

# **EPA General Terms and Conditions**

## **Effective January 27, 2016**

### **1. Introduction**

The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in 2 CFR 200.338 and 200.339.

### **2. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards**

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR, Parts 200 and 1500. 2 CFR 1500.1, Adoption of 2 CFR 200, states Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

**2.1. Implementing Procurement Standards.** Per 2 CFR 200.110, there is a one-year grace period available to non-Federal entities for implementation of the procurement standards in 2 CFR 200.317 through 200.326. As will be detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation will need to specify in their documented policies and procedures that they continue to comply with 40 CFR Part 30 or 31, as applicable, for one additional fiscal year which begins after December 26, 2014.

**2.2. Effective Date and Incremental or Supplemental Funding.** Consistent with the OMB Frequently Asked Questions at <https://cfo.gov/cofar> on Effective Date and Incremental Funding, any new funding through an amendment (supplemental or incremental) on or after December 26, 2014, and any unobligated balances (defined at 200.98) remaining on the award at the time of the amendment, will be subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR 200 and 1500).

## **Financial Information**

### **3. Reimbursement Limitation**

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See 2 CFR 1500.8

### **4. Payment Methods**

The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer. In order to comply with the Act, a recipient must receive payments via one of two electronic methods available to them:

**4.1. Automated Standard Application for Payments (ASAP).** The ASAP system is the preferred method of payment for EPA grantees. ASAP enrollment is highly encouraged for organizations that have multiple grants/cooperative agreements and for those with a frequent need to request funds. If the recipient uses multiple bank accounts for EPA grants/cooperative agreements, the recipient must enroll in ASAP. To enroll in ASAP, please complete the ASAP Initiate Enrollment form located at: <http://www2.epa.gov/financial/forms> and email it to LVFC-grants@epa.gov or fax it to LVFC at 702-798-2423.

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved funds are credited to the account at the financial institution of the recipient organization identified on the recipient's ASAP enrollment application. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Las Vegas Finance Center, at 702-798-2485, or by visiting: [www.fms.treas.gov/asap](http://www.fms.treas.gov/asap).

**4.2. Electronic Funds Transfer (EFT).**

Under this payment mechanism, the EPA Las Vegas Finance Center will obtain the recipient's banking information from the System for Award Management (SAM). Once the agreement is awarded and no restrictions are identified by the awarding office, a Las Vegas Finance Center Representative will send the recipient an email message with the EFT Control Number and payment information. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center at 702-798-2485, or by visiting: <http://www2.epa.gov/financial/grants>.

NOTE: If the banking information is not correct or changes at any time prior to the end of this agreement, the recipient must update the organization's SAM registration and notify the EPA Las Vegas Finance Center as soon as possible. This is vital to ensure proper and timely deposit of funds.

**5. Payment Drawdown**

The recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed portions of the assistance agreement to be revoked or financing method changed to a reimbursable basis.

**Selected Items of Cost**

**6. Consultant Cap**

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in Subpart D of 2 CFR 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.9.

**7. Establishing and Managing Subawards**

The recipient agrees to:

- 7.1. Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 2 CFR 200.308.
- 7.2. Establish all subaward agreements in writing;
- 7.3. Document the Federal Award Identification Number (FAIN), also known as the Grant Number, on all subaward agreements under this award;
- 7.4. Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- 7.5. Ensure that any subawards comply with the standards in 2 CFR 200 Subpart D and are not used to acquire commercial goods or services for the recipient;
- 7.6. Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are allowable, reasonable and allocable;
- 7.7. Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- 7.8. Monitor the performance of their subrecipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- 7.9. Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- 7.10. Ensure that any questions about subrecipient eligibility or other issues pertaining to subawards are addressed to the recipient's EPA Project Officer, as appropriate. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with 2 CFR 200 Subpart D can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and [http://www.whitehouse.gov/omb/financial\\_fin\\_single\\_audit](http://www.whitehouse.gov/omb/financial_fin_single_audit).
- 7.11. Be responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

