

**DEFENSE THREAT REDUCTION AGENCY (DTRA)
GENERAL TERMS AND CONDITIONS FOR GRANT AWARDS TO
FOR-PROFIT ORGANIZATIONS
WIDE AREA WORKFLOW VERSION**

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1. Acceptance of Grant. The recipient is not required to countersign the Grant document; however, the recipient agrees to the conditions specified in the Research Grant and the Articles contained herein unless notice of disagreement is furnished to the Grants Officer within fifteen (15) calendar days after the date of the Grants Officer's signature. In case of disagreement, the recipient shall not assess the Grant any costs of the research unless and until such disagreement(s) is resolved.

2. Recipient Responsibilities.

a. The recipient will bear primary responsibility for the conduct of the research and will exercise judgment towards attaining the stated research objectives within the limits of the Grant's Terms and Conditions.

b. The Principal Investigator(s) (PI) specified in the Grant award will be continuously responsible for the conduct of the research project and will be closely involved with the research effort. The PI, operating within the policies of the recipient, is in the best position to determine the means by which the research may be conducted most effectively.

c. The recipient is the responsible authority, without recourse to DTRA regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement.

d. Recipients are responsible for monitoring each project, program, subaward, function or activity supporting the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements specified in Department of Defense (DoD) Grant and Assistance Regulations (DoDGARs) §34.16, if applicable.

3. Order of Precedence. This Grant is subject to the laws and regulations of the United States. Any inconsistency or conflict in the terms and conditions specified in this Grant shall be resolved according to the following order of precedence:

a. The Federal statute authorizing this award, or any other Federal statutes directly affecting performance of this Grant.

b. DoD 3210.6-R, DoDGARs and Part 34, "Administrative Requirements for Grants and Agreements with For-Profit Organizations," as appropriate and Appendix A thereto.

c. Other terms and conditions contained within the Grant and any attachments.

d. These General Terms and Conditions.

4. Administration and Cost Principles. The following documents and attachments, effective the earlier of (i) the start date of this Grant or (ii) the date on which the recipient incurs costs to be assessed against the Grant, are incorporated by reference as part of this Grant:

a. DoD 3210.6-R, DoDGARs and Part 34, "Administrative Requirements for Grants and Agreements with For-Profit Organizations," as appropriate and

Appendix A thereto. DoDGARs is derived from 32 CFR Parts 21-37 and Part 1125. (DoDGARs may be accessed online at <http://www.dtic.mil/whs/directives/corres/html/321006r.htm>.)

b. Subpart 31.2 of the Federal Acquisition Regulation (FAR) (48 CFR Subpart 31). (FAR may be accessed online at <http://farsite.hill.af.mil/vffara.htm>.)

c. Subpart 231.2 of the DoD FAR Supplement (DFARS) (48 CFR Subpart 231). (DFARS may be accessed online at <http://farsite.hill.af.mil/VDFDARA.HTM>.)

5. Standards for Financial Management Systems. In accordance with DoDGARs Part 34, For-Profit organizations will use their existing financial management system established for doing business in the commercial marketplace, to the extent that the systems comply with Generally Accepted Accounting Principles and the minimum standards contained in DoDGARs §34.11, §34.16, and §34.17.

6. Modification of the Grant. The only method by which this Grant may be modified is by a formal, written modification signed by the Grants Officer. No other communications, whether oral or in writing, are valid.

7. Prior Approvals.

a. In accordance with DoDGARs §34.15 for For-Profit organizations, prior approval of the following deviations from budget and program plans is required:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval). (Approval via modification of the Grant.)

(2) A change in a key person specified in the application or award document. (Approval via written notification from the Grants Officer or modification of the Grant, depending on the circumstances.)

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator. (Approval via written notification from the Grants Officer or modification of the Grant, depending on the circumstances.)

(4) Request for a no-cost extension, must be submitted in writing to the Grants Officer and must be received at least thirty (30) calendar days prior to the end of the current performance period. (Approval via modification of the Grant.)

(5) Any request for additional funding. (Approval via modification of the Grant.)

(6) The inclusion of any additional costs that require prior approval in accordance with applicable cost principles for Federal funds and recipients' cost share or match, in §34.17 and §34.13, respectively. (Approval via written notification

from the Grants Officer or modification of the Grant, depending on the circumstances.)

(7) Any subaward, transfer or contracting out of substantive program performance under an award, unless described in the application and funded in the approved awards. This provision does not apply to the purchase of supplies, material, or general support services, except that procurement of equipment or other capital items of property always is subject to the Grants Officer's prior approval under §34.21(a), if it is to be purchased with Federal funds, or §34.13(a)(7), if it is to be used as cost sharing or matching. (Approval via written notification from the Grants Officer or modification of the Grant, depending on the circumstances.)

(8) The transfer of funds among direct cost categories, functions and activities for awards in which the Federal share of the project exceeds \$100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the DoD Component. No DoD Component shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation. (Approval via written notification from the Grants Officer.)

(9) The inclusion of pre-award costs. All such costs are incurred at the recipient's risk (i.e., DTRA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award, or if the award is less than anticipated and inadequate to cover such costs). (Approval via written notification from the Grants Officer or modification of the Grant, depending on the circumstances.)

(10) The purchase of real property or equipment not previously approved as part of the grant award. (Approval via written notification from the Grants Officer or modification of the Grant, depending on the circumstances.)

b. In accordance with DoDGARs §34.21(a), recipients may purchase real property or equipment in whole or in part with Federal funds under an award only with the prior approval of the Grants Officer. (Approval via written notification from the Grants Officer or modification of the Grant, depending on the circumstances.)

c. Prior approval is not required to transfer amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa. Note: If directed in the DoD Appropriations Act for the funding obligated under this grant, the indirect costs of awards funded with Basic Research funding must be a certain percentage or less of the total award value. Revised budgets may be required.

d. Within 30 calendar days from the date of receipt of the recipient's request for budget revisions, the Grants Officer shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Grants Officer shall inform the recipient in writing of the date when the recipient may expect the decision.

