2 CFR part 1125, the DoD implementation of OMB guidance at 2 CFR part 180.

Section C. Termination.

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

a. **Unilaterally by the Government**. We will provide a notice of termination if we unilaterally terminate this award in whole or in part, which we may do for either of the following reasons:

i. Your material failure to comply with the award terms and conditions. If we terminate the award for that reason, we will report the termination to the OMB-designated integrity and performance system (currently FAPIIS). In accordance with 41 U.S.C. §2313, each Federal awarding official must review and consider the information in the OMB-designated integrity and performance system with regard to any proposal or offer before awarding a grant or contract.

ii. The program office does not have funding for an upcoming increment if this award is incrementally funded. In that case, the Government's financial obligation does not exceed the amount currently obligated under the award.

b. **By mutual agreement**. With your consent, we may terminate this award, in whole or in part, for any reason. In that case, you and we must agree to:

i. The termination conditions, including the effective date; and

ii. In the case of a partial termination, the portion to be terminated.

c. **Unilaterally by the recipient**. You may unilaterally terminate this award, in whole or in part, by sending us written notification that states:

i. The reasons for the termination;

ii. The effective date; and

iii. In the case of partial termination, the portion to be terminated. In that case, however, we may terminate the award in its entirety if we determine that the remaining portion of the award will not accomplish the purposes for which we made the award.

2. If this award is terminated in its entirety before the end of the performance period, you must complete the closeout actions for which you are responsible under OAR Article VI. The due date for each action is to be measured relative to the date of termination.

3. If this award is only partially terminated before the end of the performance period, with a reduced or modified portion of the award continuing through the end of the performance period, then closeout actions will occur at the end of the performance period as specified in OAR Article VI.

4. You will continue to have all of the post-closeout responsibilities that OAR Article VII specifies for you if this award is wholly or partially terminated before the end of the performance period.

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

1. Before the effective date of the suspension or termination are allowable if:

a. You properly incurred those obligations;

b. You did not incur the obligations in anticipation of the suspension or termination;

c. In the case of termination, the costs resulted from obligations that were noncancellable after the termination; and

d. The costs would have been allowable if we had not suspended or terminated the award and it had expired normally at the end of the period of performance.

2. During the suspension or after the termination are not allowable unless we expressly authorize them, either in the notice of suspension or termination or subsequently.

OAR Article IV. Claims, disputes, and appeals. (SEPTEMBER 2017)

Section A. Definitions.

1. **Claim**. The definition of the term "claim," as it is used in this article, is in Part 1, Definitions.

2. **Grant Appeal Authority**. **RESERVED - Language in DoD Component addendum to these terms and conditions.**

Section B. Submission of claims.

1. **Your claims**. To submit a claim arising out of this award, you must submit it in writing to the grants officer for decision, specify the nature and basis for the relief you are requesting, and include all data that supports your claim.

2. **Government claims**. You will receive a written grants officer's decision if a DoD claim arises out of this award.

Section C. Alternative dispute resolution.

1. We encourage resolution of all issues related to this award by mutual agreement between you and the grants officer.

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

Section D. Grants officer decisions for claims you submit.

1. Within 60 calendar days of receiving your claim, the grants officer will either:

   a. Transmit a written decision that:

      i. Identifies data on which the decision is based; and

      ii. Identifies and provides the mailing address for the Grant Appeal Authority to whom you would submit an appeal of the decision if you elect to do so; or

   b. If more time is required to render a written decision, notify you of a specific date when he or she will render the decision and inform you of the reason for delaying it.

2. The grants officer's decision will be final unless you decide to appeal, in which case we encourage use of ADR procedures as noted in Section C of this article.

Section E. Formal administrative appeals.

1. **Right to appeal**. You have the right to appeal a grants officer's decision to the Grant Appeal Authority identified in Section A of this article.

2. **Notice of appeal**. You may appeal a grants officer's decision within 90 calendar days of receiving the decision by submitting a written notice of appeal to the Grant Appeal Authority and grants officer. If you elect to use ADR procedures, you are allowed an additional 60 calendar days to submit the written notice of appeal.

3. **Appeal file**. Within 30 calendar days of the grants officer's receipt of your notice of appeal, you should receive the appeal file with copies of all documents relevant to the appeal. You may supplement the file with other documents you deem relevant and with a memorandum in support of your position for the Grant Appeal Authority's consideration. The Grant Appeal Authority may request additional information from you.

4. **Decision**. Unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal, the appeal will be decided solely on the basis of the written record. Any fact-finding or hearing will be conducted using procedures that the Grant Appeal Authority deems appropriate.

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

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

OAR Article V. Collection of amounts due. (SEPTEMBER 2017)

Section A. Establishing a debt.

1. Any amount paid to you in excess of the amount to which you are determined to be entitled under the terms and conditions of this award constitutes a debt to the Federal Government.

2. The grants officer will attempt to resolve any claim of your indebtedness arising out of this award by mutual agreement.

3. If the grants officer fails to resolve the claim in that manner, you will receive a written notice of the grants officer's decision formally determining the debt, as described in paragraph B.2 of OAR Article IV.

The notice will describe the debt, including the amount, name and address of the official who determined the debt, and a copy of that official's determination.

Section B. Debt delinquency and appeals.

1. Within 30 calendar days of the grants officer's decision, you must either pay the amount owed to the address provided in the written notice or inform the grants officer that you intend to appeal the decision. Appeal procedures are described in OAR Article IV.

2. If you elect not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.

3. If you elect to appeal the grants officer's decision, you will have 90 calendar days after receipt of the grants officer's decision to file your appeal unless Alternative Dispute Resolution (ADR) procedures are used, as described in Section C of OAR Article IV, in which case you will have 150 calendar days.

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

1. If within 30 calendar days of the grants officer's decision, you neither pay the amount due nor provide notice of your intent to appeal the grants officer's decision, the grants officer will send you a demand letter identifying a payment office that will be responsible for any further debt collection activity.

2. If you do not pay by the due date specified in the written demand letter, the Federal Government may collect part or all of the debt by:

a. Making an administrative offset against your requests for reimbursements under Federal awards;

b. Withholding advance payments otherwise due to you; and

c. Any other action permitted by Federal statute.

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

OAR Article VI. Closeout. (SEPTEMBER 2017)

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

Section B. Refunds of unobligated balances. You must promptly refund to the award administration office any balances of unobligated cash that we have advanced or paid to you and not authorized you to use on other projects or programs.

Section C. Final reports. You must submit the:

1. Final performance report under this award no later than the date specified in Section C of REP Article I, subject to any extensions granted under Section D of that article;

2. Final financial report under this award no later than the date specified in Section C of REP Article II, subject to any extensions granted under Section D of that article;

3. Final report listing subject inventions made under the award no later than the date specified in Section B of PROP Article VI; and

4. Other final reports that are required under this award no later than 120 calendar days after the end date of the period of performance, unless you request an extension of the due date and the award administration office approves the request.

