

**1. ACKNOWLEDGEMENTS**

The Parties acknowledge and agree that NASA is not a party to this Grant Agreement, and that CASIS is not responsible for any conduct of NASA. The Parties recognize that some or all aspects of the space flight program, including the flight opportunity and the launch date, the time onboard the ISS, the ability of the crew to interface with the payload, or the specific mission that will carry the payload may change in date or duration, or become unable to be realized. The Parties will hold each other harmless in the event of a change in policy, procedure, or agreement instituted by NASA or any organization acting on its behalf, as well as based on any actions of NASA or any such organization acting on its behalf. In the event that a flight opportunity is canceled for any reason, CASIS and Grantee will make every reasonable effort to re-schedule on the next available launch vehicle. Grantee acknowledges that any change based on any actions or inactions of NASA or contractors acting on behalf of NASA do not release Grantee from its obligations under this Agreement. The Parties understand and agree that NASA is the final arbiter on all issues related to any flight opportunity under this Agreement, including without limitation flight manifest, safety review, technical review, access to astronaut's time, and return, if appropriate, of the payload.

**2. ACCEPTANCE AND PAYMENT FOR MILESTONES**

Grantee shall comply with the requirements set forth in OMB Circular A-110, as adopted by NASA as Subpart B of Part 1260 of Title 14 of the Code of Federal Regulations, to the extent that Grantee is an institution of higher education, hospital, or other non-profit organization to which the Circular is applicable and otherwise shall comply with the cost principles set forth in FAR Part 31.

**3. PRIORITY OF USE**

Any schedule or milestone in this Agreement, including any Modifications, is estimated based upon the Parties' current understanding of the projected availability of CASIS's ISS allocation. The use of the ISS NL by all Parties is subject to and contingent upon the availability of NASA goods, services, facilities, or equipment. The Grantee accepts the risk that NASA priorities may impact Grantee's priority and use of the ISS NL. Grantee further acknowledges that the availability of these NASA resources may be outside the authority and control of CASIS. In the event that projected availability changes, Grantee shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly. Should a conflict arise between two grantees with CASIS agreements, CASIS, in its sole discretion, shall determine the priority as between the two Grantees. CASIS shall not be liable to Grantee if, for any reason, Grantee's payload(s) are not flown on the ISS NL, or there is a delay or change in the prioritization of any Grantee payload(s).

**4. NONEXCLUSIVITY**

This Agreement is not exclusive. Accordingly, CASIS or Grantee may enter into similar Agreements for the same or similar purposes.

**5. CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (OCTOBER 2012)**

1. The objective of this Article is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (ISS). The Parties intend that the cross-waiver of liability be broadly construed to achieve this objective.
2. For the purposes of this Article:
  - a. The term "Damage" means:
    - i. Bodily injury to, or other impairment of health of, or death of, any person;
    - ii. Damage to, loss of, or loss of use of any property;
    - iii. Loss of revenue or profits; or
    - iv. Other direct, indirect, or consequential Damage.
  - b. The term "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads, persons, or both.
  - c. The term "Partner State" includes each Contracting Party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.
  - d. The term "Payload" means all property including software to be flown or used on or in a Launch Vehicle or the ISS.

- e. The term “Protected Space Operations”:
- i. Means all Launch Vehicle or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of this Agreement, the IGA, MOUs concluded pursuant to the IGA, and implementing arrangements. It includes, but is not limited to:
    - a. Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch Vehicles or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and
    - b. All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
  - ii. “Protected Space Operations” also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA.
  - iii. “Protected Space Operations” excludes activities on Earth which are conducted on return from the ISS to develop further a Payload’s product or process for use other than for ISS-related activities in implementation of the IGA.
- f. The term “Related Entity” means:
- i. A contractor or subcontractor of a Party or a Partner State at any tier;
  - ii. A Grantee or customer of a Party or a Partner State at any tier; or
  - iii. A contractor or subcontractor of a Grantee or customer of a Party or a Partner State at any tier. The terms “contractor” and “subcontractor” include suppliers of any kind.
- The term “Related Entity” may also apply to a State, or an agency or institution of a State, having the same relationship to a Partner State as described in paragraphs (2)(f)(i) through (2)(f)(iii) of this Article or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph (2)(e) above.
- g. The term “Transfer Vehicle” means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

