

MSU Standard Terms and Conditions
Fixed Price Subaward 11-2011

1. General Provisions.

- A. These terms and conditions apply to all Fixed Price 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 unit prices and total funding obligations, the delivery date(s), payment terms, 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 complete the work and/or submit the deliverables described in its project proposal or Statement of Work (Incorporated as Appendix A). MSU in turn agrees to pay Subrecipient the agreed price in accordance with these and other incorporated terms.
- 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.

2. 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 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. Both parties must sign modifications, except that 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. Changes to administrative information
 - 3. Extension of the delivery date
- B. Subrecipient may reject such unilateral modifications by providing written notice of exceptions to the MSU Negotiator /Administrator (Block #11) within 30 days after receipt of said modification. If the Subrecipient objects to a unilateral modification, the parties agree to negotiate an acceptable alternative.

3. Incorporation of Prime.

- A. 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. The U.S. Comptroller General, the Recipient and the Prime Sponsor or any of their duly authorized representatives, shall have access to those records, to make audits, examinations, excerpts and transcripts.
- B. 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:
 - 1. The Subaward Notice including any Special Terms and Conditions and modifications
 - 2. The MSU Standard Terms and Conditions Fixed Price Subaward 11-2011
 - 3. The Proposal or Statement Of Work incorporated into the Subaward
 - 4. The terms and conditions of the Prime Award

4. Invoice and Payment.

- A. Payment terms will be stated in Block #6. Subrecipient must submit an original and one copy of each invoice. The invoices must identify the Subaward number and be sent to the address in Block #15.
- B. If a cost-sharing amount appears in Block #7e, Subrecipient must show the cost-share expenditures on their invoice. The Subrecipient may not use Federal funds to meet

cost-share obligations under any other Federal awards.

5. Inspection.

Subrecipient must perform the work required by this Subaward in a manner consistent with the highest professional standards. Designated representatives of MSU have the right to inspect the progress and quality of the product or work performed by the Subrecipient pursuant to this Subaward. Subrecipient must make available all reasonable facilities, including access to relevant data, test results, and computation used or generated under this Subaward. 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 an inspection.

6. Key Persons, Deliverables / Reportin2 and Technical Direction.

- 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 by 25% or more 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 matters should be directed to that individual. Schedule of deliverables with prices or technical reporting requirements are stated in Block #6.

7. Administration.

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

8. Publications.

Subrecipient and its investigators are free to publish papers dealing with the results of the research project sponsored under this Subaward. 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.

9. Certifications and Assurances.

Subrecipient, by signing the SN incorporating these Terms and Conditions, certifies its compliance with any applicable regulatory requirements including but not limited to those 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 subrecipients. See Appendix B of the Federal Demonstration Partnership Operating Procedures

(http://www.nsf.gov/awards/managing/fed_dem_part.jsp) for a complete description of the following:

- I. Nondiscrimination statues on the basis of race, color, national origin, sex, blindness, handicap or age.
- 2. Common Federal Policy for the Protection of Human Subjects (45 CFR Parts 46 & 690).
- 3. USDA Rules that implement the Laboratory Animal Welfare Act of 1966 (9 CFR Parts I-4).
- 4. Regulations for the Clean Air Act, 42 USC 7606, 40 CFR 6 & 32.
- 5. Regulations for the Clean Water Act 33 USC I368, as implemented by E.O. II738.
- 6. National Scenic Rivers Act of 1968, 16 USC1271, 40 CFR 6.
- 7. For NSF & DHHS awards only, internal conflict of interest policy.
- 8. E.O. 11246, & E.O. 11375 "Equal Employment Opportunity," per 41 CFR part 60.
- 9. OMB Circular A-129 and 40 CFR 30.73, the parties are not delinquent on any Federal debt.
- 10. The parties are in compliance with the Drug-Free Workplace Act of I988, Public Law 100-690, 4I USC 70I, 40 CFR 32 or equivalent.
- II. HIPPA Patient Privacy Rule, 45 CFR 160 & 164.
- I2. Coastal Barriers Resource Act, 40 CFR 6.
- 13. The Anti-Kickback Act of I986, Pub. L. 99-634, amending I8 U.S.C. 874, 29 C.F.R. Part 3
- I4. The Safe Drinking Water Act, 42 U.S.C. 300h-3(e)
- I5. Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, 29 C.F.R. Part 5
- 16. Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-330, 29 C.F.R. Part 5

