

**MSU Standard Terms and Conditions
Cost Reimbursement Subaward 01-09**

I. General Provisions.

- A. These terms and conditions apply to all Cost Reimbursement Subawards issued by MSU. They are binding when incorporated by reference into a fully executed MSU Subaward, using a Subaward Notice (SN). All references to “Block #” are to the SN. The SN identifies the parties, the key persons, the project proposal, establishes funding and cost share obligations, the period of performance, special terms and conditions, and carries the signatures of authorized representatives of each party.
- B. The Subaward may also include other documents incorporated by the SN. Such other documents may include a proposal from the Subrecipient, or a Statement of Work with a budget as well as a Prime Award from the sponsor.
- C. The Subaward is an agreement whereby the Subrecipient commits to providing the personnel, materials and facilities necessary to accomplish the effort described in its project proposal (Block #3) or required by the associated Statement of Work. MSU in turn agrees to reimburse Subrecipient for the allowable costs of said project or work effort in accordance with these and other incorporated terms, up to a total funded dollar amount.
- D. The Subaward supersedes any prior or contemporaneous agreements or representations, between the parties regarding the proposed project, whether oral or written. Each party remains an independent entity. The Subaward does not establish any employment or agency relationship between the parties.

II. Changes and Modifications

- A. These Terms and Conditions may be altered by the Special Terms and Conditions recorded on a given SN or in subsequent written modifications. Any changes to the Subaward after the initial SN has been executed must be recorded in written modifications, using the SN form annotated with a Modification Number. Modifications must be signed by both parties, except for those matters that may be unilaterally modified by MSU, as listed immediately below. MSU may elect to issue the following types of modifications unilaterally.
 - 1. Changes in key personnel when subrecipient submits a written request for change
 - 2. Revisions to the project budget when subrecipient submits a written request
 - 3. Changes to administrative information
 - 4. Planned incremental funding actions
 - 5. Extension of the project end date
- B. Subrecipient may reject such unilateral modifications by providing written notice of exceptions to the MSU Administrator (Block #11) within 30 days after receipt of said modification. If the Subrecipient objects to a unilateral modification, the parties will negotiate an acceptable one.

- III. Incorporation of Prime.** The Subaward is also subject to the terms and conditions of the Prime Agreement, identified in Block #4 and incorporated into the Subaward as Appendix B. Prior approval from MSU is required to extend the period of performance of this Subaward. Any exceptions or additions to the Prime Award will be identified in Special Terms and Conditions, Block #6. In the event of conflicts among the various documents and agreements, the following order of precedence will govern:

**MSU Standard Terms and Conditions
Cost Reimbursement Subaward 01-09**

1. Subaward Notice including any Special Terms and Conditions and modifications
2. MSU Standard Terms and Conditions Cost Reimbursement Subaward 01-09
3. Proposal or Statement Of Work, and approved budget incorporated into the Subaward
4. Terms and conditions of the Prime Award

IV. Invoice and Payment.

- A. Subrecipient must request reimbursement for allowable costs incurred either no more frequently than monthly or at least quarterly. Requests for reimbursement must be in the form of invoices and/or financial statements, showing the same level of cost detail as the approved proposal budget, showing current period and cumulative expenditures for each level. Subrecipient must submit original and 1 copy at a minimum that include the Subaward number, period being invoiced, and a certification as to truth and accuracy of the invoice. Invoices and/or financial statements and any financial questions should be directed to the individual named in Block #15. Mississippi State University has the right to request backup documentation at its discretion.
 - B. Subrecipient must submit an invoice and/or financial statement, marked "FINAL," not later than thirty (30) days after Subaward end date. Notwithstanding any terms and conditions or other provisions contained in the final invoice or any accompanying correspondence, the final invoice and/or financial statement constitutes Subrecipient's final request for reimbursement and upon its payment by MSU, a release by which the Subrecipient does remise, release and discharge MSU, its officers, agents and employees of and from all liabilities, obligations, claims and demands whatsoever under or arising from the Subaward. Both MSU and Subrecipient understand that all payments are provisional and are subject to adjustment as a result of an adverse audit finding concerning the Subaward. If equipment is purchased, a list must be submitted with a final invoice.
 - C. If a cost-sharing amount appears in Block #7e, Subrecipient must report such cost-share expenditures to MSU along with the monthly or quarterly invoice. The report must show current period expenditures, cumulative expenditures, and a certification as to the truth and accuracy of the report. The Subrecipient may not use Federal funds to meet cost-share obligations under any other Federal awards.
- V. **Books and Records.** The Subrecipient will make all financial records, supporting documents, correspondence and any other records applicable to the Subaward available at all reasonable times for inspection, review and audit by the Prime Sponsor, by MSU or by their authorized representative(s). Subrecipient must retain these records for a period of at least three (3) years from the date of final invoice or from the settlement date of any claims, audits, appeals, or litigation, whichever is later, or as the Prime Agreement prescribes.
- VI. **Audit.** Throughout the term of the subaward, Subrecipient agrees to forward the Audit Certification Form in accordance with OMB Circular A-133. Payment of the first invoice will not be processed until we have your most recent certification form on file. A certification form should be submitted for each year that the subaward is active. Web links to audit reports, the most recent report, corrective active plans or other pertinent information may also be requested. In the absence of an A-133 audit, Subrecipient must submit a record of its most recent audit by an independent accountant, including a certification as to the accuracy and reliability of the Subrecipient's financial statements and internal control