3. Cross-waiver of liability:

- a. Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs (3)(a)(i) through (3)(a)(iv) of this Article based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:
  - i. Another Party;
  - ii. A Partner State;
  - iii. A Related Entity of any entity identified in paragraph (3)(a)(i) or (3)(a)(ii) of this Article; or
  - iv. The employees of any of the entities identified in paragraphs (3)(a)(i) through (3)(a)(iii) of this Article.
- b. In addition, each Party shall, by contract or otherwise, extend the cross-waiver of liability, as set forth in paragraph (3)(a) of this Article, to its Related Entities by requiring them, by contract or otherwise, to:
  - i. Waive all claims against the entities or persons identified in paragraphs (3)(a)(i) through (3)(a)(iv) of this Article; and
  - ii. Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (3)(a)(i) through (3)(a)(iv) of this Article.
- c. For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
- d. Notwithstanding the other provisions of this Article, this cross-waiver of liability shall not be applicable to:
  - i. Claims between a Party and its own Related Entity or between its own Related Entities;
  - ii. Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to this Agreement or is otherwise bound by the terms of this crosswaiver) for bodily injury to, or other impairment of health of, or death of, such person;
  - iii. Claims for Damage caused by willful misconduct;
  - iv. Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its Related

- v. Entities, pursuant to paragraph (3)(b) of this Article; or  
Claims by a Party arising out of or relating to another Party's failure to perform its obligations under this Agreement.
- e. Nothing in this Article shall be construed to create the basis for a claim or suit where none would otherwise exist.

## **6. PROCUREMENT OF GOODS AND SERVICES**

All purchases of goods and services must be in compliance with the Grantee's procurement guidelines. Grantee must maintain records to document compliance.

## **7. RECORD RETENTION AND AUDITS**

1. Grantee shall retain all records pertinent to this Agreement, including financial, research, statistical, audit, and property records. CASIS, NASA, the Comptroller General of the United States, or any of their duly authorized representatives or investigators shall have access to these records for inspection, monitoring, auditing, or investigative purposes.
2. CASIS may perform audits of Grantee at any time during the performance of the grant to ensure that organizational controls are in place, to ensure compliance with applicable laws and regulations, and for financial purposes. CASIS will also perform a final financial audit after performance of this Grant Agreement is completed.
3. If Grantee is an institution of higher education or other non-profit organization (including a hospital) it shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1966 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Other Non-Profit Institutions. If Grantee is a commercial organization, it shall be subject to audit by CASIS pursuant to sections 1 and 2 of this Article.

## **8. SUB-AWARDS**

This Grant, or any portion thereof, may not be sub-awarded without the prior written approval of CASIS. No sub-award shall relieve Grantee of its liability and obligation under this Agreement, and CASIS shall deal exclusively with Grantee, not any sub-awardee.