8. Unobligated Balances. In the absence of any specific notice to the contrary, the recipient is authorized to carry forward unobligated balances to subsequent funding periods of this Grant agreement.

9. Payments. 2 CFR 215.22 governs the Federal awarding agency's and recipient's responsibilities concerning payments, with the following clarifications:

a. See **Financial Reporting Requirements** under Article 23 of this document. If these financial reporting requirements are not met, payment cannot be disbursed.

b. Payments will be made in advance, subject to the conditions described in 2 CFR 215.22(b),

“Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(2) Financial management systems that meet the standards for fund control and accountability as established in §215.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.”

c. All payments shall be made by electronic funds transfers (EFT) to the bank account registered in the Central Contractor Registration (CCR). The Grantee agrees to maintain its registration in CCR including information necessary to facilitate payment via EFT. Should a change in registry or other incident necessitate the payment to an account other than that maintained in CCR, it is the Grantee's responsibility to notify the Grants Officer and obtain a modification to this Grant reflecting the change. The Government shall not be held responsible for any misdirection or loss of payment which occurs as the result of a Grantee's failure to maintain correct/current EFT information within its CCR registration. Refer to Article 38 for further information on CCR.

d. Recipients shall submit requests for payment using Wide Area Workflow (WAWF) at <https://wawf.eb.mil/>. Any request for advance payments must be approved by the Administrative Grants Office shown in Block 6 of the award. The request shall be submitted to the Administrative Office identified in Block 6 of the Research Grant by entering the following routing codes:

- I. Pay Office DoDAAC: See Block 12 (Code) on the first page of the Grant.
- II. Invoice Type: Grant and Cooperative Agreement Voucher.
- III. Issue By DoDAAC: See Block 5 (Code) on the first page of the Grant.
- IV. Admin DoDAAC: See Block 6 (Code) on the first page of the Grant.

V. Grant Approver: Same as Admin DoDAAC (Leave Ext. blank).

e. Payments will be made by the Defense Finance and Accounting Service (DFAS) office specified in the Research Grant (Block 12).

10. Funding Increments and/or Options. The recipient is advised that the Grantor's obligation to provide funding for increments and/or options included in the Grant is contingent upon satisfactory performance in the judgment of the DTRA Scientific Officer/Technical Monitor and the availability of funds. Other factors will be considered before options will be exercised (for example: expenditure rate and current programmatic objectives). Accordingly, no legal liability on the part of the Grantor exists unless or until funds are made available to the Grantor and notice of such availability is confirmed in writing to the recipient. Refer to the Funding Profile in Section G of the Grant for additional incremental funding planned, but not currently obligated for the Grant.

a. Funding Increments – In no event is the Government obligated to reimburse the recipient for expenditures in excess of the total funds allotted by the Government to this agreement. Recipients should note that low expenditure rates reported on payment requests may be cause for deferral of future increments. The Government anticipates unilateral modifications for funding increments.

b. Options – If the agreement contains Option(s), the Government reserves the right to exercise the Option(s) unilaterally.

11. Cost Sharing or Matching. Unless specified otherwise in other terms and conditions of the Grant, cost sharing or matching, if any, is included in accordance with DoDGARs §34.13.

12. Allowable Costs. Allowability of costs is in accordance with DoDGARs §34.17.

13. Program Income.

a. All program income earned during the project period (except proceeds from the sale of real and personal property and license fees and royalties received as a result of copyrights, patents, patent applications, trademarks, or inventions produced under the Grant) shall be deducted from the total project's allowable costs in determining the net allowable costs on which the Federal share of costs will be based (see DoDGARs §34.14). Proceeds from the sale of property that is acquired, rather than fabricated, under an award are not program income and shall be handled in accordance with the requirements of the Property Standards (see DoDGARs §34.20 through 34.25).

b. For awards that support research, DoDGARs §34.14(d)(1) shall apply automatically unless the terms and conditions specify another alternative or the recipient is subject to special award conditions, as indicated in DoDGARs §34.4.

14. Interest Earned. Interest earned will be subject to guidelines as specified in DoDGARs §34.12(b)(2)(iv). Interest earned shall be remitted annually to the Administrative Office annotated in Block 6 of the Grant Document, in the form of a check made payable to the U.S. Treasury.

15. Debt Collection. The establishment of debts owed by recipients of grants and transferring them to payment offices for collection shall be dealt with in accordance with DoDGARs §34.63.

16. Audits. Recipients are to periodically have independent, financial and compliance audits subject to DoDGARs §34.16.

17. Subawards. Recipients shall flow down requirements to subawards in accordance with DoDGARs §34.1(b)(2) and DoDGARs Appendix A to Part 34. Refer to Article 39 for reporting requirements for subawards.

18. Procurement Standards. Recipients shall comply with the standards set forth in DoDGARs §34.30 and 34.31 and applicable Federal statutes and Executive Orders when expending Federal funds for supplies, equipment, real property, and expendable property. Upon request, recipients shall make available for DTRA's pre-award review, procurement documents such as requests for proposals or invitations for bids, independent cost estimates, etc. in accordance with DoDGARs §34.31(b).

19. Title to Real Property and Equipment. Unless specified otherwise in other terms and conditions of the Grant, title to real property or equipment purchased in whole or in part with Federal funds shall vest in the recipient upon acquisition subject to the conditions that the recipient:

- a. Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project;
- b. Not encumber the property without approval of the Grants Officer;
- c. Use and dispose of the property in accordance with DoDGARs §34.21(d) and (e); and
- d. Manage, use and dispose of property in accordance with DoDGARs §34.21 through §34.24.

20. Intangible Property. Rights in technical data and computer software under this Grant shall be in accordance with DoDGARs §34.25(b). DTRA does not waive any rights set forth in DoDGARs §34.25(b)(2).