**MSU Standard Terms and Conditions
Cost Reimbursement Subaward 01-09**

structure. Audits and/or related documents must be sent to the address in Block 13, Attn: Assistant Controller.

VII. Key Persons, Technical Direction and Reporting.

- A. The individual named in Block #8 (normally Subrecipient's Principal Investigator) is designated as a Key Person. Subrecipient agrees not to replace that individual nor reduce his/her level of commitment to the project without prior written approval of MSU.
- B. The MSU Project Director named in Block #9 is responsible for monitoring Subrecipient's performance, technical reporting and approval of Subrecipient's invoices. All questions about technical and financial matters should be directed to that individual. Technical reporting requirements are stated in Block #6. Other questions pertaining to financial matters should be directed to the contact person in Block #15.

VIII. Administration. Matters concerning any changes in the terms, conditions, dates or amounts cited in the SN should be directed to the Negotiator /Administrator identified Blocks #10 and #11.

IX. Publications. Subrecipient and its investigators are free to publish papers dealing with the results of the research project sponsored under this Subaward, unless otherwise stated in the Prime Agreement. However, Subrecipient must give MSU the opportunity to review such papers or presentations prior to their being released. MSU agrees to complete such review within sixty (60) days. Subrecipient must include in every publication or presentation appropriate recognition of the support received from MSU and the Prime Sponsor.

X. Certifications and Assurances. Subrecipient, by signing the SN incorporating these Terms and Conditions, certifies its compliance with the applicable regulatory requirements listed below. Subrecipient agrees to immediately report to MSU any change in its compliance status. Subrecipient must flow these requirements down to any lower tier subaward recipients as appropriate. See Appendix B of the Federal Demonstration Partnership Operating Procedures (www.nsf.gov) for a complete description of the following: (CFR is "Code of Federal Regulations", USC is "United States Code", E.O. is Executive Order)

1. Regulations for E. O. 12549 & 12689, "Debarment and Suspension" (7 CFR 3017 & 40 CFR 32).
2. Prohibitions against lobbying as set forth in 31 USC 1352 and 18 USC 1913.
3. Nondiscrimination statutes on the basis of race, color, national origin, sex, blindness, handicap or age.
4. Federal Policy for the Protection of Human Subjects (45 CFR Part 46).
5. USDA Regulations that implement the Animal Welfare Act (9 CFR Parts 1-4).
6. Regulations for the Clean Air Act, 42 USC 7401.
7. Regulations for the Clean Water Act 33 USC 1251, as implemented by E.O. 11738.
8. National Scenic Rivers Act of 1968, 16 USC 1271.
9. For NSF & DHHS awards, they have written and enforce an internal conflict of interest policy.
10. The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) when Prime Award includes FAR 52.203-7.
11. E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, and 41 CFR part 60.
12. Food and Drug Administration regulations (21 CFR Parts 50 & 56).
13. Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals.

**MSU Standard Terms and Conditions
Cost Reimbursement Subaward 01-09**

XI. Termination.

- A. MSU and Subrecipient have the right to terminate the Subaward in whole or in part, without cause, with 30 days advance written notice. If the Subrecipient violates or breaches the terms of the Subaward, MSU shall send a written “Cure Letter” as a notice of its intent to terminate for default. The Cure Letter will identify the conditions in the Subrecipient’s performance that are unacceptable and establish a cure period of at least 10 days during which Subrecipient will have opportunity to correct the unacceptable conditions. If in the judgment of MSU, Subrecipient fails to correct the unacceptable conditions, MSU may terminate the Subaward for default. If Subrecipient makes satisfactory corrections within the cure period, the MSU Administrator will rescind the Cure Letter in writing.
- B. Upon notification of termination, the Subrecipient must immediately on that date stop work to the extent specified in the Notice of Termination. Subrecipient may not place any orders or subcontracts for materials, services, or facilities, except as may be necessary for the completion of such portion of the work that is not terminated. MSU agrees to reimburse the Subrecipient for all costs of the work that has been satisfactorily performed prior to said termination and all obligations that cannot be canceled that relate to such satisfactorily-performed work.

XII. Reserved.

XIII. Notices. Unless otherwise provided in the SN, official notices, which may be given by either party to the other, shall be deemed to have been fully given when made in writing, addressed/delivered to the individual shown on the SN, Block #10 for Subrecipient and Block #11 for MSU.