## 8. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

## Reporting and Additional Post-Award Requirements

### 9. Central Contractor Registration/System for Award Management and Universal Identifier Requirements

- 9.1. **Requirement for System for Award Management (SAM)** Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain the currency of the organization's information in SAM until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.
- 9.2. **Requirement for Data Universal Numbering System (DUNS) numbers.** If the recipient is authorized to make subawards under this award, the recipient:
  - 9.2.1. Must notify potential subrecipients that no entity (definition paragraph 9.3 of this award term) may receive a subaward unless the entity has provided its DUNS number.
  - 9.2.2. May not make a subaward to an entity unless the entity has provided its DUNS number.
- 9.3. **Definitions.** For the purposes of this award term:
  - 9.3.1. **System for Award Management (SAM)** means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information

about registration procedures may be found at the System for Award Management (SAM) Internet site: <https://www.sam.gov>.

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

**9.3.3. Entity**, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- 9.3.3.1.** A Governmental organization, which is a State, local government, or Indian tribe;
- 9.3.3.2.** A foreign public entity;
- 9.3.3.3.** A domestic or foreign nonprofit organization;
- 9.3.3.4.** A domestic or foreign for-profit organization; and
- 9.3.3.5.** A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

**9.3.4. Subaward:**

- 9.3.4.1.** This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient.
- 9.3.4.2.** The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).
- 9.3.4.3.** A subaward may be provided through any legal agreement, including an agreement that the recipient considers a contract.

**9.3.5. Subrecipient** means an entity that:

- 9.3.5.1.** Receives a subaward from the recipient under this award; and
- 9.3.5.2.** Is accountable to the recipient for the use of the Federal funds provided by the subaward.

## 10. Reporting Subawards and Executive Compensation

### 10.1. Reporting of first-tier subawards.

**10.1.1. Applicability.** Unless the recipient is exempt as provided in paragraph 10.4. of this award term, the recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph 10.5 of this award term).

**10.1.2. Where and when to report.** (1) The recipient must report each obligating action described in paragraph 10.1.1 of this award term to [www.fsrc.gov](http://www.fsrc.gov). (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)

**10.1.3. What to report.** The recipient must report the information about each obligating action as described in the submission instructions available at: <http://www.fsrc.gov>.

### 10.2. Reporting Total Compensation of Recipient Executives.

**10.2.1. Applicability and what to report.** The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:

- 10.2.1.1.** the total Federal funding authorized to date under this award is \$25,000 or more;
- 10.2.1.2.** in the preceding fiscal year, the recipient received:(i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

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

**10.2.2. Where and when to report.** The recipient must report executive total compensation described in paragraph 10.2.1 of this award term: (i.) As part of the registration Central System for Award Management profile available at [www.sam.gov](http://www.sam.gov). (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

### **10.3. Reporting of Total Compensation of Subrecipient Executives.**

**10.3.1. Applicability and what to report.** Unless exempt as provided in paragraph 10.4. of this award term, for each first-tier subrecipient under this award, the recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

**10.3.1.1.** in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (ii.) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

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

**10.3.2. Where and when to report.** The recipient must report subrecipient executive total compensation described in paragraph 10.3.1. of this award term:

**10.3.2.1.** To the recipient.

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

### **10.4. Exemptions**

**10.4.1.** If, in the previous tax year, the recipient had gross income, from all sources, under \$300,000, the recipient is exempt from the requirements to report:

**10.4.1.1.** subawards, and the total compensation of the five most highly compensated executives of any subrecipient.

### **10.5. Definitions.** For purposes of this award term:

**10.5.1. Entity** means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; (iv.) A domestic or foreign for-profit organization; (v.) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

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

#### **10.5.3. Subaward:**

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

**10.5.3.2.** The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).

**10.5.3.3.** A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

**10.5.4. Subrecipient** means an entity that:

**10.5.4.1.** Receives a subaward from the recipient under this award; and

**10.5.4.2.** Is accountable to the recipient for the use of the Federal funds provided by the subaward.

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

**10.5.5.1.** Salary and bonus.

**10.5.5.2.** Awards of stock, stock options and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

**10.5.5.3.** Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

**10.5.5.4.** Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

**10.5.5.5.** Above-market earnings on deferred compensation which is not tax-qualified.

**10.5.5.6.** Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **11. Recipient Integrity and Performance Matters - Reporting of Matters Related to Recipient Integrity and Performance (added 1/27/2016)**