- a. Patents. Grants and cooperative agreements with:

(1) Small business concerns shall comply with 35 U.S.C. Chapter 18, as implemented by 37 CFR Part 401, which applies to inventions made under grants and cooperative agreements with small business concerns for research and development. 37 CFR 401.14 provides a standard clause that is required in such grants and cooperative agreements in most cases, 37 CFR 401.3 specifies when the clause shall be included, and 37 CFR 401.5 specifies how the clause may be modified and tailored.

(2) For-profit organizations other than small business concerns shall comply with 35 U.S.C. 210(c) and Executive Order 12591 (3 CFR, 1987 Comp., p. 220) (which codifies a Presidential Memorandum on Government Patent Policy, dated February 18, 1983).

(a) The Executive order states that, as a matter of policy, grants and cooperative agreements should grant to all for-profit organizations, regardless of size, title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the Government (i.e., it extends the applicability of 35 U.S.C. Chapter 18, to the extent permitted by law, to for-profit organizations other than small business concerns).

(b) 35 U.S.C. 210(c) states that 35 U.S.C. Chapter 18 is not intended to limit agencies' authority to agree to the disposition of rights in inventions in accordance with the Presidential memorandum codified by the Executive order. It also states that such grants and cooperative agreements shall provide for Government license rights required by 35 U.S.C. 202(c)(4) and march-in rights required by 35 U.S.C. 203.

b. Copyright, data and software rights. Requirements concerning data and software rights are as follows:

(1) The recipient may copyright any work that is subject to copyright and was developed under an award. DoD Components reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(2) Unless waived by the DoD Component making the award, the Federal Government has the right to:

(a) Obtain, reproduce, publish or otherwise use for Federal Government purposes the data first produced under an award.

(b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

21. Patent Rights.

For-Profit organizations other than small business concerns shall comply with 35 U.S.C. 210(c) and Executive Order 12591 (3 CFR, 1987 Comp., p. 220), which codifies a Presidential Memorandum on Government Patent Policy, dated February 18, 1983 (see DoDGARs §34.25(a)). All awardees shall comply with the following, in accordance with 37 CFR §401.14. Note: "Contractor" equals "Grantee", "Subcontractor" equals "Subawardee", and "Subcontract" equals "Subaward".

a. Definitions

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) *Subject invention* means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

b. Allocation of Principal Rights

The *Contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *Contractor* retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. Invention Disclosure, Election of Title and Filing of Patent Application by *Contractor*

(1) The *contractor* will disclose each subject invention to the *Federal Agency* within two months after the inventor discloses it in writing to *contractor*

personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *Contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *Contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

d. Conditions When the Government May Obtain Title

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c) above,

but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

f. *Contractor* Action to Protect the Government's Interest

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the

contractor elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the Federal agency). The government has certain rights in the invention."

g. Subcontracts

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided,

however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

h. Reporting on Utilization of Subject Inventions

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

i. Preference for United States Industry

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in Rights

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for *Contracts* with Nonprofit Organizations

If the *contractor* is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

(2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary may review the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

l. Communication

All DTRA-related disclosures, confirmatory licenses to the government, patent applications, and other communications should be submitted in accordance with Article 21m. Questions should be submitted to basicresearch@dtra.mil.

m. Invention Reporting

37 CFR Part 401 invention reporting requirements are summarized in below table. Unless otherwise indicated in the “Submission to DTRA” column below, the grantee is required to upload the following types of invention information using iEdison. iEdison (<https://s-edison.info.nih.gov/iEdison/>), is a single web interface for government grantees to report details of inventions and patents. If the grantee organization is not already an iEdison registrant, then registration with iEdison is required prior to submission of the below invention reports. The grant shall not be closed out until all invention reporting requirements are met.

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Action	When	Discussion	37 CFR Reference	Submission to DTRA
Invention Report: The grantee must submit a report of any "subject" invention. The report must identify inventor(s), federal agency(ies), grant number(s), and date of any public disclosure. Date of submission establishes time frames for all future actions. Must be complete in technical detail. The report should be directed to the lead agency.	Within <u>2 months</u> of inventor's initial report to the grantee/contractor organization.	There is no single format for disclosing the invention to the government. The communication should include: the title of the invention, date of any public disclosure, names of all inventors, source(s) of federal funding (i.e. grant number), a written description of the invention in technical detail. The invention disclosure should be signed by the inventor(s): at the very least signed by a grantee institutional official.	401.14(a)(2) 401.14(c)(1)	Submit electronically by uploading either a PDF, TIFF, or text file through iEdison.
Rights to Inventions on Subcontracts: Subcontractors retain rights to their subject inventions.	Same reporting responsibilities, obligations and time frames as prime grantee organization.	Prime grantee organization cannot require ownership of subcontractor's subject invention(s).	401.14(g)(1) 401.14(g)(2)	Invention disclosure, confirmatory license, and proof of gov't support clause shall be submitted electronically through iEdison.
Election of Title to Invention: Grantee organization must notify the federal agency sponsor that it will retain ownership of invention and take steps to commercialize the invention.	Within <u>2 years</u> of reporting the invention to the lead federal agency sponsor. (If disclosed publicly, this period is decreased.)		401.14(b) 401.14(c)(2) 401.14(f)(1)	Submit electronically through iEdison.
Confirmatory license: The grantee organization must provide a nonexclusive, nontransferable, irrevocable, paid-up license for the government to practice or have the invention practiced on its behalf throughout the world.	Commensurate with report of any initial patent filing, unless the invention is being licensed as an unpatented biological material or research tool.		401.14(f)(1)	Submit electronically by uploading either a PDF or TIFF file through iEdison.
Nonelection of Title to Invention: Grantee organization must notify the federal sponsor that it will not retain ownership of an invention.	Within <u>2 years</u> of reporting to federal agency sponsor.	Effectively a waiver to the government. After further review the federal agency sponsor may elect title on behalf of the government. Title does not actually vest with the	401.14(c)(2) 401.14(d)	Submit electronically through iEdison.