## **9. DATA RIGHTS (AUGUST 2005) [1260.30]**

1. "Data" means recorded information, regardless of form, the media on which it may be recorded, or the method of recording, created under the grant or cooperative agreement. The term includes, but is not limited to, data of a scientific or technical nature, and any copyrightable work, including computer software and documentation thereof, in which the recipient asserts copyright, or for which copyright ownership was purchased, under the grant or cooperative agreement.
2. Fully Funded Efforts.
  - a. The Grantee grants to the Federal Government, a royalty-free, nonexclusive and irrevocable license to use, reproduce, distribute (including distribution by transmission) to the public, perform publicly, prepare derivative works, and display publicly, data in whole or in part and in any manner for Federal purposes and to have or permit others to do so for Federal purposes only.
  - b. In order that the Federal Government may exercise its license rights in data created under the Cooperative Agreement between CASIS and NASA, the Federal Government, upon request to CASIS, has the right to review and/or obtain delivery of data resulting from the performance of CASIS's work under the Cooperative Agreement, and authorize others to receive said data to use for Federal purposes. Notwithstanding the foregoing, data generated by Grantee under this Grant Agreement are not subject to this clause (2)(b).
3. Cost Sharing and/or Matching Efforts. When the Grantee cost shares with CASIS or the Government on the effort, the following paragraph applies:
  - a. In the event data first produced by Grantee in carrying out Grantee's responsibilities is furnished to NASA, and Grantee considers such data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and its Contractors (under suitable protective conditions) only for experimental, evaluation, research and development purposes, by or on behalf of the Government for an agreed to period of time, and thereafter for Federal purposes as defined in § 1260.30(b)(2) (paragraph (b)(2) of this Article).
4. For Cooperative Agreements the following paragraph applies:
  - a. As to data first produced by NASA in carrying out NASA's responsibilities under the Cooperative Agreement between CASIS and NASA and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Grantee, such data will be marked with an appropriate

legend and maintained in confidence for 5 years (unless a shorter period has been agreed to between the Government and Grantee) after development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Grantee agrees not to disclose such data to any third party without NASA's written approval until the aforementioned restricted period expires.

**10. PATENT RIGHTS (MAY 2006) [1260.28] [APPLICABLE TO SMALL BUSINESS OR NON-PROFIT ORGANIZATION]**

(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 Recipient conceived or first actually reduced to practice in the performance of work under this grant, 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 grant 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.
- (7) "Recipient" means Grantee.

(b) Allocation of Principal Rights

The Recipient 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 Recipient 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 Recipient

- (1) The Recipient will disclose each subject invention to NASA and CASIS within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to NASA and CASIS shall be in the form of a written report and shall identify the grant 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 NASA, the Recipient will promptly notify NASA and CASIS of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.
- (2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying NASA and CASIS within two years of disclosure to NASA and CASIS. 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 NASA to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The Recipient 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 Recipient 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 NASA, be granted.

(d) Conditions When the Government May Obtain Title

The Recipient will convey to NASA, upon written request, title to any subject invention—

(1) If the Recipient 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 NASA may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in (c) above; provided, however, that if the Recipient 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 NASA, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient 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 Recipient and Protection of the Recipient Right to File

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

(2) The Recipient's domestic license may be revoked or modified by NASA 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 Recipient 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 NASA to the extent the Recipient, 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, NASA will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by NASA for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient 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) Recipient Action to Protect the Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and (ii) convey title to NASA when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient 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 Recipient each subject invention made under grant in order that the Recipient 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 Recipient 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 Recipient will notify NASA 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 Recipient 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 grant) awarded by CASIS under a Cooperative Agreement with NASA. The government has certain rights in the invention.”

- (5) The Recipient shall include a list of any Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal. A complete list (or a negative statement) for the entire award period shall be included in the summary of research.

(g) Subcontracts (including purchase orders per 14 CFR § 1260.28(d))

- (1) The Recipient 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 Recipient in this clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- (2) The Recipient will include the clause at 48 CFR 1852.227-70, New Technology, in all other subcontracts, regardless of tier, with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 48 CFR 1827.303-70(b)(1)-(6).
- (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 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 Recipient 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 Recipient 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 Recipient, and such other data and information as CASIS or NASA may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by NASA in connection with any march-in proceeding undertaken by NASA in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), NASA agrees it will not disclose such information to persons outside the government without permission of the Recipient.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the Recipient 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 NASA upon a showing by the Recipient 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 Recipient agrees that with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of NASA to require the Recipient, 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 Recipient, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if NASA determines that:

- (1) Such action is necessary because the Recipient 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 Recipient, 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 Recipient, 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 Grants with Nonprofit Organizations

If the Recipient 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 NASA, 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 Recipient;
- (2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA 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 Recipient 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 Recipient 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 Recipient 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 Recipient. However, the Recipient agrees that the Secretary may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications.