Section D. Accounting for property. You must account for any real property, equipment, supplies, and intangible property that you and any subrecipients acquired or improved under the award, in accordance with PROP Articles I through IV and VI. Your requests for disposition instructions for any federally owned property, as required by PROP Article V, meet the need described in OMB guidance at 2 CFR 200.343(f) to account for that property at closeout.

OAR Article VII. Post-closeout adjustments and continuing responsibilities. (SEPTEMBER 2017)

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

1. Our right to disallow costs and recover funds on the basis of a later audit or other review, as long as we make the determination that the costs are disallowed and notify you about that determination as specified in paragraph B.2 of OAR Article II of these terms and conditions.

2. Your obligation to return any funds due to the Federal Government as a result of later refunds, corrections, or other transactions (to include any adjustments in final indirect cost rates).

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

1. Audits, as specified in FMS Article V, that cover periods of time during which you expended funds under this award.

2. Management, use, and disposition of any real property or equipment acquired or improved under this award in which we continue to have a Federal interest after closeout, as specified in PROP Articles I through IV.

3. Retention of, and access to, records related to this award, as specified in OAR Article II.

Part 7: Subawards

(articles from this part are designated with "SUB" in the article title)

SUB Article I. Distinguishing subawards and procurements. (SEPTEMBER 2017)

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

Section B. Considerations in making the determination.

1. The primary purpose of the transaction between you and the other entity is the key factor you must use to determine whether the transaction is a subaward or procurement transaction.

a. The transaction is a subaward and the other entity, therefore, a subrecipient if the transaction's primary purpose is for you to transfer—for performance by the other entity—a portion of the substantive project or program for which we are providing financial assistance to you through this award. You will continue to be accountable to us for performance of the project or program under the award, including portions performed by any subrecipients.

b. The transaction is a procurement transaction and the other entity therefore a contractor if the transaction's primary purpose is for you to purchase goods or services that you need to perform the substantive project or program supported by this award. The distinction from a subaward is the contractor is not performing a portion of the substantive project or program as a result of the transaction.

2. What you call the transaction is not a factor in distinguishing a subaward from a procurement transaction. If the transaction meets the criterion in paragraph B.1.a of this article, it is a subaward for purposes of the requirements of this award even if you call and consider the transaction a "contract."

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

1. **Process for awarding the transaction**. One important consequence of your determining whether a next-tier transaction is a subaward or procurement is that there are different requirements governing the pre-award and time of award processes that you use to award the transaction.

a. SUB Article II of this award specifies pre-award and time of award responsibilities for subawards.

b. PROC Articles I and II of this award govern pre-award and time of award processes for awarding procurement transactions.

2. **Transaction terms and conditions**. A second important consequence of your determining whether a next-tier transaction is a subaward or procurement transaction is that the terms and conditions you include in a subaward differ from those you include in a procurement transaction.

a. Section C of SUB Article II of this award addresses requirements you must include in subaward terms and conditions. Those requirements are generally either identical or directly related to requirements in the general terms and conditions of this award. They include national policy requirements, as well as administrative requirements in areas such as financial and programmatic management, property administration, procurement, and reporting.

b. PROC Article III of this award lists requirements you must include in a procurement transaction when applicable.

SUB Article II. Pre-award and time of award responsibilities. (SEPTEMBER 2017)

Section A. Requirements for unique entity identifiers.

1. **Definition of "entity."** For purposes of the unique entity identifier requirements in paragraphs A.2 and 3 of this section, "entity" has the meaning given in paragraph C.3 of appendix A to OMB guidance in 2 CFR part 25.

2. **Pre-notification of potential subrecipients**. You must notify potential subrecipients that no entity may receive a subaward from you under this award unless it has provided its unique entity identifier to you.

3. **Restriction on making subawards**.

a. General. You may not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

b. Exception. You may make a subaward to an entity that has not provided its unique entity identifier to you in rare cases in which you requested and we approved an exemption from the requirement for the entity to provide a unique entity identifier, based on the criteria in OMB guidance in 2 CFR part 25.110(d).

Section B. Pre-award risk assessment.

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

2. As part of the risk assessment under paragraph B.1 of this article, you must:

a. Verify that neither the prospective subrecipient nor its principals under the proposed subaward are excluded or disqualified from participating in the transaction, in accordance with requirements in Subpart C of OMB guidance in 2 CFR part 180, as implemented by DoD at 2 CFR part 1125; and

b. If warranted by risks you identify, determine whether to impose award-specific terms and conditions in the subaward to mitigate the risks.

i. These award-specific terms and conditions may be in addition to, or differ from, the terms and conditions that SUB Articles IV through IX of this award require you to include in subawards.

ii. They may include items such as those listed in OMB guidance in 2 CFR 200.207(b)(1) through (6).

iii. Your procedures for imposing and removing the additional or different requirements must comply with the procedural guidance in 2 CFR 200.207(c) and (d).

Section C. Subaward content.

1. **Cost-type subawards**.

a. SUB Article III of this award specifies informational content that you must include in each cost-type subaward.

b. SUB Articles IV through VIII specify administrative requirements that you must include:

i. As applicable, in each cost-type subaward to:

(A) A domestic entity (i.e., an entity other than a foreign public entity or a foreign organization); or

(B) An organizational unit of a foreign organization if that unit has a place of business in the United States; and

ii. To the maximum extent practicable in each cost-type subaward to either a foreign public entity or an organizational unit of a foreign organization that does not have a place of business in the United States (regardless of whether another organizational unit of that foreign organization has one). However, absent our prior approval, you may not allow that foreign entity or organization to acquire real property or equipment under a subaward.

c. SUB Article IX of this award specifies national policy requirements that you must include, as applicable, in each cost-type subaward.

2. **Fixed-amount type subawards**. SUB Article XII of this award specifies informational content and administrative and national policy requirements that you must include in any fixed-amount subaward that you make.

3. **Additional subaward terms and conditions**. You may include other requirements in your subawards that you need in order to meet your responsibilities under this award for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.

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

SUB Article III. Informational content of subawards. (SEPTEMBER 2017)

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

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

Section C. Amount of Federal funds obligated.

1. The "Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient" that is described in 2 CFR 200.331(a)(1)(vi) is either:

a. The amount of your obligation to the subrecipient, if the terms and conditions of this award do not require you to provide any cost sharing or matching for the project or program the award supports; or

b. The amount of the Federal share of your subaward obligation if this award does require cost sharing or matching, which in that case is the product of:

i. The Federal share of total project costs under this DoD award to you, as a percentage of those total project costs; and

ii. The total amount of project costs obligated for the subaward action.