<p>Assignment of Invention Rights to the Inventor: The inventor may request assignment of invention rights. Agencies support requests of this type to variously. In all cases, documentation is required when a grantee organization waives rights to the invention and the inventor(s) wishes to retain the invention rights.</p>	<p>(If disclosed publicly, this period is decreased.)</p> <p>At the time the grantee organization elects not to pursue title and the inventor requests rights in the invention.</p>	<p>government until government elects to retain title.</p> <p>First, the grantee organization must elect not to retain rights in the invention. Second, the inventor must request the assignment of rights, agree to all terms associated with invention reporting as detailed in 37 CFR 401, and must pursue commercialization of the invention through patent filing or licensing as a research tool. Specific procedures for any agency should be determined prior to initiating the request.</p>	<p>401.14(k)(1) non-profits</p>	<p>This status shall be indicated using iEdison; Submission of all other issues (such as outstanding required documents) should be resolved prior to proceeding further. Submission of the required documents will be done electronically by uploading either a PDF, TIFF, or text file through iEdison.</p>
<p>Initial Patent Application: The grantee must inform the government of the initial patent application that related to any subject invention. The patent application must include a government support clause.</p>	<p>Within <u>1 year</u> after election of title, unless there is an extension.</p>	<p>Time frame may vary if invention becomes public. The term initial patent application means a nonprovisional U.S. national application for patent as defined in 37 CFR 1.9(a)(3). The notification must include the patent application number and filing date assigned by the USPTO. A copy of the full application is not required.</p>	<p>401.14(c)(3) 401.2(n)</p>	<p>All filing data shall be submitted via iEdison. Evidence of inclusion of government support clause shall be submitted electronically as either a PDF or TIFF file through iEdison.</p>
<p>Assignment to Third Party: Documentation necessary when a grantee/contractor wishes to assign invention rights to third party. If the grantee/contractor is a non-profit, the government must approve the assignment. For profit or small business grantee/contractors do not need to seek approval. If the rights are assigned, new rights holder assumes the same reporting responsibilities as the grantee/contractor organization.</p>		<p>If assignment approved, third party must pursue commercialization of the invention through patent filing or licensing of the invention as a research tool. Specific procedures to request third party assignment may vary between agencies. Consult DTRA prior to initiating request.</p>	<p>401.14(k) for non-profits. Note the distinction between small businesses and non-profit organizations.</p>	<p>Documentation shall be submitted electronically as either a PDF or TIFF file through iEdison.</p>
<p>Issued Patent: Grantee must provide federal</p>	<p>At the time of issue.</p>	<p>Patent must include government support</p>	<p>401.5(f)(2)</p>	<p>All issued patent</p>

agency sponsor with patent issue date, number, title of patent, and evidence of government support clause.		clause.	401.14(f)(4)	information shall be provided using iEdison. Evidence of inclusion of government support clause will be provided electronically as a PDF or TIFF file through iEdison.
Request for Extension of Time: An extension of up to two years may be requested for election of title, or one year for filing a patent application.	Prior to any statutory bar.	Extension of 2 years for title election and one year for patent application are preapproved for funded inventions. Additional extensions need written approval from the federal agency sponsor.	401.14(c)(4)	Request electronically using iEdison.
Discontinuance of Patent Application, Payment of Maintenance Fees, or Defense in a Reexamination or Opposition proceeding on a Patent: Grantee must notify federal agency sponsor of changes in patent status.	At any time in the process, but prior to established deadlines.	Relevant information and documents (e.g., patent application or patent) must be provided such that a determination to protect government interests can be made. The federal agency sponsor has the option to pursue the patent application or the patent if not being properly pursued or maintained. Any change in status must be reported at least 30 days prior to pending PTO office actions.	401.14(f)(3) 401.6	Indication shall be made via iEdison.
Annual Utilization Report: DTRA requires utilization reporting for all subject inventions that have had title elected or are licensed without a patent. Report includes stage of development, date of first commercial sale or use, number and type of licenses, gross income, licensing to small business, status of U.S. manufacturing and identification of any FDA-approved product names.	Annually	DTRA requires invention utilization reports on a 12 month reporting cycle beginning in the month of grantee choosing and continuing throughout duration of patent. Information requirements defined in iEdison. Note: this reporting requirement, if applicable, extends beyond the grant period.	401.14(h)	Submit electronically using iEdison.
Annual Summary Report of Inventions: Summarize all previously reported subject inventions under this grant.	Annually	Invention reports shall be filed annually due no later than 1 July of each year. Grants effective after 31 January will not require a report until 1 July of the following year. The recipient shall use DD Form 882, Report	401.5(f)(3)	No iEdison submission allowed. Submit DD Form 882, Report of Inventions and Subcontracts to:

EXHIBIT B

		<p>of Inventions and Subcontracts, to file invention reports. If no inventions occurred during the annual reporting period a negative report must be submitted.</p> <p>As directed by DTRA, either email Form DD882 to basicresearch@dtra.mil (file size must be less than 10MB), or upload to the DTRA Basic and Fundamental Research Community Portal, www.dtrasubmission.net/portal. File should be named by the Grant number and ‘Invention Report’ (e.g. HDTRA1-12-1-9999 Invention Report).</p> <p>The Grant shall not be closed out until all invention reporting requirements are met.</p>	<p>-DTRA Grants Officer 8725 John J. Kingman Rd. MSC 6201 (#2730B) Ft. Belvoir VA 22060-6201 -Administrative Office identified in the Grant -As directed by DTRA, email or portal.</p>
<p>Final Invention Statement and Certification: Report all subject inventions derived or reduced to practice during the performance of the grant.</p>	<p>Due with the Final Technical Report within 90 days after the project ends.</p>	<p>Invention reports shall be filed at the end of the Grant’s PoP. If no inventions occurred during the lifetime of the award, a negative report must be submitted.</p> <p>As directed by DTRA, either email Form DD882 to basicresearch@dtra.mil (file size must be less than 10MB), or upload to the DTRA Basic and Fundamental Research Community Portal, www.dtrasubmission.net/portal. File should be named by the Grant number and ‘Invention Report’ (e.g. HDTRA1-12-1-9999 Invention Report).</p> <p>The Grant shall not be closed out until all invention reporting requirements are met.</p>	<p><u>401.5(f)(1)</u></p> <p>No iEdison submission allowed Submit DD Form 882, Report of Inventions and Subcontracts to: -DTRA Grants Officer 8725 John J. Kingman Rd. MSC 6201 (#2730B) Ft Belvoir VA 22060-6201 -Administrative Office identified in the Grant -As directed by DTRA, email or portal.</p>