A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the CASIS Administrative Point of Contact, the NASA Patent Counsel, and the NASA Grant Officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a "subject invention" for which the Recipient has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the Recipient identify the information and the "subject invention" to which it relates at the time of submittal. If required by the NASA Grant Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the Recipient has applied for patents.

**11. NEW TECHNOLOGY [48 CFR 1852.227-70] - [APPLICABLE TO ENTITY OTHER THAN SMALL BUSINESS OR NON-PROFIT ORGANIZATION]**

(a) *Definitions.*

*Administrator*, as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

*Contract*, as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

*Contractor*, as used in this clause, means Grantee.

*Contracting Officer*, as used in this clause, means the NASA Grants Officer.

*Made*, as used in this clause, means conception or first actual reduction to practice; *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.

*Nonprofit organization*, as used in this clause, means a domestic 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 (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

*Practical application*, as used in this clause, 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 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.

*Reportable item*, as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectable under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectable under Title 17 of the United States Code.

*Small business firm*, as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3–8 for small business contractors and in 13 CFR 121.3–12 for small business subcontractors will be used.)

*Subject invention*, as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(b) *Allocation of principal rights*

(1) *Presumption of title.*

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1)(A) or (1)(B) of section 20135(b) of the National Aeronautics and Space Act (51 U.S.C. § 20135(b)) (hereinafter called “the Act”), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1)(A) or (1)(B) of section 20135(b) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1)(A) or (1)(B) of section 20135(b) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1)(A) or (1)(B) of section 20135(b) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) *Waiver of rights.* (i) Section 20135(g) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1)(A) or (1)(B) of section 20135(b) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) *Minimum rights reserved by the Government.*

(1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—



- (i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and
    - (ii) Such other rights as stated in 14 CFR 1245.107.
  - (2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.
- (d) *Minimum rights to the Contractor.*
- (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries 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 Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
  - (2) The Contractor's domestic license may be revoked or modified by the Administrator 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 37 CFR part 404, Licensing of Government Owned Inventions. 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 Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
  - (3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator 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 to the Administrator any decision concerning the revocation or modification of its license.
- (e) *Invention identification, disclosures, and reports.*
- (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.
  - (2) The Contractor will disclose each reportable item to CASIS and to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to CASIS and to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(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 physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such 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 CASIS and to the agency, the Contractor will promptly notify CASIS and the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.
  - (3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site <http://invention.nasa.gov>.
  - (4) The Contractor shall furnish CASIS and the Contracting Officer the following:

- (i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this clause have been followed.
  - (ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.
- (5) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.
- (6) The Contractor agrees, subject to section 27.302(j), of the Federal Acquisition Regulation (FAR), that CASIS and the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.
- (f) *Examination of records relating to inventions.*
- (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—
    - (i) Any such inventions are subject inventions;
    - (ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and
    - (iii) The Contractor and its inventors have complied with the procedures.
  - (2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.
  - (3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.
- (g) *Subcontracts.*
- (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—
    - (i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and
    - (ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.
  - (2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—
    - (i) Shall promptly submit a written notice to CASIS and the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
    - (ii) Shall not proceed with such subcontract without the written authorization of CASIS and the Contracting Officer.
  - (3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.
  - (4) The Contractor shall promptly notify CASIS and the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be

performed under the subcontract, and the dates of award and estimated completion. Upon request of CASIS or the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

- (5) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (h) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- (h) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or 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.

