

	NATIONAL FISH AND WILDLIFE FOUNDATION GRANT AGREEMENT	1. NFWF PROPOSAL ID: 84439	2. NFWF GRANT ID: 0318.25.084439	
		3. UNIQUE ENTITY IDENTIFIER (UEI) H43KALPESBP1	4. INDIRECT COST RATE (REFERENCE LINE 17 for RATE TERMS) N/A	
5. SUBRECIPIENT TYPE State or Local Government		6. NFWF SUBRECIPIENT City of Hampton		
7. NFWF SUBRECIPIENT CONTACT		8. NFWF GRANTS ADMINISTRATOR/NFWF CONTACT INFORMATION		
Scott Smith City of Hampton 22 Lincoln St Hampton, VA, 23669 Tel: 757-727-6781 scott.smith@hampton.gov		Waverly Nohr National Fish and Wildlife Foundation 1625 Eye Street, N.W. Suite 300 Washington, D.C. 20006 Tel: 202-857-0166 Fax: 202-857-0162 waverly.nohr@nfwf.org		
9. PROJECT TITLE Developing Nature-based Solutions to Build Resilience in the Back River Estuary (VA)				
10. PROJECT DESCRIPTION Develop a holistic series of nature-based solutions such as thin-layer placement for marsh enhancement, oyster reefs, submerged aquatic vegetation bed restoration, and ephemeral islands in the Back River Estuary to enhance coastal resilience. Project will increase marsh resilience to wave action and sea level rise, reduce flood risk in Back River communities, and improve habitat quality and extent in the estuary.				
11. PERIOD OF PERFORMANCE December 1, 2024 to December 1, 2026	12. TOTAL AWARD TO SUBRECIPIENT \$845,000.00	13. TOTAL FED. FUNDS \$845,000.00	14. TOTAL NON-FED. FUNDS N/A	
15. FEDERAL MATCH REQUIREMENT N/A		16. NON-FEDERAL MATCH REQUIREMENT \$142,800		
17. SUBRECIPIENT INDIRECT COST RATE TERMS The rate specified in Line 4 reflects that the Subrecipient has elected not to claim an indirect cost rate and that this election shall apply throughout the project's period of performance.				
18. TABLE OF CONTENTS				
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19. FUNDING SOURCE INFORMATION/FEDERAL AND NON-FEDERAL							
A. FUNDING SOURCE (FS)	B. NFWF FS ID	C. FS AWARD DATE TO NFWF	D. FAIN	E. TOT FED. AWARD TO NFWF	F. TOT OBLG. TO SUBRECIPIENT	G. FS END DATE	H. CFDA
U.S. Department of Defense	FC.R669	09/30/2021	HQ00342120014	\$21,797,400.00	\$845,000.00	06/30/2029	12.017

20. NOTICE OF AWARD

The National Fish and Wildlife Foundation (NFWF) agrees to provide the NFWF Award to the NFWF Subrecipient for the purpose of satisfactorily performing the Project described in a full proposal as identified on line 1 and incorporated into this Agreement by reference. The NFWF Award is provided on the condition that the NFWF Subrecipient agrees that it will raise and spend at least the amount listed on lines 15 and 16 in matching contributions on the Project, as applicable. The Project must be completed, with all NFWF funds and matching contributions spent, during the Period of Performance as set forth above. All items designated on the Cover Page and the Table of Contents are incorporated into this Agreement by reference herein. NFWF Subrecipient agrees to abide by all statutory or regulatory requirements, or obligations otherwise required by law. Subrecipient is obligated to notify NFWF if any of the information on the Cover Page changes in any way, whether material or immaterial.

A. NAME AND TITLE OF AUTHORIZED SUBRECIPIENT SIGNER (<i>Type or Print</i>)		D. NAME AND TITLE OF NFWF AWARDING OFFICIAL Holly A. Bamford, PhD, Chief Conservation Officer	
B. SUBRECIPIENT BY	C. DATE	E. NATIONAL FISH AND WILDLIFE FOUNDATION BY	F. DATE

NFWF prohibits discrimination in all its programs and activities on the basis of race, color, religion, age, sex, national origin, ancestry, marital status, personal appearance, citizen status, disability, sexual orientation, gender identity or expression, pregnancy, child birth or related medical conditions, family responsibilities, matriculation, genetic information, political or union affiliation, veteran status or any other status protected by applicable law ("Protected Categories"). In addition, NFWF prohibits retaliation against an individual who opposes an unlawful educational practice or policy or files a charge, testifies or participates in any complaint under Title VI. NFWF complies with all applicable federal, state and local laws in its commitment to being an equal opportunity provider and employer; accordingly, it is NFWF's policy to administer all employment actions, including but not limited to, recruiting, hiring, training, promoting, and payment of wages, without regard to any Protected Category(ies).

See Reporting Schedule on the following page.

21. REPORTING DUE DATES/SUBRECIPIENT REPORTING SCHEDULE
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Reporting Task	Task Due Date
Interim Programmatic Report	December 1, 2025
Annual Financial Report	December 1, 2025
Final Financial Report	March 1, 2027
Final Programmatic Report	March 1, 2027



SECTION 1 NFWF AGREEMENT ADMINISTRATION

1.1. Amendments.

During the life of the Project, the NFWF Subrecipient is required to immediately inform in writing the NFWF Grants Administrator of any changes in contact information, Key Personnel, scope of work, indirect cost rate, as well as any difficulties in completing the performance goals articulated in the Project description. NFWF Subrecipients must request an amendment from NFWF upon determination of a deviation from the original Grant Agreement as soon as such deviation is detected. NFWF reserves the right to approve, deny and/or negotiate any such request. Alternatively, NFWF may initiate an amendment if NFWF determines an amendment is necessary at any time. Amendment requests are to be submitted via NFWF's grants management system.

1.1.1. Budget Amendment Request.

If the NFWF Subrecipient determines that: 1) the amount of the budget is going to change in any one direct cost category by an amount that exceeds 10% of the Award, or 2) there is a need to increase indirect costs, the NFWF Subrecipient must seek prior written approval via an amendment request in NFWF's grants management system.

1.1.2. Extension of Performance Period.

If additional time is needed to complete the approved Project, the NFWF Subrecipient should contact the NFWF Grants Administrator at least 45 calendar days prior to the project period expiration date to initiate the no-cost extension request process in NFWF's grants management system. In addition, if there are overdue reports required, the NFWF Subrecipient must ensure that they are submitted along with or prior to submitting the no-cost extension request.