22. Technical Reporting Requirements. Except under rare cases, performance reports are required annually.

a. **ANNUAL REPORTS:** Annual Reports are due no later than 1 July of each year. Grants effective after 31 January will not require a progress report until 1 July of the following year.

At the direction of DTRA (instructions to be provided to the awardee not later than 1 May of each year), Annual Reports must be submitted electronically as follows:

- Email the Annual Report to basicresearch@dtra.mil (file size must be less than 10MB). The file name should be the Grant number and 'Annual Report', e.g. HDTRA1-12-1-9999 Annual Report.

OR

- Upload the Annual Report to the DTRA Basic and Fundamental Research Community Portal, www.dtrasubmission.net/portal, (file size must be less than 10 MB). The file name should be the Grant number and 'Annual Report', e.g. HDTRA1-12-1-9999 Annual Report.
- Provide a copy of the report to the Administrative Office identified in the Research Grant.

The Annual Report is *not* a cumulative report. The first Annual Report shall only include actions that occurred from the Period of Performance start date up to submission of the first Annual Report. Each subsequent report shall only include actions that occurred during the 12-month period following the previous year's Annual Report.

The Annual Report shall contain the following items:

- (1) Cover Sheet: As a minimum, the cover sheet should include the following information: PI's name, Institution's name and address, and Grant number.
- (2) Objectives: List the objectives of the research effort or the statement of work. This may be omitted if there has been no change. State new or revised objectives if they have changed and the reason why.
- (3) Status of effort: A brief statement of progress towards achieving the research objectives. (Limit to 200 words).
- (4) Accomplishments/New Findings: Describe research highlights, their significance to the field, their relationship to the original goals, their relevance to the DTRA mission, and their potential application(s) to DTRA and civilian technology challenges.

(5) Personnel Supported: List professional personnel (Faculty, Post-Docs, Graduate Students, etc.) supported by and/or associated with the research effort.

(6) Publications: List peer-reviewed publications and theses submitted and/or accepted during the 12-month period starting the previous 1 October (or since start date for new grants). Include full reference information, such as authors, journal, volume, page numbers, etc. or for conference proceedings, name, date and location of the conference, and proceedings publication information.

(7) Interactions/Transitions:

(a) Participation/presentations at meetings, conferences, seminars, etc.

(b) Consultative and advisory functions to other laboratories and agencies and other DoD laboratories. Provide factual information about the subject matter, institutions, locations, dates, and name(s) of principal individuals involved.

(c) Transitions. Describe cases where knowledge resulting from your effort is used, or will be used, in a technology application. Transitions can be to entities in DoD, other federal agencies, or industry. Briefly list the enabling research, the laboratory or company, and an individual in that organization who made use of your research.

(8) New discoveries, inventions, or patent disclosures.

(9) Honors/Awards: List honors, degrees, and awards received during the Grant period. List lifetime achievement honors such as Nobel prize, honorary doctorates, and society fellowships prior to this effort.

(10) Courses taught: List class name, curriculum level and dates of any counter WMD classes taught by the PI or Co-PI.

(11) To assist in compiling all of this information, a summary table (in MSExcel format) has been created that can be downloaded from the DTRA Basic and Fundamental Research Community Portal (<https://www.dtrasubmission.net/portal/Forms.aspx>). The table should be embedded into the Annual Report with any necessary narrative. The fields contained in the table include, but are not limited to: number of PIs, number of students supported, total number of peer reviewed publications, Hirsch Index, etc.

(12) At the direction of DTRA (instructions to be provided to the awardee not later than 1 May of each year), the Quad Chart should be submitted electronically as follows:

- Email an updated Quad Chart to basicresearch@dtra.mil (file size must be less than 10MB),

OR

- Upload an updated Quad Chart as a separate file to the DTRA Basic and Fundamental Research Community Portal (www.dtrasubmission.net/portal). The file name should be the Grant number and 'Quad Chart', e.g. HDTRA1-12-1-9999 Quad Chart.

A quad chart template is available in the Document & Template Library on the DTRA Basic and Fundamental Research Community Portal (www.dtrasubmission.net/portal).

b. ANNUAL TECHNICAL REVIEW: At least one representative (preferably the PI) for each award is expected to attend and present at the annual technical program review meeting, unless otherwise exempted by DTRA in writing. For planning purposes the review will be for five days and will be held in Northern Virginia, typically during the summer months. DTRA encourages collaborators and graduate students to attend the Annual Technical Review.

c. FINAL TECHNICAL REPORTS: A comprehensive final technical report is required: the draft document is required forty-five (45) days prior to the end of the Period of Performance and the final document is required ninety (90) days after the expiration or termination of the award. The report should be structured substantially as follows:

(1) The purpose of the final report is to document and to transition the results of the effort into the DTRA and DoD applied research community. The final report will always be sent to the Defense Technical Information Center (DTIC) and unclassified reports may be made available to the public through the National Technical Information Service (NTIS).