## **12. CONFIDENTIALITY**

1. Definitions
  - a. For purposes of this Agreement, "Confidential Information" shall mean any information disclosed by any Party to any other Party, in the following forms:
    - (i) if in written, graphic, electronic information or any other tangible medium, including without limitation data, designs, memoranda, models, prototypes, hardware, tools or technology; or
    - (ii) if originally disclosed orally or by way of observation, to the extent identified as Confidential Information at the time of such original disclosure and to the extent summarized in reasonable detail and confirmed as being Confidential Information in a written notice delivered to the receiving Party within ten (10) days after original disclosure.
  - b. "Confidential Information" shall not include information which:
    - (i) Is available or becomes available in the public domain through no act of the receiving Party;
    - (ii) Is independently developed by or on behalf of the receiving Party without Confidential Information of the disclosing Party; or
    - (iii) was acquired by a Party from other than one of the other Parties prior to the time of its disclosure by the disclosing Party.
2. Each Party shall treat Confidential Information of the other Parties with the same degree of confidentiality with which it treats its own Confidential Information (except that it shall not release such Confidential Information pursuant to this or any other Agreement), and in no case less than a reasonable degree of confidentiality.
3. Each Party shall not copy Confidential information, in whole or in part, except as required in furtherance of the uses thereof permitted by this Agreement, and except with accurate reproduction of all proprietary legends and notices located in the originals;
4. Each Party shall not use any Confidential Information for its own account or purposes, or for the account or purposes of any third Party;
5. Each Party shall limit dissemination of Confidential Information received from the other Party to only those of its employees and outside consultants who need to know the Confidential Information in furtherance of the uses thereof permitted by this Agreement; provided, however, that a receiving Party shall in all events be responsible to the disclosing Party for any action or inaction of the receiving Party's existing, future and former employees and outside consultants that would violate this Agreement, as if action or inaction had been that of receiving Party directly;
6. Each Party shall destroy or return to the disclosing Party any Confidential Information received in written or other tangible media, including all copies and records thereof, upon any request by the Disclosing Party;
7. Nothing in this Agreement may be construed to prevent a receiving Party from disclosing said information as required by law or legal process as long as the receiving Party, if permitted by applicable law, promptly notifies the disclosing Party of its obligation to disclose and provides reasonable cooperation to the disclosing Party in any efforts to contest or limit the scope of the disclosure. Grantee agrees that—upon request or as required by law, legal process, or applicable agreements including CASIS' Cooperative Agreement with NASA—CASIS may disclose the identities and the analysis provided by Grantee's agents performing work under this Agreement to NASA or the United States Congress provided that CASIS shall notify Grantee as required by this Section of the Agreement.
8. Confidentiality under this agreement shall be effective during the term of this agreement, unless earlier terminated as provided for in Article 22 of this agreement; provided however, that each party's obligations of confidentiality and restrictions on use of the information received by it shall survive and continue to survive and be binding on the parties' employees, former employees, and successors in-interest for three (3) years after the end of the term of this agreement.

## **13. DISCLAIMER OF WARRANTY**

1. Goods, services, facilities, or equipment coordinated by CASIS under this Agreement are provided "as is." CASIS makes no express or implied warranty as to the condition of such goods, services, facilities, or equipment, or as to the condition of any research or information generated under this Agreement, or as to any products made or developed under or as a result of this Agreement including as a result of the use of information generated hereunder, or as to the merchantability or fitness for a particular purpose of such research, information, or resulting product, or that goods, services, facilities, or equipment provided will accomplish the intended results or are safe for any purpose including the intended purpose, or that any of the above will not interfere with privately-owned rights of others. Neither CASIS nor its subcontractors shall be liable for special, consequential or

incidental damages attributed to such equipment, facilities, technical information, or services coordinated under this Agreement or such research, information, or resulting products made or developed under or as a result of this Agreement.