XIV. Assignment and Subcontracting. Subrecipient may not assign the Subaward nor any right, remedy, obligation or liability arising there under or by reason thereof nor may Subrecipient further subcontract any of the work to be performed under the Subaward without prior written approval from MSU.

XV. Inspection. Designated representatives of MSU have the right to inspect and review the progress of the work performed at the Subrecipient’s place of business pursuant to this Agreement. Subrecipient must make available all reasonable facilities, including access to relevant data, test results, and computation used or generated under this Agreement if requested by MSU. MSU must conduct such inspections in such manner so as not to unduly delay the progress of the work. MSU must give the Subrecipient reasonable notice prior to conducting any such inspection.

XVI. Use of Names. Either party may use the name of the other in a public announcement of the existence of the Subaward. Other than that, neither party to the Agreement may use the names, marks or symbols of the other or of the other party’s employees in any manner, including public announcements, advertising, or promotional sales literature without the prior written consent of the other party.

XVII. Disputes. The parties agree that should a factual dispute arise which is not resolved between the parties within thirty (30) calendar days of the first discussions regarding the matter that the parties may enter into voluntary mediation in an effort to resolve the dispute. The parties shall share equally the cost of the mediator but each party shall be responsible for its own

**MSU Standard Terms and Conditions
Cost Reimbursement Subaward 01-09**

separate expenses and costs of whatever nature incurred in preparing for and participating in the mediation. The parties must mutually agree to a mediator and the mediation shall be conducted at a mutually convenient location. However, the location of the mediation shall not in any way or manner serve as a basis for determining the law applicable to the dispute at that time or later. The mediation must be held within sixty (60) calendar days of the date that the party desiring to enter into mediation notifies the other party in writing of the desire for mediation. Unless the mediation effort results in a signed resolution of the dispute within ninety (90) calendar days from the date that the party desiring to enter into mediation notified the other party in writing of the desire for mediation, then whatever legal or equitable remedies are available to either party may then be pursued. This provision does not preclude either party from pursuing legal remedies before or during the mediation that are otherwise required by law. Subrecipient agrees to continue performance on a disputed matter pending resolution of the dispute or until Mississippi State University notifies the other party to the contrary.

XVIII. **Inventions**. The parties agree to abide by the applicable United States regulations governing patents and inventions issued by the US Department of Commerce at Chapter 37 CFR 401, wherein the rights of the Federal Government are established. Any invention or discovery made or conceived in the performance of the research or other work (hereinafter called "Invention"), or any patent to be granted on such Invention shall be jointly or individually owned by Subrecipient and/or MSU in accordance with the following criteria:

- A. Title to any Invention made or conceived jointly by employees of both Subrecipient and MSU in the performance of the Research (hereinafter called "Joint Invention") shall vest jointly in MSU and Subrecipient.
- B. Title to any Invention made or conceived solely by employees of either Subrecipient or MSU in the performance of the Research shall vest in the party who made or conceived such Invention or discovery.

XIX. **Copyright**. The Subrecipient may copyright any work product, software or data that is subject to copyright and was developed by or on behalf of Subrecipient under the Subaward. Any such copyrighted materials are subject to the following:

- A. A royalty-free, non-exclusive and irrevocable license to MSU to reproduce, distribute, display, perform and make derivative work so long as such uses are for its own internal noncommercial educational and research purposes and
- B. For Subawards made under Prime Awards from a Federal agency, The Government reserves for itself Government purpose rights a royalty-free, non-exclusive, and irrevocable license to reproduce, translate, publish, use and dispose of such materials. The Federal agency may also require prior approval before the Subrecipient may claim copyright to the material.
- C. For non-Federal sponsored prime awards, Intellectual Property rights are subject to negotiation.

XX. **Law and Severability**. This contract shall be governed and interpreted in accordance with the laws of the State of Mississippi, excluding its conflict and choice of laws provisions. (However, should the sub-recipient be a governmental entity of another state entitled to sovereign immunities, then the following sentence replaces the foregoing sentence: "This contract is recognized as having been consummated in Mississippi but the parties recognize that each party is a governmental entity of another state and this agreement does not, and

**MSU Standard Terms and Conditions
Cost Reimbursement Subaward 01-09**

shall not be construed to, change, enlarge, diminish, or otherwise waive the sovereignty of either party or the rights, privileges, or immunities of either party.") Subrecipient agrees to comply with all relevant federal, state, county, and municipal executive orders, rules, regulations, laws and ordinances. In the event that any provision(s) of the Agreement are rendered void or illegal the remainder of its provisions shall remain in effect. Failure on the part of either party to exercise a right or remedy shall not preclude exercising them in the future.

End of MSU Standard Terms and Conditions Cost Reimbursement Subaward 01-09