### **11.1. General Reporting Requirement**

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

### **11.2. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

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

**11.2.2.** Reached its final disposition during the most recent five year period; and

**11.2.3.** Is one of the following:

**11.2.3.1.** A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

**11.2.3.2.** A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

**11.2.3.3.** An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

**11.2.3.4.** Any other criminal, civil, or administrative proceeding if:

- 11.2.3.4.1.** It could have led to an outcome described in paragraph 11.2.3.1, 11.2.3.2, or 11.2.3.3 of this award term and condition;
- 11.2.3.4.2.** It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
- 11.2.3.4.3.** The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### **11.3. Reporting Procedures**

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

### **11.4. Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph 11.1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### **11.5. Definitions**

For purposes of this award term and condition:

**11.5.1.** Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

**11.5.2.** Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.

**11.5.3.** Total value of currently active grants, cooperative agreements, and procurement contracts includes—

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

**11.5.3.2.** The value of all expected funding increments under a Federal award and options, even if not yet exercised.

## **12. Final Federal Financial Report (FFR)**

Pursuant to 2 CFR 200.327 and 200.343, EPA recipients must submit the SF-425 no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extension of reporting due dates may be approved by EPA upon request of the recipient. The form is available on the internet at: <http://www2.epa.gov/financial/forms>. All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov) or fax at 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document.

## **13. Indirect Cost Rate Agreements**

Recipients are entitled to reimbursement of indirect costs, subject to any statutory or regulatory administrative cost limitations, if they have a current Federally-approved indirect cost rate agreement or have submitted an

indirect cost rate proposal to their cognizant federal agency for review and approval and a final rate has been determined by the cognizant agency. Recipients are responsible for maintaining an approved indirect cost rate for the life of the award. Recipients with differences between their provisional rates and final rates are not entitled to more than the award amount, without prior approval from EPA.

#### **14. Audit Requirements (modified 1/27/16)**

In accordance with 2 CFR 200.501(a), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: [https://harvester.census.gov/facides/\(S\(3wauez2yufokbe3engv0dtek\)\)/account/login.aspx](https://harvester.census.gov/facides/(S(3wauez2yufokbe3engv0dtek))/account/login.aspx). For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <https://harvester.census.gov/facweb/Default.aspx>.

#### **15. Closeout Requirements**

Reports required for closeout of the assistance agreement must be submitted in accordance with this agreement. Submission requirements and frequently asked questions can also be found at <http://www2.epa.gov/grants/frequently-asked-questions-about-closeout-information>.

#### **16. Suspension and Debarment**

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at: <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

#### **17. Disclosing Conflict of Interests**

##### **17.1. For awards to Non-federal entities and individuals (other than states and fellowship recipients under 40 CFR Part 46).**

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at <http://www2.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the

Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grant Specialist will respond to any such disclosure within 30 calendar days.

EPA's COI Policy requires that recipients have systems in place to address, resolve and disclose to EPA COIs described in sections 4.0(b), (c) and/or (d) of the COI Policy that affect any contract or subaward regardless of amount funded under this award. The recipient's COI Point of Contact for the award must disclose any COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of the discovery of the potential COI and their approach for resolving the COI.

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.74 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that recipients and subrecipients disclose COI's that are discovered under their systems for addressing and resolving COI. If recipients or subrecipients do not discover a COI, they do not need to advise EPA or the pass-through entity of the absence of a COI.

Upon notice from the recipient of a potential COI and the approach for resolving it, the Agency will then make a determination regarding the effectiveness of these measures within 30 days of receipt of the recipient's notice unless a longer period is necessary due to the complexity of the matter. Recipients may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. Failure to disclose a COI may result in cost disallowances.

Disclosure of a potential COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the recipient notifies EPA of measures the recipient or subrecipient has taken to eliminate, neutralize or mitigate the conflict of interest when making the disclosure.

**17.2. For awards to states including state universities that are state agencies or instrumentalities**

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at <http://www2.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental, incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grant Specialist will respond to any such disclosure within 30 calendar days.

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.74. Any other COI are subject to state laws, regulations and policies. EPA's COI Policy requires that subrecipients

have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.74 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that subrecipients disclose COI's to state pass-through entities that are discovered under their systems for addressing, resolving, and disclosing COI. If subrecipients do not discover a COI, they do not need to advise state pass-through entities of the absence of a COI.