(2) Content: The final report is more than an extension of previous annual reports. The final report shall be a comprehensive technical summary of the significant work accomplished. The final report, where it is not readily accessible in published form should, where applicable:

(a) Clearly describe and illustrate the experimental equipment, setup, and procedures;

(b) Characterize and tabulate collected/computed data in an appendix;

(c) Sufficiently describe computational codes so they can be reproduced. Include a listing of the code in an appendix if possible and appropriate; and

(d) When the research effort culminates in the production of one or more student theses or dissertations, in these cases, the most significant advancements and conclusions (equations, figures, relationships, etc.) should be included in an executive summary. The theses or dissertations

should be attached as appendices only if they are not readily available. If they are, clearly reference them and how they can be obtained. Also include in the executive summary, cumulative lists of people involved in, and publications stemming from, the research effort. Do not include copies of already submitted or published articles in the final report.

(3) Standard Form (SF) 298: SF-298, Report Documentation Page, must be used. Item 13 of the SF-298 should contain a 100 to 200 word abstract summarizing technical progress during the reporting period. The SF-298 may be found on the Internet at:

[http://contacts.gsa.gov/webforms.nsf/0/B82C70E2B4C7843185256A2C005F72E0/\\$file/SF298_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/B82C70E2B4C7843185256A2C005F72E0/$file/SF298_e.pdf)

(4) Format: Cover and title page. The report style should be third person singular using past tense. Jargon, special symbols or notations, subscripts, mathematical symbols or foreign alphabet letters are not permitted. All of the report pages should be prepared for acquisition and distribution by DTIC. All of the report pages should be of good quality for copying purposes. No pages should be missing.

The format and standard required by your institution for the preparation of theses and dissertations shall be used for the final report. In the absence of any institutional standards, you may wish to refer to the American National Standards Institute (ANSI) document Z39.18-1987, "Scientific and Technical Reports: Organization, Preparation, and Production," for guidance. The report may be obtained from:

American National Standards Institute Incorporated
1430 Broadway
New York NY 10018

(5) Report Classification: It is anticipated that all final technical reports will be unclassified and that distribution will not be limited. However, for final technical reports that require a limited distribution as deemed necessary by DTRA, a Distribution List will be provided with the comments on the draft final technical report. The Distribution List should be formatted to match the rest of the report, placed at the end of the report, and added to the Table of Contents. The number of pages in the Distribution List should be added to the total page count and included in the total number of pages cited in Block 15 of the SF-298.

(6) Report Submission: The draft of the final technical report will be due not later than forty-five (45) days prior to the end of the period of performance.

At the direction of DTRA (instructions to be provided to the awardee in advance of the end of the PoP), the draft of the final technical report (including a draft SF-298) must be submitted electronically as follows:

- Email the draft of the final technical report to basicresearch@dtra.mil (file size must be less than 10MB). The file name should be the Grant number and 'Draft Final Report', e.g. HDTRA1-12-1-9999 Draft Final Report.

OR

- Upload the draft of the final technical report to the DTRA Basic and Fundamental Research Community Portal, www.dtrasubmission.net/portal, (file size must be less than 10 MB). The file name should be the Grant number and 'Draft Final Report', e.g. HDTRA1-12-1-9999 Draft Final Report.
- Provide a copy of the report to the Administrative Office identified in the Research Grant.
- Within thirty (30) days this draft will be reviewed by DTRA and comments will be provided to the Grantee. The Grantee shall incorporate the requested changes. Final Technical Reports are due ninety (90) days after the expiration or termination of the award. The final submission should be made in accordance with the draft final report submission instructions. Provide a copy of the report to the Administrative Office identified in the Research Grant.

23. Financial Reporting Requirements.

a. Federal Financial Report, SF-425. This report is due quarterly, no later than 30 days after the end of the reporting period. Reporting periods are as follows: 1 January – 31 March, 1 April – 30 June, 1 July – 30 September, and 1 October – 31 December, respectfully. Final reports shall be submitted no later than 30 days after the project or grant period end date.

The SF-425 form and instructions can be found on the Internet at:
http://www.whitehouse.gov/omb/grants_forms/

b. All financial reports shall be submitted to the Administration Office identified in Block 6 of the Research Grant. In addition, at the direction of DTRA (instructions to be provided to the awardee not later than 1 May of each year), the Financial Report must be submitted electronically as follows:

- Email the Financial Report to basicresearch@dtra.mil (file size must be less than 10MB). The file name should be the Grant number and 'Financial Report', e.g. HDTRA1-12-1-9999 Financial Report.

OR

- Upload the Financial Report to the DTRA Basic and Fundamental Research Community Portal, www.dtrasubmission.net/portal, (file size must be less than 10 MB). The file name should be the Grant number and 'Financial Report', e.g. HDTRA1-12-1-9999 Financial Report.

24. After-the-Award Requirements. Closeout, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to requirements found in DoDGARs §34.61 through 34.63.

25. Delegation of Administration Duties. Certain grant administration duties have been delegated to the Administration Office identified in Block 6 of the Research Grant. These duties are as follows:

- a. Provisionally approve all Grant and Cooperative Agreement Vouchers.
- b. Perform all property administration services except the approval of recipient's requests to purchase equipment with grant funds. Such approvals must be granted by the DTRA Grants Officer.
- c. Perform all plant clearance functions.
- d. Approve requests for Registration for Scientific and Technical Information Services (DD Form 1540).
- e. Obtain all financial report(s) (see Article 23 of this document).
- f. Execute administrative closeout procedures, which include the following:
 - (1) Obtain the final Report of Inventions and Subcontracts (DD Form 882).
 - (2) Obtain final payment request, if any.
 - (3) Obtain final property report and dispose of purchased property and government furnished equipment (GFE) in accordance with the DoDGARs Part 22, Subpart G.
 - (4) Perform a review of final incurred costs and assist the Grants Officer in resolving exceptions, if any, resulting from questioned costs.
 - (5) Assure that all refunds due the Government are received by the Grantor.

NOTE: This term and condition is **not applicable** to instrumentation and equipment grant awards.