1.2. Matching Contributions.

Matching Contributions consist of cash, contributed goods and services, volunteer hours, and/or property raised and spent for the Project. Matching Contributions for the purposes of this Project must meet the following criteria: (1) Are verifiable from the NFWF Subrecipient's records; (2) Are not included as contributions for any other federal award; (3) Are necessary and reasonable for the accomplishment of project or program objectives; (4) Are allowable under OMB Cost Principles; (5) Are not paid by the U.S. Government under another federal award except where the federal statute authorizing a program specifically provides that federal funds made available for such program can be applied to matching or cost sharing requirements of other federal programs when authorized by federal statute; (6) Are provided for in the approved budget when required by the federal awarding agency; (7) Are committed directly to the project and must be used within the period of performance as identified in this Agreement; (8) Otherwise conform to the law; and, (9) Are in compliance with the requirements of Section 3.3 of this Agreement concerning Compliance with Laws.

1.2.1. Documentation and Reporting of Matching Contributions.

The NFWF Subrecipient must retain supporting documentation, including detailed time records for contributed services, original receipts, appraisals of real property, and comparable rentals for other contributed property, at its place of business in the event of an audit of the NFWF Subrecipient as required by applicable federal regulations. The NFWF Subrecipient must report match progress in Payment Requests and Financial Reports.

1.2.2. Assessing Fair Market Value.

Fair market value of donated goods, services and property, including volunteer hours, shall be computed as outlined in §200.306 of 2 CFR Subtitle A, Chapter II, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (hereinafter “OMB Uniform Guidance”), regardless of whether this Agreement is federally funded.

1.3. Payment of Funds.

To be eligible to receive funds, NFWF Subrecipient must submit to NFWF (1) an original executed copy of this Agreement for the Project; (2) any due financial and programmatic reports; and (3) a complete and accurate Payment Request via NFWF’s grants management system. At any time, NFWF reserves the right to require submission of source documentation, including but not limited to timesheets, cash receipts, contracts or subaward agreements, for any costs where the NFWF Subrecipient is seeking reimbursement by NFWF. NFWF reserves the right to retain up to ten percent (10%) of funds until submission and acceptance of final reports.

1.3.1. Reimbursements.

NFWF Subrecipient may request funds on a reimbursable basis. Reimbursement requests must include expenditures to date and an explanation of any variance from the approved budget.

1.3.2. Advances.

NFWF Subrecipient may request advance payment of funds prior to expenditure provided that the NFWF Subrecipient: (1) demonstrates an immediate need for advance payment; (2) documents expenditure of advanced funds; (3) maintains written procedures that minimize the time elapsing between the transfer of funds and disbursement; and (4) has established appropriate financial management systems that meet the needs and standards for fund control and accountability. Approval of any advance payment of funds is made at the sole discretion of NFWF, based on an assessment of the NFWF Subrecipient’s needs.

1.3.3. Interest.

Any interest earned in any one year on funds advanced to the NFWF Subrecipient that exceeds \$500 must be reported to NFWF, and the disposition of those funds negotiated with NFWF. Interest amounts up to \$500 per year may be retained by the NFWF Subrecipient for administrative expense.

1.4. Reports.

1.4.1. Interim Programmatic Reports.

The NFWF Subrecipient will submit interim programmatic reports to NFWF based on the reporting schedule in Line 21 of the Cover Sheet to this Agreement, as may be amended at NFWF's sole discretion. The interim programmatic report shall consist of written statements of Project accomplishments and updated metric values since Project initiation, or since the last reporting period, and shall be submitted via NFWF's grants management system. NFWF may require specific formatting and/or additional information as appropriate.

1.4.2. Interim Financial Reports.

The NFWF Subrecipient will submit interim financial reports to NFWF based on the reporting schedule in Line 21 of the Cover Sheet to this Agreement, as may be amended at NFWF's sole discretion. The interim financial report shall consist of financial information detailing cumulative expenditures made under this Project since Project initiation and shall be uploaded via NFWF's grants management system. NFWF may require specific formatting and/or additional information as appropriate.

1.4.3. Annual Financial Report.

The NFWF Subrecipient will submit annual financial reports to NFWF based on the reporting schedule in Line 21 of the Cover Sheet to this Agreement, as may be amended at NFWF's sole discretion. The NFWF Subrecipient must enter a justification when there is a difference between the amount disbursed by NFWF and the amount expended by the grantee. Failure to submit an annual financial report in a timely manner will delay payment of submitted payment requests.

1.4.4. Final Reports.

Based on the reporting schedule in Line 21 of the Cover Sheet to this Agreement, the NFWF Subrecipient will submit (1) a Final Financial Report accounting for all Project funds received, Project expenditures, and budget variances (if any) compared to the approved budget; (2) a Final Programmatic Report summarizing and documenting the accomplishments and metric values achieved during the Period of Performance; (3) copies of any publications, press releases and other appropriate products resulting from the Project; and (4) photographs as described in Section 1.4.3.1 below. The final reports and digital photo files should be uploaded via NFWF's grants management system. Any requests for extensions of final report submission dates must be made in writing to the NFWF Grants Administrator and approved by NFWF in advance. NFWF may require specific formatting and/or additional information as appropriate. NFWF shall communicate any amendments to reporting schedules, specific formatting requirements, and/or requirements for additional information to the NFWF Subrecipient in writing at least thirty (30) days prior to the reporting deadline associated with such amendment and/or requirement.

1.4.4.1. Photographs.

NFWF requests, as appropriate for the Project, a representative number of high-resolution (minimum 300 dpi) photographs depicting the Project (before-and-after images, images of species impacted, and/or images of staff/volunteers working on the Project). Photographs should be uploaded with the Final Programmatic Report via NFWF's grants management system as individual .jpg files. The Final Programmatic Report narrative should list each photograph, the date the photograph was taken, the location of the photographed image, caption, photo credit, and any other pertinent information (e.g., species, activity conducted) describing what the photograph is depicting. By uploading photographs to NFWF's grants management system the NFWF Subrecipient certifies that the photographs are unencumbered and that NFWF and Project Funders have a fully paid up non-exclusive, royalty-free, irrevocable, perpetual, worldwide license for posting of Final Reports and for any other purposes that NFWF or the Project Funder determines appropriate.

1.4.4.2. Spatial Data.

The NFWF Subrecipient will submit accurate spatial data with the final report at a resolution that allows NFWF to know exactly where individual on-the-ground project activities occurred. Accurate spatial data are defined as polygon(s) depicting the exact location and boundaries of each on-the-ground conservation practice implemented within the Period of Performance. For projects where the location of activities has changed or was only known approximately at the full proposal stage, grantees will update the spatial data given with the exact location of activities. Updates to spatial data depicting project activities will be submitted through NFWF's online mapping tool. The polygon(s) name(s) shall include the conservation actions that have been completed within that project area. NFWF retains the right to use the spatial data in order to perform spatial analyses and depict the generalized project location on public maps.