2. Note that the total project costs of the award and subaward, as used in paragraphs C.1.b.i and ii of this section, include any cost sharing or matching that you or the subrecipient provides to meet any cost sharing or matching requirement under this award.

Section D. Total amount obligated to the subrecipient. The "Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including the current obligation," as described in 2 CFR 200.331(a)(1)(vii), is the cumulative amount to date of the amounts described in Section C of this article.

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

Section F. Federal awarding agency, pass-through entity, and awarding official. The "Name of Federal awarding agency" and "pass-through entity," as those terms are used in 2 CFR 200.331(a)(1)(x) are the DoD and the business name associated with your registration in the System for Award Management. In that same paragraph of 2 CFR part 200, the "awarding official" is the individual in your organization who made the subaward.

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

1. The rate the subaward must include is the subrecipient's rate, whether it is a rate set by negotiation with a Federal Government agency or you, or is the de minimis rate described in 2 CFR 200.414(f).

2. You are required to include the indirect cost rate only if the subrecipient is willing to share that information with you and assents that information about its rate is not proprietary. If a subrecipient is not willing to share information about its indirect cost rate with you, consult the grants officer for this award to explore alternative ways to assess the reasonableness of costs of the subaward.

SUB Article IV. Financial and program management requirements for subawards. (SEPTEMBER 2017)

Section A. Purposes of this article in relation to other articles.

1. This article specifies administrative requirements concerning financial and program management that you must include in the terms and conditions of each cost-type subaward that you make under this award to a domestic entity.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under FMS Articles I through VII of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

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

1. Sections A through C of FMS Article I of this award if the subrecipient is a State;

2. Sections B and C of FMS Article I if the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe; or

3. 32 CFR 34.11 if the subrecipient is a for-profit entity.

Section C. Payments.

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

2. **Subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes**. The following paragraphs specify requirements you must include in subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

a. **Payment method**.

i. If you are authorized to request advance payments under this award, you must authorize a subrecipient to request advance payments unless:

(A) The subrecipient does not maintain, or demonstrate the willingness to maintain, written procedures that minimize the time elapsing between its receipt of each payment and its disbursement of the funds for project or program purposes;

(B) You impose a requirement for the subrecipient to be paid by reimbursement as a result of your risk evaluation of the subrecipient under SUB Article II of this award;

(C) The subaward is for construction; or

(D) The subrecipient requests reimbursement of funds after it disburses them for project or program purposes.

ii. If you do not authorize advance payments for one of the reasons given in paragraph C.2.a.i of this article, you must specify either reimbursement or working capital advances as the payment method in accordance with OMB guidance in 2 CFR 200.305(b)(3) and (4).

b. **Payment timing and amount**.

i. **Advances**. You must limit advance payments to the minimum amounts needed and time the payments to be in accordance with the subrecipient's actual, immediate cash requirements in carrying out the project or program under the subaward. The timing and amount of your advance payments to the subrecipient must be as close as is administratively feasible to the subrecipient's actual disbursements for direct project costs and the proportionate share of any allowable indirect costs. Your subawards also must include the requirements of paragraphs B.2.b and c of FMS Article II to specify costs subrecipients must exclude from amounts of their advance payment requests.

ii. **Reimbursements or working capital advances**. You must follow OMB guidance in 2 CFR 200.305(b)(3) and (4) concerning timing and amount of reimbursements or working capital advances.

c. **Frequency of requests**. You must allow the subrecipient to request advance payments or reimbursements, including those associated with the working capital advance payment method, as often as it wishes if you pay using electronic funds transfers and at least monthly otherwise.

d. **Other requirements**.

i. In any subaward that was subject to our consent, you must include the requirements of paragraph B.5 of FMS Article II of this award concerning withholding of payments.

ii. You must include the provisions of paragraph B.6 of FMS Article II concerning depositories in each subaward that authorizes the subrecipient to request advance payments.

3. **Subawards to for-profit entities**. The provision concerning payments in each subaward you make to a for-profit entity must conform to the requirements in 32 CFR 34.12.

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

1. You must include in each subaward a requirement that the allowability of costs under the subaward (and any lower-tier subawards or procurement transactions into which the subrecipient enters) must be determined in accordance with the applicable cost principles identified in Section A of FMS Article III of this award.

2. You must specify in each subaward the period of availability of funds for any project or program purpose so that the period neither begins before nor ends after the period during which you may use funds available to you under this award for that same project or program purpose.

3. You must include in each subaward the provisions concerning fee or profit that are in Section D of FMS Article III of this award.

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

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

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

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

   a. Sections B through D of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

   b. The provisions of 32 CFR 34.13(a) if the subaward is to a for-profit entity.

2. The methods for determining and documenting the values of those contributions or donations to be counted as cost sharing or matching. Those methods are specified in:

   a. Sections E and F of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

   b. The provisions of 32 CFR 34.13(b) if the subaward is to a for-profit entity.

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

1. In each subaward to a State, institution of higher education, nonprofit organization, local government, or Indian tribe:

   a. You must require the subrecipient to account to you when it earns any program income under the subaward or uses it, so that you can prepare reports you are required to submit to us. If the award-specific terms and conditions of this award require you to account for program income earned after the period of performance, you must include a corresponding requirement in your subawards.

b. You must include the provisions of Sections A through D of FMS Article VII of this award.

c. You may specify the deduction, addition, or cost sharing or matching alternative or a combination of those alternatives, for the subrecipient's use of any program income it earns. However, you still must comply with the alternative specified in Section E of FMS Article VII and any applicable award-specific terms and conditions for the total amount of program income earned, which includes amounts earned by you and your subrecipients. For example, if we require you to use the deduction alternative, you may authorize a subrecipient to use the addition alternative if you reduce the funding allocated for portions of the project or program that you or other subrecipients perform to make the required reduction in the total award amount.

2. In each subaward to a for-profit entity, you must include the provisions of 32 CFR 34.14, with the appropriate method specified for disposition of program income.

SUB Article V. Property requirements for subawards. (SEPTEMBER 2017)

Section A. Purposes of this article in relation to other articles.

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

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROP Articles I through VI of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

Section B. Title to property.

1. **Subawards to institutions of higher education, nonprofit organizations, States, local governments, or Indian tribes**.

a. General. You must include terms and conditions in each subaward to flow down to the subrecipient the provisions of:

i. Paragraph A.1 of PROP Article I concerning vesting of title to property acquired under the subaward unless paragraph B.1.b of this section provides otherwise.

ii. Sections B through E of PROP Article I that are applicable to types of property that the subrecipient may acquire, improve, donate, or for which it may otherwise be accountable under the subaward.

b. **Exceptions.** **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions**.