26. Claims, Disputes and Appeals. Claims, disputes, and appeals shall be processed in accordance with the procedures provided in DoDGARs §22.815.

27. Termination and Enforcement. Recipients shall be subject to the termination and enforcement conditions found in DoDGARs §34.51 and §34.52.

28. Security. As a general rule, PI's will not need access to classified security information in the conduct of research supported under this Grant. Should it appear that access to such information is desirable, the recipient shall advise the Grantor and request clearance for the investigator. Should information be developed during the course of work under this Grant that, in the judgment of the PI or the recipient, should be classified, the Grants Officer shall be notified immediately.

29. Representations and Assurances. By accepting funds under this Grant, the recipient assures that it will comply with applicable provisions of the following national policies:

a. Nondiscrimination: By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:

(1) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR Part 195.

(2) On the basis of sex or blindness, 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 handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and DoD regulations at 32 CFR Part 56.

b. Live Organisms: By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:

(1) For human subjects:

(a) The Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR Part 46 and implemented by the Department of Defense at 32 CFR Part 219.

(b) The recipient shall adhere to DTRA local clause 252.223-9002. The full text of this clause is as follows:

252.223-9002 PROTECTION OF HUMAN SUBJECTS (AUG 2010)

All research under this grant involving human subjects must be conducted in accordance with 32 CFR 219, 10 U.S.C. 980, and DoDD 3216.02, as well as other applicable federal and state regulations. Grantees must be cognizant of and abide by the additional restrictions and limitations imposed on the DoD regarding research involving human subjects, specifically as regards vulnerable populations (32 CFR 219 modifications to subparts B-D of 45 CFR 46), recruitment of military research subjects (32 CFR 219), and surrogate consent (10 U.S.C. 980). DTRA Directive 3216.01 establishes the DTRA Human Subjects Protection Program, sets forth the policies, defines the applicable terms, and delineates the procedures necessary to ensure DTRA compliance with federal and DoD regulations and legislation governing human subject research. The regulations mandate that all DoD activities, components, and agencies protect the rights and welfare of human subjects of study in DoD-supported research, development, test and evaluation, and related activities hereafter referred to as “research”. The requirement to comply with the regulations applies to new starts and to continuing research.

The DTRA directive requires that research using human subjects may not begin or continue until the Defense Threat Reduction Agency’s Research Oversight Board (ROB) has reviewed and approved the proposed protocol. Grantees and subcontractors are required to submit a valid federal assurance for their organization (institution, laboratory, facility) that has been issued by either DoD or the Department of Health and Human Services, and documentation of review of proposed protocols by the local Institutional Review Board (IRB) to include consent forms for any planned research using human subjects to the DTRA ROB for its review through the Grants Officer’s representative (if assigned) or the Grants Officer. The ROB review is separate from, and in addition to, local IRB review.

Written approval to begin research or subcontract for the use of human subjects under the proposed protocol will be provided in writing from the DTRA ROB, through the Grants Officer. A copy of this approval shall be maintained by both the Grantee and the government. Any proposed modifications or amendments to the approved protocol or consent forms must be submitted to the local IRB and the DTRA ROB for review and approval. Examples of modifications/amendments to the protocol include but are not limited to:

- 1) a change of the PI
- 2) changes in duration or intensity of exposure to some stimulus or agent

- 3) changes in the information requested of volunteers, or changes to the use of specimens or data collected
- 4) changes in perceived or measured risks or benefits to volunteers that require changes to the study

Research pursuant to such modifications or amendments shall not be initiated without IRB and ROB approval except when necessary to eliminate apparent and immediate hazards to the subject(s).

Research projects lasting more than one year require IRB review at least annually, or more frequently as required by the responsible IRB. ROB review and approval is required annually. The Grantee or subcontractor must provide documentation of continued IRB review of protocols for ROB review and approval in accordance with these Terms and Conditions. Research must not continue without renewed ROB approval unless necessary to eliminate apparent and immediate hazards to the subject(s).

Non-compliance with any provision of this clause may result in withholding of payments under the grant pursuant to the grant's payments clause(s) and/or grant termination pursuant to the grant's termination clause(s). The government shall not be responsible for any costs incurred for research involving human subjects prior to protocol approval by the ROB.

(2) For animals:

(a) The recipient shall adhere to:

(1) Requirements for animal acquisition, transport, care, handling, and use in 9 CFR Parts 1-4, Department of Agriculture rules implementing the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and 9 CFR Subchapter A, Parts 1 through 4).

(2) Rules of the Departments of Interior (50 CFR Parts 10-24) and Commerce (50 CFR Parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(3) DTRA local clause 252.235-9001. The full text of this clause is as follows:

252.235-9001 PROHIBITION OF USE OF
LABORATORY ANIMALS (JULY 2010) (DTRA)

The grant recipient shall obtain approval from the US Army Medical Research and Materiel Command (MRMC), Animal Care and Use Review Office (ACURO) prior to conducting research on live nonhuman vertebrates. Studies involving non-human primates, dogs, cats, or marine mammals will require a site visit by an ACURO laboratory animal veterinarian as a condition of approval. DoD may also conduct site visits involving research on other animals when deemed appropriate. The animal research facility is responsible for notifying the DoD sponsor if Association for the Assessment and Accreditation of Laboratory Animal Care accreditation is lost or the facility is under USDA inspection. DoD also has the right to a site inspection under these circumstances.

The grant recipient (including subcontractors) is expressly forbidden to use laboratory animals in any manner whatsoever without the express written approval of MRMC ACURO.

The grant recipient shall complete the ACURO Animal Use Appendix for Research Involving Animals found at the following web site: https://mrmc-www.army.mil/index.cfm?pageid=Research_Protections.acuro_AnimalAppendix. Submit the completed ACURO appendix, contact information, the DTRA grant number and a copy of the grant for processing to the email address listed at the ACURO website. Once ACURO approves the effort, the grant recipient will receive written approval to begin animal use from the US Army MRMC ACURO by separate email. The grant recipient shall promptly provide a copy of the approval to the Grants Officer and Grants Officer representative. After approval, changes or protocol amendments must be submitted to and approved by ACURO before implementation.