1.4.4.3. Monitoring and Other Project Data.

Upon request by NFWF, the NFWF Subrecipient will provide to NFWF raw and/or summary data collected or analyzed as part of the project, for NFWF's use in analyses of program outcomes. The Subrecipient will submit these data, either when available or at project completion, through a cloud-based data sharing platform or another agreed-upon mechanism.

1.4.5. Significant Developments.

The NFWF Subrecipient shall report on events that may occur between the scheduled performance reporting dates that have a significant impact on the Project. Such reporting shall be made as soon as the following conditions become known:

1.4.5.1. Problems, delays, or adverse conditions which will materially impair the ability to meet the Project objective, including but not limited to the objective itself, its schedule and/or the budget. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the matter; and/or,

1.4.5.2. Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

1.5. Reports and Payment Requests.

All reports, financial, programmatic, or otherwise, or payment requests under a federal award must be submitted by a representative of the NFWF Subrecipient who has the NFWF Subrecipient's full authority to render such reports and requests for payment and to provide required certifications as set forth in 2 CFR 200.415, as applicable.

1.6. Record Retention and Access.

1.6.1. Retention Requirements for Records.

NFWF Subrecipient shall maintain all records connected with this Agreement for a period of at least three (3) years following the latest end date of the funding source(s) referenced above in line 19. FUNDING SOURCE INFORMATION/FEDERAL AND NON-FEDERAL or the close-out of all pending matters or audits related to this Agreement, whichever is later. As funding source end dates may be extended over time, the NFWF Subrecipient will be notified of the most up-to-date record retention requirements upon closure of this Award. If any litigation, claim, or audit is started (irrespective of the NFWF Subrecipient's involvement in such matter) before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings or pending matters involving the records have been resolved and final action taken.

NFWF shall notify NFWF Subrecipient if any such litigation, claim or audit takes place or if funding source end date(s) is extended so as to extend the retention period. Records for real property and equipment acquired with federal funds must be retained for at least three (3) years following disposition of such real property. For awards solely funded with funding sources with "N/A" listed as the end date, NFWF Subrecipient shall maintain all records connected with this Agreement for a period of at least three (3) years following the date of final payment or the Period of Performance end date, whichever is later.

1.6.2. Access to Records.

NFWF or any of its authorized representatives shall have access to such records and financial statements upon request, as shall Inspectors General, the Comptroller General of the United States or any of their authorized representatives if the Funding Source or any funding entity (*i.e.*, a secondary funding source) is a federal agency and/or any portion of the Project provided herein is paid with federal funds. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

SECTION 2 NFWF AGREEMENT CLAUSES

2.1. Restrictions on Use of Funds.

The NFWF Subrecipient agrees that any funds provided by NFWF and all Matching Contributions will be expended only for the purposes and programs described in this Agreement. No funds provided by NFWF pursuant to this Agreement or Matching Contributions may be used to support litigation expenses, lobbying activities, or any other activities not authorized under this Agreement or otherwise unallowable under the Federal Cost Principles set forth in the OMB Uniform Guidance.

2.2. Assignment.

The NFWF Subrecipient may not assign this Agreement, in whole or in part, to any other individual or other legal entity without the prior written approval of NFWF.

2.3. Subawards and Contracts.

When making subawards or contracting, NFWF Subrecipient shall: (1) abide by all applicable granting and contracting procedures, including but not limited to those requirements of the OMB Uniform Guidance (2 C.F.R. Part 200); (2) ensure that all applicable federal, state and local requirements are properly flowed down to the subawardee or contractor, including but not limited to the applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200); and (3) ensure that such subaward or contracting complies with the requirements in Section 3.3 of this Agreement concerning Compliance with Laws. NFWF Subrecipient shall also include in any subaward or contract a similar provision to this, requiring the use of proper grant and contracting procedures and subsequent flow down of federal, state, and local requirements to lower-tiered subawardees and contractors.

2.4. Unexpended Funds.

Any funds provided by NFWF and held by the NFWF Subrecipient and not expended at the end of the Period of Performance will be returned to NFWF within ninety (90) days after the end of the Period of Performance.

2.5. Publicity, Acknowledgment of Support, and Disclaimers.

2.5.1. Publicity.

The NFWF Subrecipient gives NFWF the right and authority to publicize NFWF's financial support for this Agreement and the Project in press releases, publications, and other public communications.

2.5.2. Acknowledgment of Support.

The NFWF Subrecipient agrees to: (1) give appropriate credit to NFWF and any Funding Sources identified in this Agreement for their financial support in any and all press releases, publications, annual reports, signage, video credits, dedications, and other public communications regarding this Agreement or any of the project deliverables associated with this Agreement, subject to any terms and conditions as may be stated in Section 5 and Section 6 of this Agreement; and (2) include the disclaimer provided at Section 2.5.4.

2.5.3. Logo Use.

The NFWF Subrecipient must obtain prior NFWF approval for the use relating to this Award of the NFWF logo or the logo or marks of any Funding Source.

2.5.4. Disclaimers.

Payments made to the NFWF Subrecipient under this Agreement do not by direct reference or by implication convey NFWF's endorsement nor the endorsement by any other entity that provides funds to the NFWF Subrecipient through this Agreement, including the U.S. Government, as applicable, for the Project. All information submitted for publication or other public releases of information regarding this Agreement shall carry the following disclaimer, which NFWF may revise at any time at its sole discretion:

For Projects funded in whole or part with federal funds: "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government or the National Fish and Wildlife Foundation and its funding sources. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government, or the National Fish and Wildlife Foundation or its funding sources."

For Projects not funded with federal funds: "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions of the National Fish and Wildlife Foundation or its funding sources. Mention of trade names or commercial products does not constitute their endorsement by the National Fish and Wildlife Foundation or its funding sources."

2.6. Posting of Final Reports.

The NFWF Subrecipient hereby acknowledges and consents for NFWF and any Funding Source identified in this Agreement to post its final programmatic reports and deliverables on their respective websites. In the event that the NFWF Subrecipient intends to claim that its final report contains material that does not have to be posted on such websites because it is protected from disclosure by statutory or regulatory provisions, the NFWF Subrecipient shall so notify NFWF and any Funding Source identified in this Agreement and clearly mark all such potentially protected materials as "PROTECTED," providing an accurate and complete citation to the statutory or regulatory source for such protection.