2. **Subawards to for-profit entities**.

a. **Real property and equipment**. You must obtain the prior approval of the grants officer before permitting any for-profit subrecipient to acquire or improve real property or equipment under the award.

i. If the grants officer does not grant the approval, you must include a subaward provision that prohibits the subrecipient from acquiring or improving real property or equipment under the subaward.

ii. If the approval is granted, you must include a subaward provision specifying that title vesting and Federal interest are governed by provisions of 32 CFR 34.21(b) and (c).

b. **Supplies.** You must include a subaward provision specifying that vesting of title to supplies is governed by provisions of 32 CFR 34.24 (a), subject to the use and disposition requirements of 32 CFR 34.24 (b).

c. **Federally owned property.** You must include a provision in any subaward to a for-profit entity under which the subrecipient may be accountable for federally owned property, to state that title to such property will remain vested in the Federal Government.

Section C. Property management system. If you make a subaward under which the subrecipient either may acquire or improve equipment or real property, or may be accountable for federally owned property, you must include in the subaward:

1. If the subrecipient is a State, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section B of PROP Article II concerning other property management system standards.

2. If the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section C of PROP Article II concerning other property management system standards.

3. Applicable provisions of 32 CFR 34.22(a) and 34.23 if the subrecipient is a for-profit entity and:

a. The subrecipient may be accountable under the subaward for federally owned property; or

b. You obtained the grants officer's prior approval for the subrecipient's acquisition of equipment under the subaward.

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

1. **Use**. The requirements concerning use of real property:

a. In Section A of PROP Article III if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, unless the award-specific terms and conditions of this award provide otherwise; and

b. In 32 CFR 34.21(d) if the subaward is to a for-profit entity and you obtained the grants officer's prior approval for the subrecipient's acquisition of real property under the subaward.

2. **Disposition.** Provisions to require the subrecipient to request disposition instructions through you when the property is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B of PROP Article III to address the Federal interest in the property.

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

1. If the subaward is to a State:

a. The requirements in Sections B and E of PROP Article IV concerning use and disposition of equipment and supplies; and

b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements.

2. If the subaward is to an institution of higher education, nonprofit organization, local government, or Indian tribe:

a. The requirements in Sections C and E of PROP Article IV concerning use of equipment and use and disposition of supplies;

b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

c. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your

responsibilities to us under Section D of PROP Article IV to address the Federal interest in the equipment.

3. If the subaward is to a for-profit entity:

   a. The requirements concerning use and disposition of supplies in 32 CFR 34.24(b);

   b. And you obtained the grants officer's prior approval for the entity's acquisition of equipment under the subaward:

      i. The requirements concerning use of equipment in 32 CFR 34.21(d);

      ii. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

      iii. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B or D of PROP Article IV to address the Federal interest in the equipment.

Section F. Use and disposition of federally owned property. If you make a subaward under which the subrecipient may be accountable for federally owned property, you must include subaward provisions specifying that the subrecipient:

1. May use the property as specified in paragraph A.1 of PROP Article V;

2. Must submit requests through you for the award administration office's approval to use the property for other purposes, as described in paragraph A.2 of PROP Article V;

3. Must request the award administration office's disposition instructions through you when the property is no longer needed for subaward purposes or the subaward ends.

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

1. Sections A through D of PROP Article VI if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

2. Section A of PROP Article VI as it applies to works developed under the subaward, Section B of PROP Article VI, paragraph C.1 of Section C of PROP Article VI, and Section D of PROP Article VI, if the subaward is to a for-profit entity.

SUB Article VI. Procurement procedures to include in subawards. (SEPTEMBER 2017)

Section A. Purposes of this article in relation to other articles.

1. This article specifies administrative requirements concerning procurement procedures that you must include in the terms and conditions of each cost-type subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROC Articles I through III of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

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

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

1. You must include the requirements of Sections A through G of PROC Article II and applicable sections of PROC Article III of this award.

2. You must include the requirement for the subrecipient to make available to you, upon request:

   a. Technical specifications of proposed procurement transactions, under the conditions described in OMB guidance at 2 CFR 200.324(a); and

   b. Other procurement documents for pre-procurement review, under the conditions described in OMB guidance at 2 CFR 200.324(b).

3. If it is possible that, under a subaward you make, the subrecipient may award a construction or facility improvement contract with a value in excess of the simplified acquisition threshold, you must include provisions in the subaward to require the subrecipient to comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.325(a) through (c), unless you determine that the subrecipient's bonding policy and requirements are adequate to protect Federal interests.

Section D. Subaward to a for-profit entity. In any subaward you make to a for-profit entity, you must include the requirements in 32 CFR 34.31.

SUB Article VII. Financial, programmatic, and property reporting requirements for subawards. (SEPTEMBER 2017)

Section A. Purposes of this article in relation to other articles.

1. This article specifies administrative requirements concerning reporting that you must include in the terms and conditions of each cost-type subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under REP Articles I through III of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

Section B. Performance reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any performance information you need, by the time you need it, to comply with the performance reporting requirements in REP Article I and other terms and conditions of this award.

2. You may specify a form, format, or data elements the subrecipient must use to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article I specifies for your reporting to us).

Section C. Financial reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any financial information you need, by the time you need it, to comply with the financial reporting requirements in REP Article II and other terms and conditions of this award.

2. You may specify a form, format, or data elements the subrecipient must use to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article II specifies for your reporting to us).

Section D. Reporting on property.

1. Each subaward you make under this award must include provisions concerning property reporting as described in paragraph D.2 of this section if the subrecipient may, under the subaward:

a. Acquire or improve real property or equipment;

b. Acquire supplies or intangible property; or

c. Be accountable for federally owned property.

2. The subaward provisions must require the subrecipient to give you the information you need about the property in order to meet your responsibilities to us under Sections A through D of REP Article III and PROP Articles II through VI.

SUB Article VIII. Other administrative requirements for subawards. (SEPTEMBER 2017)

Section A. Purposes of this article in relation to other articles.

1. This article specifies other administrative requirements that you either must or should include in the terms and conditions of each cost-type subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under OAR Articles I through VII of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

Section B. Submission and maintenance of subrecipient information. You must include the substance of the provision in Section C of OAR Article I in any subaward you make under this award. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

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

1. If the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe:

a. You must include the requirements of Section A of OAR Article II with the additional condition that, for any subrecipient under this award that does not have a federally approved rate for indirect or facilities and administration costs and that does not use the de minimis rate described in 2 CFR 200.414(f), you must:

i. Require the subrecipient to keep records that support its indirect or facilities and administration costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply; and

ii. Keep any plan or computation the subrecipient submits to you to serve as a basis for your determining the reasonableness and allowability of indirect or facilities and administration costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.

b. You must include the requirements of Sections B, C, and F of OAR Article II.

c. You must include provisions that enable you to comply with the requirements of Section D of OAR Article II concerning records for joint or long-term use.

d. You must include provisions that establish the same rights and responsibilities for the subrecipient under the subaward that Section E of OAR Article II establishes for you under this award.

e. You may not impose any other record retention or access requirements on the subrecipient.