#### **14. COMPLIANCE WITH LAWS AND REGULATIONS**

1. The Parties shall comply with all applicable laws and regulations including, but not limited to, safety; security; export control; environmental; and suspension and debarment laws and regulations. Access by a Party to NASA facilities or property, or to a NASA Information Technology (IT) system or application, is contingent upon compliance with NASA security and safety policies and guidelines including, but not limited to, standards on badging, credentials, and facility and IT system/application access.
2. Grantee shall comply with the following provisions in the NASA Handbook for Grants and Cooperative Agreements: [http://nodis3.gsfc.nasa.gov/npg\\_img/N\\_PR\\_5800\\_001E/N\\_PR\\_5800\\_001E .pdf](http://nodis3.gsfc.nasa.gov/npg_img/N_PR_5800_001E/N_PR_5800_001E.pdf)
  - Non-discrimination provision, 14 C.F.R. § 1260.33
  - Clean Air and Water provision, 14 C.F.R. § 1260.34

##### 2.1 Restrictions on Funding Activities with China for Awards Subject to 14 CFR § 1260 (DEVIATION FEB 2012)

(a) Pursuant to The Department of Defense and Full-Year Appropriation Act, Public Law 112-10, Section 1340(a); The Consolidated and Further Continuing Appropriation Act of 2012, Public Law 112-55, Section 539; and future year appropriations (hereinafter, "the Acts"), NASA is restricted from using funds appropriated in the Acts to enter into or fund any grant or cooperative agreement of any kind to participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement. (b) Definition: "China or Chinese-owned Company" means the People's Republic of China, any company owned by the People's Republic of China, or any company incorporated under the laws of the People's Republic of China. (c) The restrictions in the Acts do not apply to commercial items of supply needed to perform a grant or cooperative agreement. (d) Subaward - The recipient shall include the substance of this provision in all subawards made hereunder.

3. With respect to any export control requirements:
  - a. The Parties will comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120 through 130, and the Export Administration Regulations (EAR), 15 C.F.R. Parts 730 through 774, in performing work under this Agreement or any Amendment to this Agreement. In the absence of available license exemptions or exceptions, the Grantee shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data and software, or for the provision of technical assistance.
  - b. The Grantee shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of work under this Agreement or any Amendment under this Agreement, including instances where the work is to be performed on-site at NASA and where the foreign person will have access to export-controlled technical data or software. Additionally, the subcontractor shall be responsible for appropriately identifying, classifying, and marking data that is subject to these regulations.
  - c. The Grantee will be responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions or exceptions.
  - d. The Grantee will be responsible for ensuring that the provisions of this Article apply to its Related Entities.

##### 3. With respect to suspension and debarment requirements:

- a. The Grantee hereby certifies, to the best of its knowledge and belief, that it has complied, and shall comply, with 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1880, Subpart C.
  - b. The Grantee shall include language and requirements equivalent to those set forth in subparagraph (3)(a), above, in any lower-tier covered transaction entered into under this Agreement.
4. Grantee agrees that by executing this Grant Agreement, it is providing the certifications set forth as Attachments B (Nondiscrimination), C (Drug-Free Workplace), a D (Byrd Anti-Lobbying Amendment) and F (Export Compliance Acknowledgement Form). To be provided upon award.

#### **15. PERSONAL CONFLICTS OF INTEREST - [Applicable when CASIS indicates or Grantee believes that Grantee may use subjective judgment in making sub-awards or subcontracts in performing the Grant]**

- (a) Definitions. As used in this clause:

"Subjective judgment" involves the use of attitudes, beliefs and opinions, giving the individual latitude in executing the grant.

The following activities may involve the use of subjective judgment: (1) selection of subgrant recipients; (2) prioritization of subgrant recipients; (3) preparation of subgrant requests for proposals. Being free of financial interests is the best manner to ensure there is no basis for “bias” in executing the grant.

“Covered employee” means an individual who—

- (1) Is an employee of the grantee or a subcontractor, a consultant, a partner, or that is a sole proprietor;
- (2) Performs a function involving “subjective judgment.”

“Non-public information” means any information that a covered employee gains by reason of work under the grant relative to a function involving subjective judgment that the covered employee knows, or reasonably should know, has not been made public.

“Personal conflict of interest” means a situation in which a covered employee has a financial interest, personal activity, or relationship that could compete with or impair the employee’s ability to act impartially and in the best interest of the Government when performing under the grant.