2.7. Website Links.

The NFWF Subrecipient agrees to permit NFWF to post a link on any or all NFWF websites to any websites created by the NFWF Subrecipient in connection with the Project.

2.8. Evaluation.

Throughout a program or business plan, NFWF engages in monitoring and evaluation to assess progress toward conservation goals and inform future decision-making. These efforts use both data collected by grantees as part of their NFWF grant as well as post-award project data collected by third-party entities commissioned to conduct a program evaluation. The NFWF Subrecipient agrees to cooperate with NFWF by providing timely responses to all reasonable requests for information to assist in evaluating the accomplishments of the Project period of five (5) years after the project end date.

2.9. Intellectual Property.

Reports, materials, books, databases, monitoring data, maps and spatial data, audio/video, and other forms of intellectual property created using this grant may be copyrighted or otherwise legally protected by the NFWF Subrecipient or by the author. The NFWF Subrecipient agrees to provide to NFWF and any Funding Source identified in this Agreement a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use, publish, copy and alter the NFWF Subrecipient's intellectual property created using this award for non-commercial purposes in any media – whether now known or later devised – including posting such intellectual property on NFWF's or Funding

Source websites and featuring in publications. NFWF retains the right to use project metrics and spatial data submitted by the NFWF Subrecipient to estimate societal benefits that result and to report these results to funding partners on a case-by-case basis as determined by NFWF. These may include but are not limited to: habitat and species response, species connectivity, water quality, water quantity, risk of detrimental events (e.g., wildfire, floods), carbon accounting (e.g., sequestration, avoided emissions), environmental justice, and diversity, equity, and inclusion.

2.10. System for Award Management (SAM) Registration.

The NFWF Subrecipient must maintain an active SAM registration at www.SAM.gov until the final financial report is submitted or final payment is received, whichever is later. If the NFWF Subrecipient's SAM registration expires during the required period, NFWF will suspend payment to the NFWF Subrecipient until the SAM registration is updated.

2.11. Arbitration.

This section is intentionally left blank.

2.12. Indemnity.

To the extent permitted by Virginia law and without waiving its sovereign or governmental immunities, the NFWF Subrecipient shall indemnify and hold harmless NFWF, any Funding Source identified in this Grant Agreement, their respective officers, directors, agents, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and expenses including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions or liabilities arising from or in connection with the Project. The terms of this provision will survive termination of this Agreement.

2.13. Insurance.

The NFWF Subrecipient, a Virginia government entity, is a self-insured entity agreeing to make such insurance available to NFWF against liability for injury to persons or property from any and all activities undertaken by the NFWF Subrecipient in connection with this Agreement, subject to the provisions of §§ 2.2-1837 and 2.2-1838 of the Code of Virginia. The terms of this provision will survive termination of this Agreement.

2.14. Choice of Law/Jurisdiction.

This section is intentionally left blank.

2.15. Stop Work.

NFWF may, at any time, by written order to the NFWF Subrecipient, require the NFWF Subrecipient to stop all, or any part, of the work called for by this Agreement for a period of 90 days after the order is delivered to the NFWF Subrecipient. The order shall be specifically identified as a stop-work order issued under this section. Upon receipt of the order, the NFWF Subrecipient shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to this Agreement covered by the order during the period of work stoppage. Within a period of 90 calendar days after a stop-work order is delivered to the NFWF Subrecipient, or within any extension of that period to which the parties shall have agreed, NFWF shall either cancel the stop-work order or terminate the Agreement under section 2.16.

2.16. Termination.

2.16.1. Upon the occurrence of any of the following enumerated circumstances, NFWF may terminate this Agreement, or any portion thereunder, upon receipt by the NFWF Subrecipient of NFWF's written notice of termination, or as otherwise specified in the notice of termination:

2.16.1.1. the NFWF Subrecipient is adjudged or becomes bankrupt or insolvent, is unable to pay its debts as they become due, or makes an assignment for the benefit of its creditors; or,

2.16.1.2. the NFWF Subrecipient voluntarily or involuntarily undertakes to dissolve or wind up its affairs; or,

2.16.1.3. suspension or debarment by the Government of the NFWF Subrecipient; or,

2.16.1.4. any breach of the requirements set forth in Section 3.3 of this Agreement concerning Compliance with Laws; or,

2.16.1.5. NFWF learns that NFWF Subrecipient has an organizational conflict of interest, or any other conflict of interest, as determined in the sole discretion of NFWF, that NFWF believes, in its sole discretion, cannot be mitigated; or,

2.16.1.6. after written notice and a reasonable opportunity, the NFWF Subrecipient is unable to cure a perceived non-compliance with any material term (other than those enumerated at 2.16.1.1 – 2.16.1.5) of this Agreement. The cure period shall be considered the timeframe specified by the Funding Source(s), if any, minus one (1) to five (5) days or as agreed upon by the Parties in writing, or if no time is specified by the Funding Source(s), ten (10) days or as otherwise agreed upon by the Parties. Within this time period the NFWF Subrecipient shall, as determined by NFWF, (a) satisfactorily demonstrate its compliance with the term(s) originally believed to be in non-compliance; or (b) NFWF, at its sole discretion, may determine that NFWF Subrecipient has satisfactorily demonstrated that reasonable progress has been made so as not to endanger performance under this Agreement; or,

2.16.1.7. if the Funding Source issues an early termination under the funding agreement(s) covering all or part of the Project at issue hereunder.

2.16.2. Either Party may terminate this Agreement by written notice to the other Party for any reason by providing thirty (30) days' prior written notice to the other Party.

2.16.3. In the event of termination of this Agreement prior to Project completion, the NFWF Subrecipient shall immediately (unless otherwise directed by NFWF in its notice if NFWF initiated the termination) undertake all reasonable steps to wind down the Project cooperatively with NFWF, including but not limited to the following:

2.16.3.1. Stop any portion of the Project's work that is incomplete (unless work to be completed and a different date for termination of work are specified in NFWF's notice).

2.16.3.2. Place no further work orders or enter into any further subawards or contracts for materials, services, or facilities, except as necessary to complete work as specified in NFWF's notice.

2.16.3.3. Terminate all pending Project work orders, subawards, and contracts for work that has not yet commenced.

2.16.3.4. With the prior written consent of NFWF, promptly take all other reasonable and feasible steps to minimize and/or mitigate any damages that may be caused by the failure to complete the Project, including but not limited to reasonable settlements of any outstanding claims arising out of termination of Project work orders, subawards, and contracts. NFWF will reimburse the NFWF Subrecipient for non-cancelable allowable costs incurred by the NFWF Subrecipient prior to termination that cannot be mitigated. However, the foregoing is subject to the complete

reimbursement of such costs by the Funding Source; accordingly, any amounts ultimately not paid, or which are recouped by the Funding Source, are subject to recoupment by NFWF.