2. If the subaward is to a for-profit entity, you must include the records retention and access provisions of 32 CFR 34.42.

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

1. Identify remedial actions you may take to address the subrecipient's noncompliance. Available remedies are described in:

a. OMB guidance in 2 CFR 200.338 for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

b. 32 CFR 34.52 for a subaward to a for-profit entity.

2. With respect to termination specifically:

a. Identify conditions under which you, the subrecipient, or both (by mutual agreement) may terminate the subaward, in whole or in part, as described in:

i. OMB guidance in 2 CFR 200.339(a) for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

ii. 32 CFR 34.51 for a subaward to a for-profit entity.

b. Inform the subrecipient that you will provide it with a notice of termination if you unilaterally terminate the award

c. Specify that you and the subrecipient remain responsible for applicable requirements addressed in Sections G and H of this article concerning closeout, post-closeout adjustments, and continuing responsibilities.

3. With respect to either suspension or termination of the subaward, inform the subrecipient about the criteria that you will use to either allow or disallow subaward costs, which are in:

a. Section D of OAR Article III for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

b. 32 CFR 34.52(c) for a subaward to a for-profit entity.

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

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

Section G. Closeout.

1. In each subaward that you make to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, you must include provisions to require the subrecipient to:

a. Liquidate all obligations that it incurred under the subaward not later than 90 calendar days after the end date of the period of performance of either the subaward or this award, whichever is earlier, unless you grant an extension.

b. Promptly refund to you any balances of unobligated cash that you advanced or paid to the subrecipient, unless you received authorization from the award administration office for the subrecipient's use of those funds on other projects or programs.

c. Submit to you:

i. Any information you need from the subrecipient to meet your responsibilities to us for an accounting of property, under Section D of OAR Article VI; and

ii. Not later than 90 calendar days after the end date of the period of performance of this award, unless you grant the subrecipient an extension, any information you need to meet your responsibilities to us for final reports, under Section C of OAR Article VI.

2. In each subaward that you make to a for-profit entity, you must include the terms and conditions that you deem necessary for you to be able to comply with the requirements in OAR Article VI.

Section H. Post-closeout adjustments and continuing responsibilities.

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

SUB Article IX. National policy requirements for subawards. (SEPTEMBER 2017)

Section A. General.

1. You must include provisions in the terms and conditions of each subaward you make to require the subrecipient entity's compliance with each of the national policy requirements in Sections B through E of this article that you determine is applicable, given the type of entity receiving the subaward and activities it will be carrying out under the subaward.

2. If an entity to which you are about to make a subaward will not accept an award provision requiring its compliance with a national policy requirement that you determine to be applicable, you must alert the award administration office immediately. You may not omit an applicable national policy requirement in order to make the subaward.

3. If at any time during the performance of a subaward, you learn that—or receive a credible allegation that—the subrecipient is not complying with an applicable national policy requirement, you must alert the award administration office immediately.

Section B. Nondiscrimination national policy requirements. You must include provisions in each subaward to require the subrecipient's compliance with the nondiscrimination national policy requirements specified in paragraphs A.1 through A.5 of NP Article I, as applicable.

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

1. The subrecipient complies with all applicable Federal environmental laws and regulations, including those specified in paragraphs A.2, A.3, A.5, and A.6 of NP Article II, as applicable.

2. Provide any information you need, when you need it, in order to comply with the requirement to immediately notify us of potential environmental impacts specified in paragraphs A.4 , A.5, and A.6 of NP Article II, as applicable, due to activities under the award (which includes subaward activities).

Section D. National policy requirements concerning live organisms. You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements concerning human subjects and animals that are specified in paragraphs A.1 and A.2 of NP Article III, as applicable.

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

1. Paragraph A.1.

2. Paragraphs A.3.a and b.

3. Paragraphs A.4 through A.17.

4. Paragraph B.1.

SUB Article X. Subrecipient monitoring and other post-award administration. (SEPTEMBER 2017)

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

1. The subrecipient carries out the portion of the substantive project or program under this award for which the subaward was made.

2. The subrecipient is using project funds under the subaward (including any cost sharing or matching the subrecipient provides that is counted as project funds in the approved budget of this award) for authorized purposes.

3. The subrecipient's performance under the subaward is in compliance with applicable Federal statutes and regulations, and the terms and conditions of your subaward.

Section B. Subrecipient monitoring actions.

1. **Required monitoring actions**. You must, as part of your post-award monitoring of each subrecipient:

    a. Review the financial and programmatic information that your subaward terms and conditions require the subrecipient to provide, in accordance with Sections B and C of SUB Article VII of this award.

    b. Follow up and ensure that the subrecipient takes timely and appropriate action to remedy deficiencies detected through any means, including audits and on-site reviews.

    c. With respect to audits of subrecipients that are required under FMS Article V of this award:

i. Verify that the subrecipient is audited in accordance with those requirements, as applicable (note that Section F of SUB Article IV requires you to include those audit requirements for the subrecipient in the subaward's terms and conditions).

ii. Resolve and issue a management decision for audit findings that pertain to your subaward. Doing so is a requirement under either Section A or B of FMS Article V of this award (Section B requires that explicitly and Section A does so by implementing OMB guidance in 2 CFR 200.521, as well as other portions of Subpart F of that part).

iii. Consider whether you need to adjust your own records related to this award based on results of audits, on-site reviews or other monitoring of the subrecipient and, as applicable, notify the award administration office.

2. **Other monitoring actions**. OMB guidance in 2 CFR 200.331(e)(1) through (3) describes other actions that may be useful as part of your subrecipient monitoring program, depending on the outcomes of the pre-award risk assessment you conducted in accordance with Section B of SUB Article II.

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

1. Consider whether you need to take any remedial action if you determine that the subrecipient is noncompliant with an applicable Federal statute or regulation or the terms and conditions of your subaward, as described in Section D of SUB Article VIII.

2. Provide a notice of termination to the subrecipient if you terminate its subaward unilaterally for any reason prior to the end of the period of performance.

3. In the case of either suspension or termination of a subaward prior to the end of the period of performance, allow or disallow subaward costs in accordance with Section D of OAR Article III.

Section D. Subaward closeout.