- (1) Among the sources of personal conflicts of interest are—
  - (i) Financial interests of the covered employee, of close family members, or of other members of the household;
  - (ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
  - (iii) Gifts, including travel.
- (2) Financial interests referred to in paragraph (1) of this definition may arise from—
  - (i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
  - (ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
  - (iii) Services provided in exchange for honorariums or travel expense reimbursements;
  - (iv) Research funding or other forms of research support;
  - (v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
  - (vi) Real estate investments;
  - (vii) Patents, copyrights, and other intellectual property interests; or
  - (viii) Business ownership and investment interests.

(b) Requirements. The Grantee shall—

- (1) Have procedures in place to screen covered employees for potential personal conflicts of interest, including—
  - (i) Obtaining and maintaining a financial disclosure statement from each covered employee, when the employee is initially assigned to the task involving subjective judgment; and
  - (ii) Requiring each covered employee to update the disclosure statement whenever the employee’s personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.
- (2) For each covered employee—
  - (i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform a function involving the use of subjective judgment if the Recipient has identified a personal conflict of interest for the employee that the Recipient or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;
  - (ii) Prohibit use of non-public information for personal gain; and
  - (iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information.
- (3) Inform covered employees of their obligation—
  - (i) To disclose and prevent personal conflicts of interest;
  - (ii) Not to use non-public information for personal gain; and
  - (iii) To avoid even the appearance of personal conflicts of interest;
- (4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;
- (5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established

pursuant to this provision; and

- (6) Report to CASIS any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report shall include a description of the violation and the actions taken by the Grantee in response to the violation. Personal conflict-of-interest violations include—
  - (i) Failure by a covered employee to disclose a personal conflict of interest; and
  - (ii) Use by a covered employee of non-public information for personal gain.
- (c) Mitigation or waiver.
  - (1) In exceptional circumstances, if the Grantee cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of this clause, the Grantee may submit a request through CASIS for—
    - (i) Agreement to a plan to mitigate the personal conflict of interest; or
    - (ii) A waiver of the requirement.
  - (2) The Grantee also must notify CASIS of any de minimis conflict a covered employee may have. A conflict is considered de minimis if the aggregate value belonging to covered employee, the spouse, and the minor children in the following holdings does not exceed \$15,000.
    - (i) Publicly traded securities,
    - (ii) Long-term Federal Government securities, and
    - (iii) Municipal securities
- (d) Remedies. In addition to other remedies available to CASIS, the Grantee's failure to comply with the requirements of paragraphs (b), (c)(2), or (e) of this clause may render the grantee subject to termination of the grant.
- (e) Subcontract flowdown. The Grantee shall include the substance of this provision including this paragraph (e), in subcontracts or sub-awards as appropriate.

**16. ORGANIZATIONAL CONFLICTS OF INTEREST - [Applicable when CASIS indicates or Grantee believes that Grantee may use subjective judgment in making sub-awards or subcontracts in performing the Grant]**

1. When the possibility of an organizational conflict of interest ("OCI") exists, Grantee will provide an OCI Mitigation Plan to CASIS. CASIS may make a unilateral change to the OCI Mitigation Plan as necessary.
2. Grantee shall promptly report any violation of the OCI Mitigation Plan, or any OCI, to CASIS. This report shall include a description of the violation and the actions the grantee has taken or proposes to take to mitigate and avoid repetition of the violation. After conducting such further inquiries and discussions as may be necessary, CASIS and Grantee shall agree on appropriate corrective action, if any, or CASIS shall direct such action. Any breach of this provision, including any nondisclosure, or misrepresentation of material facts regarding OCIs to be disclosed, may result in termination of the Grant.
3. When the possibility of an OCI exists, Grantee will ensure that OCI prevention and mitigation requirements (including this clause) flow down to affected subcontractors or sub-awardees at any tier. The terms "Grantee" and "CASIS" shall be appropriately modified to reflect the change in parties and to preserve CASIS's and the Government's rights.