2.16.3.5. Deliver or make available to NFWF all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by the NFWF Subrecipient under this Agreement, whether completed or in progress.

2.16.3.6. Return to NFWF any unobligated portion of the Award.

2.17. Entire Agreement.

These terms and conditions, including the Attachments hereto, constitute the entire agreement between the Parties relating to the Project described herein and supersede all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No representations or statements of any kind made by any representative of a Party, which are not stated herein, shall be binding on said Party.

2.18. Severability.

Each provision of this Agreement is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful, or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the Parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.

2.19. Interpretation and Construction.

2.19.1. This Agreement shall be interpreted as a unified contractual document with the Sections and the Attachments having equal effect, except in the event of any inconsistency between them. In the event of a conflict between any portion of this Agreement and another portion of this Grant Agreement, first the Sections will apply in the following order of precedence: 5, 4, 3, 1, 2 and 6, and then any supplemental attachments.

2.19.2. The title designations of the provisions to this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement.

2.19.3. Every right or remedy conferred by this Agreement upon or reserved to the Parties shall be cumulative and shall be in addition to every right or remedy now or hereafter existing at law or in equity, and the pursuit of any right or remedy shall not be construed a selection.

2.19.4. The failure of NFWF to exercise any right or privilege granted hereunder or to insist upon the performance and/or compliance of any provision of this Agreement, a referenced contractual, statutory or regulatory term, or an Attachment hereto, shall not be construed as waiving any such right, privilege, or performance/compliance issue, and the same shall continue in full force and effect.

2.19.5. Notwithstanding any express statements regarding the continuation of an obligation beyond the expiration or termination of this Agreement, the rights and obligations of this Agreement, which by their nature extend beyond its expiration or termination, shall remain in full force and effect and shall bind the Parties and their legal representatives, successors, heirs, and assigns.

SECTION 3 REPRESENTATIONS, CERTIFICATIONS, OBLIGATIONS AND OTHER STATEMENTS – GENERAL

3.1. Binding Obligation.

By execution of this Agreement, NFWF Subrecipient represents and certifies that this Agreement has been duly executed by a representative of the NFWF Subrecipient with full authority to execute this Agreement and binds the NFWF Subrecipient to the terms hereof. After execution by the representative of the NFWF Subrecipient named on the signature page hereto, this Agreement represents the legal, valid, and binding obligation of the NFWF Subrecipient, enforceable against the NFWF Subrecipient in accordance with its terms.

3.2. Additional Support.

In making this Award, NFWF assumes no obligation to provide further funding or support to the NFWF Subrecipient beyond the terms stated in this Agreement.

3.3. Compliance with Laws.

3.3.1. In General.

By execution of this Agreement and through its continued performance hereunder, the NFWF Subrecipient represents, certifies and agrees that it is and shall continue to conduct all such activities in compliance with all applicable federal, state, and local laws, regulations, and ordinances and to secure all appropriate necessary public or private permits and consents. The terms of this provision will survive termination of this Agreement and must be flowed down to any and all contractors, subcontractors or subrecipients entered into by NFWF Subrecipient in the performance of this Agreement.

3.3.2. Compliance with Anti-Corruption Laws.

The NFWF Subrecipient represents, certifies and agrees to ensure that no payments have been or will be made or received by the NFWF Subrecipient in connection with this Agreement in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §dd-1 *et seq.*), or any other applicable anti-corruption laws or regulations (e.g., UK Bribery Act 2010) in the countries in which the NFWF Subrecipient performs under this Agreement.

3.3.3. Compliance with Anti-Terrorism Laws.

The NFWF Subrecipient represents, certifies and agrees not to provide material support or resources directly or indirectly to, or knowingly permit any funds provided by NFWF pursuant to this Agreement or Matching Contributions to be transferred to, any individual, corporation or other entity that the NFWF Subrecipient knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (1) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury's Office of Foreign Assets Control, which list is available at www.treas.gov/offices/enforcement/ofac; (2) on the consolidated list of individuals and entities maintained by the "1267 Committee" of the United Nations Security Council at http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml; (3) on the consolidated list maintained by the U.S. Department of Commerce at http://export.gov/ecr/eg_main_023148.asp, or (4) on such other list as NFWF may identify from time to time.

3.3.4. Compliance with Additional Laws and Restrictions.

The NFWF Subrecipient represents, certifies and agrees to ensure that its activities under this Agreement comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, U.S. export controls, restrictive trade practices, boycotts, and all other economic sanctions or trade restrictions promulgated from time to time by means of statute, executive order, regulation or as administered by the U.S. Department of State, the Office of Foreign Assets Control, U.S. Department of the Treasury, or the Bureau of Industry and Security, U.S. Department of Commerce.

3.4. Subrecipient Debarment and Suspensions.

By and through NFWF Subrecipient's execution of this Agreement, NFWF Subrecipient warrants and represents its initial and continued compliance that it is not listed on the General Services Administration's, government-wide System for Award Management Exclusions (SAM Exclusions), in accordance with the OMB guidelines at 2 C.F.R Part 180 that implement E.O.s 12549 (3 C.F.R., 1986 Comp., p. 189) and 12689 (3 C.F.R., 1989 Comp., p. 235), "Debarment and Suspension." The NFWF Subrecipient further provides that it shall not enter into any subaward, contract or other agreement using funds provided by NFWF with any party listed on the SAM Exclusions in accordance with Executive Orders 12549 and 12689. The SAM Exclusions can be found at <https://www.sam.gov/portal/public/SAM/>.

3.5. Conflicts of Interest.

By execution of this Agreement, NFWF Subrecipient acknowledges that it is prohibited from using any Project funds received under this Agreement in a manner which may give rise to an apparent or actual conflict of interest, including organizational conflicts of interest, on the part of the NFWF Subrecipient. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of NFWF Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. An organizational conflict of interest is defined as a relationship that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. The NFWF Subrecipient represents and certifies that it has adopted a conflict of interest policy that, at a minimum, complies with the requirements of the OMB Uniform Guidance, and will comply with such policy in the use of any Project funds received under this Agreement. NFWF Subrecipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of NFWF Subrecipient. If NFWF Subrecipient becomes aware of any actual or potential conflict of interest or organizational conflict of interest, during the course of performance of this Agreement, NFWF Subrecipient will immediately notify NFWF in writing of such actual or potential conflict of interest, whether organizational or otherwise.