1. You will close out each subaward when you either:

a. Determine that the subrecipient has completed its programmatic performance under the subaward and all applicable administrative actions; or

b. Terminate the subaward, if you do so prior to completion of the subrecipient's programmatic performance.

2. With respect to the closeout of each subaward:

a. You must pay the subrecipient promptly for allowable and reimbursable costs.

b. Consistent with the terms and conditions of the subaward, you must make a settlement for any upward or downward adjustments to the Federal share of project costs after you receive the information you need from the subrecipient to close out the subaward.

c. You should complete the closeout of the subaward no later than one year after you receive and accept the final reports and other information from the subrecipient that you need to close out the subaward.

SUB Article XI. Requirements concerning subrecipients' lower-tier subawards. (SEPTEMBER 2017)

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

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

1. Ensure that the lower-tier transaction is a subaward, rather than a procurement transaction, by making the determination that SUB Article I of this award requires you to make.

2. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

3. Include in any cost-type subaward it makes at the next tier:

   a. The informational content that SUB Article III specifies;

   b. The administrative requirements that SUB Articles IV through VIII of this award specify;

   c. The national policy requirements that SUB Article IX of this award specifies, as applicable; and

   d. The requirements of this article if the next-tier subrecipient may make even lower-tier cost-type subawards to other entities.

4. Carry out the subrecipient monitoring and other post-award administration responsibilities specified in SUB Article X.

SUB Article XII. Fixed-amount subawards. (SEPTEMBER 2017)

Section A. Limitations on use.

1. You may not use a fixed-amount subaward:

   a. If the total value over the life of the subaward will exceed the simplified acquisition threshold.

   b. Unless the project or program scope is specific, with definite outcomes, and you are able to establish a reasonable estimate of the actual costs of accomplishing those outcomes.

   c. If you will predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under the subaward.

   d. If the subrecipient will acquire any real property or equipment under the subaward.

2. For fixed-amount subawards not prohibited by paragraph 1 of this section and except as provided in Section B of this article, you must obtain our prior approval before making a fixed-amount type of subaward.

   a. If Section B of FMS Article IV requires you to obtain our prior approval before you make any subaward, and you do not identify the subaward as a fixed-amount subaward when you obtain that approval, then you must subsequently request separate approval before awarding it as a fixed-amount type of subaward.

   b. If a subaward is identified as a fixed-amount type of subaward in the budget you submit for our approval, then our approval of the budget is the required prior approval.

Section B. Fixed-amount subawards that do not require prior approval. You are not required to obtain our prior approval before using a fixed-amount type of subaward if:

1. The subaward is to either:

   a. A foreign public entity; or

   b. An organizational unit of a foreign organization, if that unit does not have a place of business in the United States, regardless of whether another organizational unit of that foreign organization has one.

2. You determine that the portion of the project or program under this award which the subrecipient will be carrying out under the subaward has one or more specific outcomes with the following characteristics:

   a. You can define the outcomes well enough to specify them at the time you make the subaward. Note that:

i. Outcomes are distinct from inputs needed to achieve the outcomes, such as amounts or percentages of time that subrecipient employees or other participants will spend on the project or program.

ii. The inherently unpredictable nature of basic or applied research makes it rarely, if ever, possible to define specific research outcomes in advance, which makes fixed-amount subawards inappropriate for research. Note that technical performance reports serve to document research outcomes but are not themselves outcomes, notwithstanding the definition of "performance goals" in OMB guidance at 2 CFR 200.76.

b. The accomplishment of each outcome will be observable and verifiable by you when it occurs, so that you will not need to rely solely on the subrecipient's assurance of that accomplishment.

c. The subrecipient associates its estimated costs with outcomes in the proposal it submits to you, and you are confident that the costs of accomplishment of the outcomes will equal or exceed the subaward amount. This requires either that you have a high degree of confidence:

i. In your estimate of the costs associated with accomplishing the well-defined and observable outcomes, based on the prospective subrecipient's proposal (and using the applicable cost principles in FMS Article III as a guide); or

ii. That those costs will be within a finite range, rather than a specific amount, so that you may provide an amount of funding under the subaward that does not exceed the lower end of the range, with the provision that the subrecipient agrees to provide any balance above that amount that ultimately is needed to accomplish the outcomes. Your subaward then would include a term or condition to reflect the subrecipient's agreement to provide that balance (which would be in an amount to be post-determined, when the outcomes are accomplished). Note that this is distinct from a situation in which you predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward, a situation in which paragraph A.1.c of this article prohibits use of a fixed-amount subaward.

3. a. The subaward is based on a fixed rate per unit of outcome (or "unit cost") and you have both the confidence:

i. That is described in paragraph B.2.c of this article in the estimated costs associated with each unit of outcome; and

ii. In the subrecipient's guarantee that it can accomplish at least the number of units of outcome on which your total subaward amount will be based (i.e., the product of the unit cost and the number of units of outcome the subrecipient guarantees to accomplish).

b. Note, however, that not every fixed-rate subaward is also a fixed-amount subaward. If you have confidence in the unit cost but not also in the subrecipient's ability to guarantee the number of

units of outcome that it will accomplish, then you should set a not-to-exceed award amount based on the number of units desired and reduce the subaward amount at the end if the subrecipient accomplishes fewer than that number. Examples of activities for which it may be appropriate to award this type of fixed-rate subaward that is not a fixed-amount subaward include:

i. A clinical trial for which the unit cost is the cost of treating each participant. The not-to-exceed amount would be based on the number of participants the subrecipient planned to recruit and the final award on the number who actually participated, documentation for which would be subject to audit.

ii. Labor costs for performance of a portion of the project or program under this award by an organization or entity that treats its indirect cost rate as proprietary information. The unit cost in that case may be "loaded" labor rates for the organization's or entity's employees that include indirect costs. The final award amount would depend on the number of labor hours the organization's or entity's employees expended under the subaward, documentation for which may be audited without exposing proprietary details associated with the actual costs.

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

Section D. Terms and conditions addressing administrative requirements.

1. **General.** This section:

a. Specifies the minimum set of terms and conditions (in lieu of the more extensive set specified in SUB Articles IV through X for cost-type subawards) addressing administrative requirements that you must include in each fixed-amount subaward:

i. To an entity other than a foreign organization, as applicable; and

ii. To the maximum extent practicable, to a foreign organization.

b. Does not preclude the inclusion of other requirements that you need in order to meet your responsibilities under this award for performance of the project or program and compliance with applicable administrative requirements.