Upon receiving notice of a potential COI and the approach for resolving it, the Agency will make a determination regarding the effectiveness of these measures within 30 days of receipt of the state's notice of a subrecipient COI unless a longer period is necessary due to the complexity of the matter. States may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. A subrecipient's failure to disclose a COI to the state and EPA may result in cost disallowances.

Disclosure of a potential subrecipient COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the subrecipient has taken measures that EPA and the state agree eliminate, neutralize or mitigate the conflict of interest.

## **Programmatic General Terms and Conditions**

### **18. Sufficient Progress**

EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

### **19. Copyrighted Material and Data**

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

## **20. Patents and Inventions**

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov>. Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at <http://iEdison.gov>. EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property “developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.”

## **21. Acknowledgement Requirements for Non-ORD Assistance Agreements**

The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.”

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: <http://www.nsf.gov/awards/managing/rct.jsp>. A Federal-wide workgroup is currently updating the Federal-Wide Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and when completed recipients of EPA ORD research must abide by the research T&Cs.

## **22. Electronic and Information Technology Accessibility**

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology (“EIT”). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient’s websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C’s Web Content Accessibility Guidelines (WCAG) 2.0 (see <http://www.access-board.gov/sec508/guide/index.htm>).

### **23. Light Refreshments and/or Meals**

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event; and
- (3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the recipient's EPA Project Officer; however, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

### **24. Tangible Personal Property**

**24.1 Reporting** Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to 40 CFR 35.6340 and 35.6660 for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

#### **24.2 Disposition**

**24.2.1 Most Recipients.** Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document or this award term, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

**24.2.2 State Agencies.** Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

**24.2.3 Superfund Recipients.** Equipment purchased under Superfund projects is subject to specific disposal options in accordance with 40 CFR Part 35.6345.

## **Public Policy Requirements**

### **25. Civil Rights Obligations**

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

**a. Statutory Requirements**

- i. In carrying out this agreement, the recipient must comply with:
  1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
  2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
  3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is conducting an education program under this agreement, it must also comply with:
  1. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
  1. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

**b. Regulatory Requirements**

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
  1. For Title IX obligations, 40 C.F.R. Part 5; and
  2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
  3. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.

**c. TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation**

- i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004\\_register&docid=fr25jn04-79.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf).
- ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
- iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that

such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

## **26. Drug-Free Workplace**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at <http://ecfr.gpoaccess.gov/>.

## **27. Hotel-Motel Fire Safety**

Pursuant to 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act.

## **28. Lobbying and Litigation**

### **a. All Recipients.**

- i. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.
- iii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv. Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v. Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

## **29. Recycled Paper**

When directed to provide paper documents, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

### **30. Resource Conservation and Recovery Act**

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in 40 CFR Part 247.

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.322, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

### **31. Trafficking in Persons**

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

- i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—
  1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  2. Procure a commercial sex act during the period of time that the award is in effect; or
  3. Use forced labor in the performance of the award or subawards under the award.
- ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity —
  1. Is determined to have violated a prohibition in paragraph 30.1 of this award term; or
  2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph 31.1 of this award term through conduct that is either—
    - a. Associated with performance under this award; or
    - b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

#### **b. Provision applicable to a recipient other than a private entity. EPA may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—**

- i. Is determined to have violated an applicable prohibition in paragraph 30.1. of this award term; or
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph 30.1 of this award term through conduct that is either—
  1. Associated with performance under this award; or
  2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by EPA at 2 CFR 1532

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

- i. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph 30.1 of this award term.

- ii. Our right to terminate unilaterally that is described in paragraph 30.1.2 and 30.2:
  - 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - 2. Is in addition to all other remedies for noncompliance that are available to us under this award.
- iii. The recipient must include the requirements of paragraph 30.1 of this award term in any subaward made to a private entity.

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

- i. “Employee” means either:
  - 1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - 2. Another person engaged in the performance of the project or program under this award and not compensated by 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.
- ii. “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.
- iii. “Private entity”:
  - 1. 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.
  - 2. 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.
- iv. “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).