SECTION 4 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS RELATING TO FEDERAL FUNDS – GENERAL

4.1. If the Funding Source or any funding entity (*i.e.*, a secondary funding source) is a federal agency and/or any portion of the Project provided herein is paid with federal funds, the NFWF Subrecipient must read and understand certain applicable federal regulations, including but not limited to, the following in Sections 4 and 5 of this Agreement as set forth herein.

The NFWF Subrecipient will need to understand and comply with the OMB Uniform Guidance (including related Supplements as may be applicable to a specific federal funding source(s), and Appendices as may be applicable), in addition to other applicable federal regulations. This includes, but is not limited to, the provisions of the Federal Funding Accountability and Transparency Act (FFATA), which includes requirements on executive compensation, and also requirements implementing the Act for the non-federal entity at 2 CFR part 25 Financial Assistance Use of Universal Identifier and System for Award Management and 2 CFR part 170 Reporting Subaward and Executive

Compensation Information. The most recent version of the Electronic Code of Federal Regulations can be found at <https://www.ecfr.gov/>.

4.2. 2 CFR § 200 Subpart F Audits.

It is the responsibility of the NFWF Subrecipient to arrange for audits as required by 2 CFR Part 200, Subpart F – Audit Requirements. The NFWF Subrecipient shall notify NFWF in writing about 2 CFR Subpart F audit findings related to projects funded by NFWF pass-through funds. The NFWF Subrecipient understands that NFWF may require the NFWF Subrecipient to take corrective action measures in response to a deficiency identified during an audit.

4.3. Real and Personal Property.

In accordance with 2 C.F.R. § 200.316 (Property trust relationship), real property, equipment, and intangible property acquired or improved with federal funds must be held in trust by the NFWF Subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the NFWF Subrecipient must comply with all use, reporting, and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship) and 200.329 (Reporting on real property), as applicable.

4.4. Mandatory Disclosure.

NFWF Subrecipient must disclose, in a timely manner, in writing to NFWF all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Failure to make required disclosures can result in any of the remedies described in this Agreement, including termination, and any remedies provided under law, including suspension or debarment by cognizant federal authorities.

4.5. Trafficking in Persons.

Pursuant to section 106(a) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104(g)) (codified at 2 C.F.R. Part 175), NFWF Subrecipient shall comply with the below provisions. Further, NFWF Subrecipient shall flow down these provisions in all subawards and contracts, including a requirement that Subrecipients similarly flow down these provisions in all lower-tiered subawards and subcontracts. The provision is cited herein:

- I. Trafficking in persons.
 - a. *Provisions applicable to a recipient that is a private entity.*
 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
 2. We as the federal awarding agency's pass-through entity may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),".

- b. *Provision applicable to a recipient other than a private entity.* We as the federal awarding agency's pass-through entity may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity-
 - 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),".
- c. *Provisions applicable to any recipient.*
 - 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. *Definitions.* For purposes of this award term:
 - 1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - 2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - 3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
 - 4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

4.6. 41 United States Code (U.S.C.) 4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection:

(a) This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 U.S.C. 4712.

(b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.

4.7. 41 USC §6306, Prohibition on Members of Congress Making Contracts with Federal Government.

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit. NFWF Subrecipient shall flow down this provision in all subawards and contracts, including a requirement that subrecipients similarly flow down this provision in all lower-tiered subawards and subcontracts.

4.8. Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving.

(Sub)Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order. NFWF Subrecipient shall flow down this provision in all subawards and contracts, including a requirement that subrecipients similarly flow down this provision in all lower-tiered subawards and subcontracts.

4.9. 43 CFR §18 New Restrictions on Lobbying.

By execution of this Agreement, the NFWF Subrecipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, and certifies to the following statements:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the NFWF Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

(c) The NFWF Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification, as represented by execution of this Agreement, is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. All liability arising from an erroneous representation shall be borne solely by the entity filing that representation and shall not be shared by any entity to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31 of the U.S. Code.

4.10. Prohibition on Issuing Financial Assistance Awards to Entities that Require Certain Internal Confidentiality Agreements.

The NFWF Subrecipient must not require their employees, subrecipients, or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees, subrecipients, or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information. The NFWF Subrecipient must notify their employees, subrecipients, or contractors that existing internal confidentiality agreements covered by this condition are no longer in effect.

4.11. Drug-Free Workplace.

The NFWF Subrecipient must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 41 USC Chapter 81 Drug-Free Workplace.

4.12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. (Effective 8/13/2020)

As required by 2 CFR 200.216, the NFWF Subrecipient is prohibited from obligating or expending funds awarded under this Agreement to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company, or any other company, including affiliates and subsidiaries, owned or controlled by the People's Republic of China, which are a substantial or essential component of any system, or as critical technology as part of any system. By and through the NFWF Subrecipient's execution of this Agreement, the NFWF Subrecipient warrants and represents that the NFWF Subrecipient will not obligate or expend funds awarded under this Agreement for "covered telecommunications equipment or services" (as this term is defined and this restriction is imposed under 2 CFR 200.216).

4.13. Domestic Preference for Procurements.

- a) Under this Agreement and in accordance with 2 C.F.R. § 200.322, the NFWF Subrecipient shall to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- b) For purposes of this agreement, the following definitions apply:
 - i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and
 - ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

SECTION 5 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS RELATING TO FEDERAL FUNDS – FUNDING SOURCE SPECIFIC

NFWF Subrecipient acknowledges that when all or part of this Agreement is funded by a federal award that certain representations, certifications, and other statements relating to the use of such funds or performance of the Project may be necessary. These representations, certifications and other statements are set forth below. Unless otherwise stated in this Agreement, the execution and submission of this Agreement serves as affirmative acknowledgement of an agreement with the below representations, certifications, and other statements. Further, should circumstances of the NFWF Subrecipient change during the performance of this Agreement that would render one of these representations, certifications and/or other statements inaccurate, invalid or incorrect, the NFWF Subrecipient shall promptly notify NFWF of such change in circumstance. Finally, NFWF reserves the right to update and require subsequent acknowledgement of an agreement with new or revised representations, certifications, and other statements at no additional cost under this Agreement.

FC.R669 Grant Terms

Department of Defense Terms and Conditions

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 1104, “Grants and Cooperative Agreements Implementation of Guidance in 2 CFR part 200” (79 FR 76047, December 19, 2014 as amended at 85 FR 49506, August 13, 2020).

Part 1: RESERVED

PART 1: FINANCIAL AND PROGRAM MANAGEMENT

FMS Article I. Financial management system standards.