2. **Financial and program management requirements**.

a. **Financial management system standards**. For a subaward to other than a for-profit entity, your subaward must require the subrecipient to include the information specified in paragraph B.1 of FMS Article I in its financial management system, for the purposes of the non-Federal audits required by paragraph 2.d of this section.

b. **Payments**. Your payments must be based on accomplishment of the outcomes and associated costs that you used to establish the subaward amount, rather than on subrecipient expenditures for project or program purposes. Milestone payments before the end of the subaward's period of performance may be appropriate if there are outcomes that the subrecipient will accomplish at different times during that period.

c. **Revision of budget and program plans**. If our prior approval was required under paragraph A.2 of this article for use of a fixed-amount type of subaward, then you must:

   i. Request our prior approval for any change in principal investigator, project leader, project partner, or scope or objective of the subaward; and

   ii. Therefore include a requirement in the subaward for the subrecipient to request that approval through you.

d. **Non-federal audits**. You must include the requirement for non-Federal audits described in Section F of SUB Article IV. The audits are intended to focus on compliance with the performance requirements in the subaward terms and conditions and not to review actual costs as they would for a cost-type subaward.

e. **Certification of completion**. You must include the requirement for the subrecipient to provide you with a certification at the end of the project as specified in 2 CFR 200.201(b)(3).

3. **Property requirements**.

a. **Federally owned property**. If the subrecipient will be accountable for federally owned property, you must include the property management system, use, and disposition requirements described in Sections C and F of SUB Article V that are applicable to federally owned property.

b. **Intangible property**. You must include the applicable intangible property requirements described in Section G of SUB Article V.

4. **Reporting requirements**. You must include requirements for reporting that you need in order to meet your responsibilities under this award for reporting to us.

5. **Other administrative requirements**.

a. **Integrity-related information.** You must include the substance of the provision in Section C of OAR Article I in any subaward you make under this award. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

b. Records retention and access.

i. You must include the requirements for records retention and access in paragraph A.3 and Sections B and F of OAR Article II, as applicable, if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe. You may not impose any other records retention or access requirements on the subrecipient.

ii. You must include the corresponding requirements of 32 CFR 34.42 if the subaward is to a for-profit entity.

c. **Remedies and termination**. You must include:

i. The requirements concerning remedies and termination that are described in paragraphs D.1 and 2 of SUB Article VIII;

ii. Provisions addressing any hearing and appeal rights the subrecipient has, as described in Section E of SUB Article VIII; and

iii. Terms and conditions addressing adjustment of the amount of the subaward if it is terminated before the subrecipient accomplishes all of the specified outcomes.

d. **Continuing responsibilities**. You must include requirements concerning continuing responsibilities for audits and records retention and access that are described in paragraphs B.1 and 3 of OAR Article VII.

e. **Collection of amounts due**. You should consider including requirements concerning collection of amounts due, as described in Section F of SUB Article VIII.

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

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

Section G. Fixed-amount subawards at lower tiers.

1. **Authority**.

a. If Section B of this article authorizes you to use a fixed-amount type of subaward without our prior approval in some situations, a cost-type subaward that you make may authorize the subrecipient to use fixed-amount subawards at the next lower tier in those same situations without our prior approval.

b. If you wish to allow a subrecipient of a cost-type subaward to use fixed-amount subawards at the next tier in other situations (i.e., situations in which this article requires you to obtain our prior approval before using a fixed-amount type of subaward), your subaward terms and conditions must require the subrecipient to submit a request through you to obtain our prior approval for use of that type of subaward.

2. **Subaward requirements**. If your subrecipient is authorized to use lower-tier fixed-amount subawards, as described in paragraphs 1.a and b of this section, your subaward's terms and conditions must:

a. Require the subrecipient, before it makes any lower-tier fixed-amount subaward, to:

i. Ensure that the lower-tier transaction is a subaward, rather than a procurement transaction, by making the determination that SUB Article I of this award requires you to make.

ii. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

b. Include the requirements specified in Sections A through F of this article.

Part 8: National Policy Requirements

(articles from this part are designated with "NP" in the article title)

NP Article I. Nondiscrimination national policy requirements. (SEPTEMBER 2017)

Section A. Cross-cutting nondiscrimination requirements. By signing this award or accepting funds under this award, you assure that you will comply with applicable provisions of the national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by Department of Defense (DoD) regulations at 32 CFR part 195.

2. On the basis of gender, blindness, or visual impairment, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DoD regulations at 32 CFR part 196.

3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

4. On the basis of disability, in the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

5. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) related to physically handicapped persons' ready access to, and use of, buildings and facilities for which Federal funds are used in design, construction, or alteration.

Section B. Other nondiscrimination requirements. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions.**

NP Article II. Environmental national policy requirements. (SEPTEMBER 2017)

Section A. Cross-cutting environmental requirements. You must:

1. You must comply with all applicable Federal environmental laws and regulations. The laws and regulations identified in this section are not intended to be a complete list.

2. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.).

3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35.

The requirements concern lead-based paint in buildings owned by the Federal Government or housing receiving Federal assistance.

4. Immediately identify to us, as the Federal awarding agency, any potential impact that you find this award may have on:

a. The quality of the "human environment", as defined in 40 CFR 1508.14, including wetlands; and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et seq.), the regulations at 40 CFR 1500-1508, and Executive Order 12114, if applicable; and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives to the proposed action until we provide written notification of Federal compliance with NEPA or Executive Order 12114.

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

c. A land or water use or natural resource of a coastal zone that is part of a federally approved State coastal zone management plan and provide any help we may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.) including preparation of a Federal agency Coastal Consistency Determination.

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

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

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

5. You must comply fully with the Endangered Species Act of 1973, as amended (ESA, at 16 U.S.C. 1531 et seq.), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need in complying with the consultation requirements of ESA section 7 (16 U.S.C. 1536) applicable to Federal agencies or any regulatory authorization we may need resulting from performance under this award. This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

6. You must fully comply with the Marine Mammal Protection Act of 1972, as amended (MMPA, at 16 U.S.C. 1361 et seq.) and provide any assistance we may need in obtaining any required MMPA permit resulting from performance under this award.

Section B. Other environmental requirements. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions.**

NP Article III. National policy requirements concerning live organisms. (SEPTEMBER 2017)

Section A. Cross-cutting requirements concerning live organisms.