The grant recipient, or subcontractors as appropriate, shall submit the most recent U.S. Department of Agriculture Animal Care Inspection Report annually in accordance with the CDRL.

Non-compliance with any provision of this clause may result in the termination of the grant.

c. Debarment and Suspension: The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR Part 180, as implemented by the DoD in 2 CFR Part 1125. The recipient also agrees to

communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the recipient enters into transactions that are “covered transactions” under Subpart B of 2 CFR Part 180 and the DoD implementation in 2 CFR Part 1125.

d. Environmental Standards: By signing this agreement or accepting funds under this agreement, the recipient assures that it will:

(1) Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C.1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR Part 32.

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

e. Drug-Free Workplace: The recipient agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 32 CFR Part 26, which implements Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

f. Officials Not to Benefit: No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

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

h. Cargo Preference: The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C.1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.

30. Research Involving Recombinant DNA Molecules. Any recipient performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant

DNA molecules agrees by acceptance of this award to comply with the National Institutes of Health “Guidelines for Research Involving Recombinant DNA Molecules,” amended 29 September 2009 (74 FR48275), or such later revision of those guidelines as may be published in the Federal Register.

31. Retention and Access to Records. Retention and access to records pertinent to this award are subject to the requirements of DoDGARs §34.42.

32. Certification. By accepting funds under this agreement, the recipient is providing the Certification at Appendix A to 32 CFR Part 28 regarding lobbying.

33. Data Collection. Data collection activities, if any, performed under this Grant are the responsibility of the recipient. Awarding agency support of the project does not constitute approval of the survey design, questionnaire content, or data collection procedures. The recipient shall not represent to respondents that such data are being collected for or in association with the awarding agency without the specific written approval of the cognizant awarding agency official. However, this requirement is not intended to preclude mention of the awarding agency support of the project in response to an inquiry or acknowledgment of such support in any publication of this data.

34. Site Visits. The Government, through authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and to provide such technical assistance as may be required. The recipient shall provide, and shall require its subrecipients and subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of site visits. All site visits and evaluations shall be performed in a manner that does not unduly interfere with or delay the work.

35. Publications and Acknowledgement of Sponsorship.

a. Publication of results of the research project in an appropriate professional journal is encouraged as an important method of recording and reporting scientific information. A courtesy copy of each accepted publication shall be uploaded directly into the web-based reporting system previously described herein

b. The recipient agrees that in the release of information relating to the grant, such release shall include the following statement, “The project or effort depicted was or is sponsored by the Department of the Defense, Defense Threat Reduction Agency. The content of the information does not necessarily reflect the position or the policy of the federal government, and no official endorsement should be inferred.” For purposes of this provision, information includes news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association proceedings, symposia, etc.

c. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, all recipients receiving federal funds, shall clearly state: (i) the percentage of

total costs of the program or project which will be financed with federal money, and (ii) the dollar amount of federal funds for the project or program.

36. Fee and Profit. This agreement does not provide for the payment of fee or profit to the recipient.

37. Combating Trafficking in Persons. The recipient agrees to comply with the trafficking in persons requirement in Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)).

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—

(a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

(b) Procure a commercial sex act during the period of time that the award is in effect; or

(c) Use forced labor in the performance of the award or subawards under the award.

(2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity—

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

(b) 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—

(1) Associated with performance under this award; or

(2) 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 Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR Part 376.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency 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—

(a) Associated with performance under this award; or

(b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR Part 376.

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 Article:

(a) Implements Section 106(g) of the TVPA, as amended (22 U.S.C. 7104(g)), and

(b) 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:

(a) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

(b) 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":

(a) 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.

(b) Includes:

(1) A non-profit organization, including any non-profit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

(2) 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).

38. Central Contractor Registration and Universal Identifier Requirements.

a. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

b. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

(1) Must notify potential subrecipients that no entity (see definition in paragraph c of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

(2) May not make a subaward to an entity unless the entity has provided its DUNS number to you.

c. Definitions

For purposes of this award term:

(1) Central Contractor Registration (CCR) 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 CCR Internet site (currently at <http://www.ccr.gov>).

(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>).

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

- (a) A Governmental organization, which is a State, local government, or Indian Tribe;
- (b) A foreign public entity;
- (c) A domestic or foreign nonprofit organization;
- (d) A domestic or foreign for-profit organization; and
- (e) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

(4) Subaward:

- (a) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- (b) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- (c) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

(5) Subrecipient means an entity that:

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

39. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

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

(2) Where and when to report.

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

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

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

b. Reporting Total Compensation of Recipient Executives.

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

(a) the total Federal funding authorized to date under this award is \$25,000 or more;

(b) in the preceding fiscal year, you received—

(1) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(2) \$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

(c) The public does not have access to information about the compensation of the executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d))

or Section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

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

(a) As part of your registration profile at <http://www.ccr.gov>.

(b) By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

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

(a) in the subrecipient's preceding fiscal year, the subrecipient received—

(1) 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

(2) \$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

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

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

(a) To the recipient.

(b) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during

the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

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

(1) Subawards,

and

(2) The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

(1) Entity means all of the following, as defined in 2 CFR Part 25:

(a) A Governmental organization, which is a State, local government, or Indian tribe;

(b) A foreign public entity;

(c) A domestic or foreign nonprofit organization;

(d) A domestic or foreign for-profit organization;

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

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

(3) Subaward:

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

(b) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

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

(4) Subrecipient means an entity that:

(a) Receives a subaward from you (the recipient) under this award; and

(b) Is accountable to you for the use of the Federal funds provided by the subaward.

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

(a) Salary and bonus.

(b) 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.

(c) 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.

(d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(e) Above-market earnings on deferred compensation which is not tax-qualified.

(f) 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.