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 Assistance Listing (formerly 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 financial 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 (seeSection 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 theapproved budget for those purposes.

6. RESERVED

- 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 withFMS 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 thisaward 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.

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 DoD nor NFWF 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.

- a. You are required to return all interest in excess of \$500 per year to the Federal government via the Payment Management System (PMS) regardless of whether you were paid through the PMS.
 - Instruction for returning interest can be found at <https://pms.psc.gov/grantrecipients/returning-funds-interest.html>.

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.

3. **RESERVED**

4. **RESERVED**

5. **RESERVED**

6. **Withholding of payments.** We will withhold payments for allowable costs under the award at anytime 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.

7. **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 \$250,000 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).

FMS Article III. Allowable costs, period of availability of funds, and fee or profit.

Section A. Allowable costs. This section specifies which Federal cost principles must be used in determining the allowability of costs charged to this award, a subrecipient's costs charged to any cost-type subaward that you make under this award, and a contractor's costs charged to any cost-type procurement 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

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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. RESERVED - Not Applicable.

Section C. RESERVED - Not Applicable.

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.

Section A. RESERVED

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

program.

2. **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.

FMS Article V. Non-Federal audits.

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 \$1,000,000. 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.

Section A. RESERVED

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 2CFR 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 2CFR 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.

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 PRO 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 financial report that you submit the program income that you earn and any that you use during the reporting period

covered by that report.

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 2: PROPERTY ADMINISTRATION

PROP Article I. Title to property.

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.

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 annually 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.

Section A. Use of real property.

1. Except as otherwise provided by Federal statutes or the Federal agency, 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. Easements for

utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance.

Section B. Disposition of real property. When you no longer need real property for the originally authorized purpose, you must obtain disposition instructions from NFWF. 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.

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 at 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.
 6. Indian tribes must use and manage equipment acquired under the award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian tribes must follow the guidance in paragraphs 1-5 of this section.

Section D. Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe. You must request disposition instructions from NFWF when either original or replacement equipment acquired under this award with a current fair market value that exceeds \$10,000 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 \$10,000 or less, you may retain, sell, or otherwise dispose of the item with no further obligation to the Federal Government.

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 \$10,000 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. The aggregate value of unused supplies consists of all supply types, not just like-item supplies. You are entitled to compensation in an amount calculated by multiplying the percentage of your contribution towards the cost of the original purchase(s) by the current market value or proceeds from the sale. You may deduct and retain for selling and handling expenses up to \$1,000 of the proceeds.

PROP Article V. Use and disposition of federally owned property.

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 NFWF 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.

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: any institution of higher education, non-profit organization, State, local government, Indian tribe, for-profit entity, foreign organization, or foreign public entity receiving a DoD award or subaward for the performance of 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 3: PROCUREMENT

PROC Article I. Procurement standards for States.

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 200.323.

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.

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.

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 200.324, 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 200.323.

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 200.325(a).
2. Pre-procurement documents for our review, as described in 2 CFR 200.325(b) unless you are exempt from that requirement under 2 CFR 200.325(c).

Section I. Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, you should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This must be included in all subawards including all contracts and purchase orders for work or products under this award.

PROC Article III. Contract provisions for recipient

procurements.

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. **RESERVED**
- 3. **RESERVED**
- 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).
 - a. The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single use plastic products. See Executive Order 14057, section 101, Policy.
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 ocean-going 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.

13. Prohibition on certain telecommunications and video surveillance services or equipment.

You must include the provision provided in Section B.18 of NP Article IV in Part 8 of these general terms and conditions in each contract under this award.

PART 4: RESERVED

PART 6: OTHER ADMINISTRATIVE REQUIREMENTS

OAR Article I. Submitting and maintaining recipient information.

Section A – RESERVED

Section B – RESERVED

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.

Section A. Records retention period. Except as noted elsewhere in this article, you must retain all Federal award records for three years from the date of submission of their final financial report. For awards that are renewed quarterly or annually, you must retain records for three years from the date of submission of their quarterly or annual financial report, respectively.

1. For any item of exempt property with a current fair market value greater than \$10,000, 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 administrative 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 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 (Note: You or your subrecipient may notify OMB of any disputes with Federal agencies regarding the application of a federally negotiated indirect cost rate.).

- c. If you do not have a federally approved rate for indirect or facilities and administrative costs and do not use the de minimis rate described in 2 CFR 200.414(f), you must:
 - i. keep records that support its indirect or facilities and administrative costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply; and
 - ii. Keep any plan or computation the subrecipient submits to you to serve as a basis for your determining the reasonableness and allowability of indirect or facilities and administrative costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.

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 – RESERVED

Section E – RESERVED

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 200.337(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.

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 200.208. If imposing award-specific conditions, we will notify you before modifying the award and, once you have corrected the noncompliance, 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.
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. 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.
- 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 – RESERVED

OAR Article V – RESERVED

OAR Article VI – RESERVED

OAR Article VII. Post-closeout adjustments and continuing responsibilities.

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. Inventions developed under the award as specified in Section B of PROP Article VI.
4. Retention of, and access to, records related to this award, as specified in OAR Article II.

PART 7: SUBAWARDS

SUB Article I. Distinguishing subawards and procurements.

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.
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.

SUB Article II. Pre-award and time of award responsibilities.

Section A. RESERVED

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 200.332(b). OMB guidance in 2 CFR 200.206(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 2CFR 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. RESERVED
 - ii. They may include items such as those listed in OMB guidance in 2 CFR 200.208(c)(1) through (6).
 - iii. Your procedures for imposing and removing the additional or different requirements must comply with the procedural guidance in 2 CFR 200.208(d) and (e).

SUB Article III. Informational content of subawards.

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 200.332(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 200.332(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 200.332(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 200.332(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 200.332(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 200.332(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 200.332(a)(1)(xiii) for the subaward to include the “Indirect cost rate for the Federal award:”

1. You are required to use an approved rate negotiated between the subrecipient and the Federal Government. If no such rate exists, you must use either a rate negotiated by you as the prime recipient or the de minimis rate described in 2 CFR 200.414(f). You may not require the subrecipient to use a de minimis rate less than the standard de minimis rate.
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.

Section A. RESERVED

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, Indian tribe or 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. 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.

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.
4. You are required to ensure subrecipients return all interest in excess of \$500 per year to the Federal government via the Payment Management System (PMS) regardless of whether they were paid through the PMS.

e. Instruction for returning interest can be found at
<https://pms.psc.gov/grantrecipients/returning-funds-interest.html>.

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 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, Indian tribe, or 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 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, Indian tribe, or 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.

SUB Article V. Property requirements for subawards.