1. Human subjects.

   a. You must protect the rights and welfare of individuals who participate as human subjects in research under this award and comply with the requirements at 32 CFR part 219, DoD Instruction (DoDI) 3216.02, 10 U.S.C. 980, and when applicable, Food and Drug Administration (FDA) regulations.

   b. You must not begin performance of research involving human subjects, also known as human subjects research (HSR), that is covered under 32 CFR part 219, or that meets exemption criteria under 32 CFR 219.101(b), until you receive a formal notification of approval from a DoD Human Research Protection Official (HRPO). Any approval to perform HSR under this award is received after the HRPO has performed a review of your documentation of planned HSR activities and has officially furnished a concurrence with your determination as presented in the documentation.

   c. In order for the HRPO to accomplish this concurrence review, you must provide sufficient documentation to enable his or her assessment as follows:

      i. If the HSR meets an exemption criterion under 32 CFR 219.101(b), the documentation must include a citation of the exemption category under 32 CFR 219.101(b) and a rationale statement.

      ii. If your activity is determined as "non-exempt research involving human subjects", the documentation must include:

         (A) Assurance of Compliance (i.e., Department of Health and Human Services' Office for Human Research Protections (OHRP) Federalwide Assurance (FWA)) appropriate for the scope of work or program plan; and

(B) Institutional Review Board (IRB) approval, as well as all documentation reviewed by the IRB to make their determination.

d. The HRPO retains final judgment on what activities constitute HSR, whether an exempt category applies, whether the risk determination is appropriate, and whether the planned HSR activities comply with the requirements in paragraph 1.a of this section.

e. You must notify the HRPO immediately of any suspension or termination of the Assurance of Compliance.

f. DoD staff, consultants, and advisory groups may independently review and inspect your research and research procedures involving human subjects and, based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD requirements.

g. Definitions for terms used in paragraph 1 of this article are found in DoDI 3216.02.

2. Animals.

a. Prior to initiating any animal work under the award, you must:

i. Register your research, development, test, and evaluation or training facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2136 and 9 CFR section 2.30, unless otherwise exempt from this requirement by meeting the conditions in 7 U.S.C. 2136 and 9 CFR parts 1-4 for the duration of the activity.

ii. Have your proposed animal use approved in accordance with DoD Instruction (DoDI) 3216.01, Use of Animals in DoD Programs by a DoD Component Headquarters Oversight Office.

iii. Furnish evidence of such registration and approval to the grants officer.

b. You must make the animals on which the research is being conducted, and all premises, facilities, vehicles, equipment, and records that support animal care and use available during business hours and at other times mutually agreeable to you, the United States Department of Agriculture Office of Animal and Plant Health Inspection Service (USDA/APHIS) representative, personnel representing the DoD Component oversight offices, as well as the grants officer, to ascertain that you are compliant with 7 U.S.C. 2131 et seq., 9 CFR parts 1-4, and DoDI 3216.01.

c. Your care and use of animals must conform with the pertinent laws of the United States, regulations of the USDA, and regulations, policies, and procedures of the DoD (see 7 U.S.C. 2131 et seq., 9 CFR parts 1-4, and DoDI 3216.01).

d. You must acquire animals in accordance with DoDI 3216.01.

3. Use of remedies.

Failure to comply with the applicable requirements in paragraphs 1 and 2 of this section may result in the DoD Component's use of remedies, e.g., wholly or partially terminating or suspending the award, temporarily withholding payment under the award pending correction of the deficiency, or disallowing all or part of the cost of the activity or action (including the Federal share and any required cost sharing or matching) that is not in compliance. See OAR Article III.

Section B. Other requirements concerning live organisms. **RESERVED - Only applicable if provided in DoD Component addendum to these terms and conditions or award-specific terms and conditions.**

NP Article IV. Other national policy requirements. (SEPTEMBER 2017)

Section A. Cross-cutting requirements.

1. Debarment and suspension. You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR part 180, as adopted by DoD at 2 CFR part 1125. This includes requirements concerning your principals under this award, as well as requirements concerning your procurement transactions and subawards that are implemented in PROC Articles I through III and SUB Article II.

2. Drug-free workplace. You must comply with drug-free workplace requirements in Subpart B of 2 CFR part 26, which is the DoD implementation of 41 U.S.C. chapter 81, "Drug-Free Workplace."

3. Lobbying.

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR part 28, and submit all disclosures required by that statute and regulation.

b. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

c. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions.

4. Officials not to benefit. You must comply with the requirement that no member of Congress shall be admitted to any share or part of this award, or to any benefit arising from it, in accordance with 41 U.S.C. 6306.

5. Hatch Act. If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508) concerning political activities of certain State and local government employees, as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. Native American graves protection and repatriation. If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. Fly America Act. You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require that U.S. Government financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available.

8. Use of United States-flag vessels. You must comply with the following requirements of the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:

a. Pursuant to Public Law 83-664 (46 U.S.C. 55305), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 8.a of this section must be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. Research misconduct. You must comply with requirements concerning research misconduct in Enclosure 4 to DoD Instruction 3210.7, "Research Integrity and Misconduct." The Instruction implements the Governmentwide research misconduct policy that the Office of Science and Technology Policy published in the Federal Register (65 FR 76260, December 6, 2000, available through the U.S. Government Printing Office web site: http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR).

10. Requirements for an Institution of Higher Education Concerning Military Recruiters and Reserve Officers Training Corps (ROTC).

a. As a condition for receiving funds available to the DoD under this award, you agree that you are not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

i. The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (ROTC)—-in accordance with 10 U.S.C. 654 and other applicable Federal laws—-at that institution (or any subelement of that institution);

ii. Any student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education.

iii. The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

iv. Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of DoD funds under this award and all other DoD grants and cooperative agreements; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. Historic preservation. You must identify to us any:

a. Property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, “Identification and Protection of Historic Properties,” [3 CFR, 1971-1975 Comp., p. 559]. Impacts to historical properties are included in the definition of “human environment” that require impact assessment under NEPA (See NP Article II, Section A).

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (54 U.S.C. chapter 3125).

12. Relocation and real property acquisition. You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. Confidentiality of patient records. You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14. Pro-Children Act. You must comply with applicable restrictions in the Pro-Children Act of 1994 (Title 20, Chapter 68, subchapter X, Part B of the U.S. Code) on smoking in any indoor facility:

a. Constructed, operated, or maintained under this award and used for routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18.

b. Owned, leased, or contracted for and used under this award for the routine provision of federally funded health care, day care, or early childhood development (Head Start) services to children under the age of 18.

15. Constitution Day. You must comply with Public Law 108-447, Div. J, Title I, section 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

16. Trafficking in persons. You must comply with requirements concerning trafficking in persons specified in the award term at 2 CFR 175.15(b), as applicable.

17. Whistleblower protections. You must comply with 10 U.S.C. 2409, including the:

a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies; and

b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.

Section B. Additional requirements.

1. Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements.

a. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

b. You must notify your employees, contractors, and subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph a. of this award provision are no longer in effect.

c. The prohibition in paragraph 1.a. of this section does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

d. If the Federal Government determines that you are not in compliance with this award provision, it:

i. Will prohibit your use of funds under this award, in accordance with section 743 of Division E of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, (Public Law 113-235) or any successor provision of law; and

ii. May pursue other remedies available for your material failure to comply with award terms and conditions.