17. Environmental Protection Agency Regulations, 40 C.F.R. Parts 1 through 49
18. Mandatory Standards & Policies contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871
19. "Debarment and Suspension" Regulations under E.O. 12549 & 12689, 7 CFR 3017, 10 CFR 606 & 40 CFR 32, or equivalent.
20. Prohibitions against lobbying as set forth in 7 CFR 3018, 31 USC 1352 and 18 USC 1913.
21. The Hatch Act (5 U.S.C. s 1501-1508 and 7324-7328) which limits the political activities of employees whose principal employment activities in whole or in part supported by Federal Funds.
22. Comply with environmental regulations that may be issued pursuant to:
 - a. Institution of environmental quality control measures under NEPA (PL 91-190 & EO11514
 - b. Notification of violating facilities EO 11738
 - c. Protection of wetlands EO 11990
 - d. Evaluation of flood hazards in floodplains EO 11988
 - e. Assure project consistency under Costal Zone Management Act of 1972 16 USC 1451
 - f. Endangered Species Act of 1973, as amended PL 93-205
 - g. National Historic Preservation Act of 1966, 16 USC470, E011593
 - h. Lead-Based Paint Poisoning Prevention Act 42 USC 4801
 - i. Requirements governing the applicable Grant Program

(Abbreviations: CFR ="Code of Federal Regulations," USC= "United States Code," E.O. ="Executive Order," OMB ="Office of Management and Budget")

10. Termination.

- A. If the SUBCONTRACTOR shall fail to fulfill in a proper manner its obligations under this Agreement or violates any of the provisions of the Agreement, MSU shall have the right to terminate in whole or in part, this Subcontract by sending written notice of termination to the SUBCONTRACTOR ten (10) days prior to the effective date of such termination. In the event of such termination, the Subcontractor shall be entitled to receive reimbursement for all expenses incurred to the date of termination. Such expenses shall not exceed the maximum amount payable under this subcontract.
- B. It is expressly understood that in the event that MSU's agreement from Prime Award is terminated or the funding thereunder ceases, MSU, at its option, may terminate, in whole or in part, this Subcontract by sending written Notice of Termination to the SUBCONTRACTOR ten (10) days prior to the effective date of such termination.
- C. This Agreement may be terminated by either party, with or without cause, by giving thirty (30) days written notice to the other party.
- D. Upon notification that this Subcontract has been terminated, whether pursuant to paragraph A, B, or C of this Article, the SUBCONTRACTOR shall immediately stop all work under this Subcontract on the date and to the extent specified in the Notice of Termination. The SUBCONTRACTOR shall not place any orders or subcontracts for materials, services, or facilities, unless the SUBCONTRACTOR, after receipt of the termination notice, requests and receives an express written authorization from MSU to do so.

11. Liability.

Each party is responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by applicable law.

12. Notices.

Unless otherwise provided in the SN, official notices, from 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. The parties agree that the following methods are acceptable for delivering official notices: Certified mail, return receipt requested, electronic mail with confirmation of receipt, Express courier service (e.g. FedEx or UPS) or fax with confirmation of receipt.

13. 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.

14. 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.

15. Equipment.

The terms of the prime agreement shall govern who has title to equipment purchased under this Subaward. If title to equipment vests with MSU under the prime agreement, then title to equipment purchased by the Subawardee shall vest with the Subawardee.

16. Disputes

In the event of a dispute or claim regarding any matter under the Subaward that is not disposed of by mutual agreement, the parties will pursue those institutional and/or legal remedies as may be appropriate to resolve any dispute. Legal remedies may include either party pursuing the dispute in a court of competent jurisdiction. In this event, each party shall be responsible for all costs they incur as a result of such action. Subrecipient agrees to continue performance on a disputed matter until any such dispute is resolved.

17. Intellectual Property

Both parties agree to abide by the applicable United States regulations governing patents and inventions issued by the U.S. Department of Commerce at 37 CFR 401, wherein the rights of the Federal Government are established. Any invention or discovery be 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 Subcontractor and/or MSU in accordance with the following criteria:

a) Title to any Invention made or conceived jointly by employees of both Subcontractor and MSU in the performance of the Research (hereinafter called "Joint Invention") shall vest jointly with MSU and Subcontractor.

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 whose employees or students made or conceived such Invention or discovery.

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

a) MSU retains a royalty-free, non-exclusive and irrevocable license 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, a royalty-free, non-exclusive, and irrevocable license to reproduce, translate, publish, use and dispose of such materials.

c) For non-Federal sponsored prime awards, Intellectual Property rights are subject to negotiation.

18. Confidentiality

A. In the performance of the Project, it may be necessary for one party to disclose information that is proprietary and confidential to the disclosing party. All such information must be disclosed in writing and designated as confidential or, if disclosed orally, must be identified

as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such disclosure. Except as otherwise provided herein, for a period of Three (3) years following the date of such disclosure, the receiving party agrees to use the confidential information only for purposes of this Agreement and further agrees that it will not disclose or publish such information except that these restrictions do not apply to:

- (i) information that is or becomes publicly known through no fault of the receiving party;
- (ii) information learned from a third party entitled to disclose it;
- (iii) information already known to or developed by receiving party before receipt from disclosing party, as shown by receiving party's prior written records;
- (iv) information for which receiving party obtains the disclosing party's prior written permission to publish;
- (v) information required to be disclosed by court order or operation of law; or
- (vi) information that is independently developed by the receiving party's personnel who are not privy to the disclosing party's confidential information.

B. The receiving party must use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of confidential information disclosed hereunder.

19. Law And Severability

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
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