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**

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.

Section D. Use and disposition of real property. Use and disposition of real property. If you make a subaward under which the subrecipient may acquire or improve real property, then you must ensure the subrecipient complies with PROP Article III.

Section E. Appraisals. You must ensure the subrecipient obtain an independent appraiser whenever an appraisal of real property is required, except as provided in the implementing regulations at 49 CFR part 24, “Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs.”

Section F. 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.

Section G. 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 H. 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.

Section I. Disposition of residual supplies acquired under this award. If the subrecipient has a residual inventory of unused supplies with aggregate value exceeding \$10,000 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. The aggregate value of unused supplies consists of all supply types, not just like-item supplies. You are entitled to compensation in an amount calculated by multiplying the percentage of your contribution towards the cost of the original purchase(s) by the current market value or proceeds from the sale. You may deduct and retain for selling and handling expenses \$1,000.

SUB Article VI. Procurement procedures to include in subawards.

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 200.325(a); and
 - b. Other procurement documents for pre-procurement review, under the conditions described in OMB guidance at 2 CFR 200.325(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 200.326(a) through (c), unless you determine that the subrecipient's bonding policy and requirements are adequate to protect Federal interests.

SUB Article VII. Financial, programmatic, and property reporting requirements for subawards.

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 the 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 specified 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 the 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 specified 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.

Section A. RESERVED

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 administrative costs and that does not use the de minimis rate described in 2 CFR 200.414(f), you must:
 - i. Require the subrecipient to keep records that support its indirect or facilities and administrative costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply; and
 - ii. Keep any plan or computation the subrecipient submits to you to

serve as a basis for your determining the reasonableness and allowability of indirect or facilities and administrative costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.

- b. You must include the requirements of Sections B, C, and F of OAR Article II.
- c. **RESERVED**
- d. **RESERVED**
- 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 200.339 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 200.340(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. 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; 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.

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 your final reporting requirements.

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

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.19.
4. Paragraph B.1.

SUB Article X. Subrecipient monitoring and other post-award administration.

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 200.332(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.

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.

PART 8: NATIONAL POLICY REQUIREMENTS

NP Article I. Nondiscrimination national policy requirements.

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.

NP Article II. Environmental national policy

requirements.

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 in wellhead protection areas, 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.

NP Article III. National policy requirements concerning live organisms.

Section A. Cross-cutting requirements concerning live organisms.

1. Human subjects.
 - a. Institutions receiving DoD funds must protect the rights and welfare of individuals who participate as human subjects in research under this award, complying with the requirements at 32 CFR part 219, DoD Instruction (DoDI) 3216.02, and when applicable, Food and Drug Administration (FDA) regulations.
 - b. Award recipients, to include sub-recipients, must not commence DoD-supported human subject research (HSR), as defined in DoDI 3216.02, to include research with human data and biological specimens, until a DoD Human Research Protection Official (HRPO) issues formal approval.
 - c. The HRPO reviews documentation of planned HSR under the award for compliance with applicable regulations and policies. Recipient institutions must provide sufficient documentation to enable the HRPO assessment as

follows:

- i. For research that is exempt or does not involve human subjects, the protocol documents and institutional determination that the research is not HSR, or exempt HSR.
- ii. For non-exempt research involving human subjects, the institution must provide:
 - (A) Current Assurance of Compliance (i.e., Department of Health and Human Services' Office for Human Research Protections Federal-wide Assurance (FWA)) for all engaged institutions;
 - (B) Current Institutional Review Board (IRB) registration number(s).
 - (C) Documentation that the DoD-supported HSR has been reviewed and approved by an IRB, including scientific merit.
 - (D) Documentation of investigators' human research protection training.
 - (E) IRB-approved protocol documents.
- 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. Recipients must notify the HRPO promptly of the following:
 - i. IRB-approved changes to HSR that involve changes to key investigators or institutions; substantive changes to the IRB's risk-benefit assessment of the protocol; addition of vulnerable populations or DoD-affiliated personnel as subjects;
 - ii. Transfer of HSR oversight to a different IRB;
 - iii. Notification by any federal body, State agency, official governing body of a Native American or Alaskan native tribe, other entity, or foreign government that the non-DoD institution's DoD-supported HSR is under investigation;
 - iv. When the institution is notified by any Federal department or agency or national organization that any part of its human research protection program is under investigation for cause involving a DoD-supported research protocol;
 - v. Any problems involving risks to subjects or others, suspension or

- vi. The results of the IRB's continuing review, if required;
- vii. A DoD-supported study's closure;
- viii. Change in status when a previously enrolled human subject becomes a prisoner, and the protocol was not reviewed and approved by the IRB in accordance with Subpart C, Subpart 46 of Title 45, CFR and DoDI 3216.02.

- f. Recipients must make records that document compliance or noncompliance with requirements in paragraph 1.a accessible for inspection and copying, as determined by DoD human research protection personnel, by authorized DoD representatives.
- g. DoD representatives may independently review and inspect 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.

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.

NP Article IV. Other national policy

requirements.

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 182, 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:).

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.
18. Section 889 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Public Law 115-232) prohibits the head of an executive agency from obligating or expending loan or grant funds to procure or obtain, extend, or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems prohibited systems as identified in section 889 of the NDAA for FY 2019.
 - (a) In accordance with 2 CFR 200.216 and 200.471, all awards that are issued on or after August 13, 2020, recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system,

or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- (c) See Public Law 115-232, section 889 for additional information.

COVERED FOREIGN COUNTRY means the People's Republic of China.

TELECOMMUNICATIONS COST means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.

19. RESERVED

Section B. Additional requirements.

1. Food and Beverage: Funds shall not be used to pay for food or beverage.
2. 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.

SECTION 6 OTHER REPRESENTATIONS, CERTIFICATIONS, STATEMENTS AND CLAUSES

NFWF Subrecipient acknowledges that all or part of this Agreement may be funded by a non-federal source that requires certain representations, certifications, and other statements relating to the use of such funds or performance of the Project. These representations, certifications and other statements are set forth below. Unless otherwise stated in this Agreement, the execution and submission of this Agreement serves as affirmative acknowledgement of an agreement with the below representations, certifications, and other statements. Further, should circumstances of the NFWF Subrecipient change during the performance of this Agreement that would render one of these representations, certifications and/or other statements inaccurate, invalid or incorrect, the NFWF Subrecipient shall promptly notify NFWF of such change in circumstance. Finally, NFWF reserves the right to update and require subsequent acknowledgement of an agreement with new or revised representations, certifications, and other statements at no additional cost under this Agreement.

None.