



1. DEFINITIONS

A term with its initial letter(s) capitalized is a defined term and will have the meaning ascribed to it in these Federal Flowdown Provisions – Uniform Guidance; provided, however, that if not defined herein, it will have the meaning ascribed to in the Standard Terms.

- 1.1 “Standard Terms” means the WSU Standard Terms and Conditions of Purchases – Services and Goods, which are available for download on the Website.
- 1.2 “Terms” means these Federal Flowdown Provisions – Uniform Guidance, the Standard Terms, and any other applicable Supplemental Terms that govern.
- 1.3 “Uniform Guidance” means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The full text of the Uniform Guidance may be found at 2 CFR Part 200.

2. APPLICABILITY OF FEDERAL FLOWDOWN PROVISIONS

- 2.1 If WSU has entered into a grant or cooperative agreement (the “Prime Contract”) with either the U.S. Government or another entity who itself has entered into a grant or cooperative agreement with the U.S. Government (the “Awarding Agency”), and the Prime Contract requires that certain clauses from Uniform Guidance, Appendix II be incorporated into and form part of the Contract, then Seller is required to comply with these Federal Flowdown Provisions – Uniform Guidance.
- 2.2 By their terms, not all listed provisions apply to this transaction. Clauses that are not applicable are deemed self-deleting.
- 2.3 WSU may choose to flow down additional clauses when necessary to satisfy WSU’s contractual obligations.
- 2.4 Seller agrees to flow down all applicable clauses to lower-tier subcontractors. In the event of any conflict among the requirements of clauses applicable to this Contract, the most stringent requirements of the clauses will apply.
- 2.5 The provisions set forth below are not intended to be a complete list of Seller’s requirements.
- 2.6 These Federal Flowdown Provisions – Uniform Guidance constitute Supplemental Terms, as that phrase is defined in the Standard Terms.
- 2.7 These Federal Flowdown Provisions – Uniform Guidance are posted on the Website. WSU may change these Federal Flowdown Provisions – Uniform Guidance at any time in its sole discretion. Such changes shall be effective upon posting of such updates on the Website. Seller is responsible for periodically visiting the Website to review changes to these Federal Flowdown Provisions – Uniform Guidance.

- 2.8 Seller warrants it has fully reviewed, understands, and can fulfill its obligations under these Federal Flowdown Provisions – Uniform Guidance and agrees to be bound by these requirements and any further changes to them.

3. SECTION A: ADMINISTRATIVE REQUIREMENTS

- 3.1 **Compliance with Applicable Laws.** Seller shall perform all activities funded by this Contract in accordance with all Applicable Laws.
- 3.2 **Remedies for Non-Compliance.** If this Contract exceeds the Simplified Acquisition Threshold (SAT), if Seller fails to comply with any Applicable Laws, as that term is defined herein, WSU may, at its discretion, impose additional conditions upon Seller including but not limiting to temporarily withholding cash payments pending correction of the deficiency, disallowing all or part of the cost of the activity or action not in compliance, requiring payments as reimbursements rather than advance payments, withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period; requiring additional, more detailed financial reports; requiring additional project monitoring; requiring Seller to obtain technical or management assistance; or establishing additional prior approvals. In the alternative, and in its sole discretion, WSU may terminate, in whole or in part, the Contract and/or avail itself of any other remedies that may be legally available. For purposes of this Contract, the term “Applicable Laws” means all applicable federal, state, and local laws, ordinances, and regulations, including but not limited to the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Title 2 Code of Federal Regulations §200 et seq.
- 3.3 **Termination.**
 - a. **For Convenience.** If this Contract is in excess of \$10,000, WSU may terminate this Contract, in whole or in part, at any time and for any reason, upon ten (10) days written notice to Seller. In the event that the Awarding Agency terminates the Prime Contract (or any statements of work issued to WSU under the Prime Contract), WSU shall terminate this Contract and/or the applicable SOW in accordance with the terms of the Prime Contract.
 - b. **For Cause.** If this Contract is in excess of \$10,000, WSU may terminate this Contract upon written notice to Seller, and such termination shall be effective three calendar days from the date of delivery of such notice, should any of the following occur: (a) Seller becomes insolvent or files for bankruptcy; (b) Seller fails to deliver the goods or services being purchased under this Contract within the time specified by this Contract or any written



extension; (c) Seller fails to make progress or meet any of the progress deadlines, so as to endanger performance of this Contract; or (d) if Seller is in breach of any other term of this Contract and Seller fails to cure such breach within five (5) business days of receipt of notice of such breach.

- c. **Procedures Upon Termination.** Upon termination of this Contract for any reason, Seller shall (a) stop work immediately on the terminated portion of the Contract; (b) terminate all contracts (including but not limited to subcontracts and subawards) related to the termination of the Contract; (c) advise the University of any special circumstances precluding stoppage of work; (d) continue to perform the portion of the Contract not terminated; (e) take any action necessary to protect property in Seller's possession in which the University has an interest; (f) notify the University of any legal proceedings related to this Contract; (g) settle any subcontractor claims arising out of the termination; and (h) dispose of termination inventory as directed by the University. Seller shall be reimbursed for allowable costs and non-cancelable obligations incurred prior to the date of termination and shall furnish all necessary data, deliverables, and final reports on the research completed or in progress through the date of termination.

4. SECTION B: NATIONAL POLICY REQUIREMENTS

- 4.1 **Equal Employment Opportunity.** If this Contract involves a federally assisted construction contract, as that term is defined in 41 CFR 60-1.3, Seller is subject to, and agrees to abide by, the Equal Opportunity Clause contained in 41 CFR 60-1.4(b), incorporated by reference. Furthermore, the Equal Opportunity Clause contained in 41 CFR 60-1.4(b) applies to all nonexempt subcontracts entered into by Seller under this Contract, and Seller agrees to include the Equal Opportunity Clause contained in 41 CFR 60-1.4(b) in all nonexempt subcontracts.
- 4.2 **Wage Rate Requirements (Construction), formerly the Davis-Bacon Act.** When required by Federal program legislation, Seller must take the following actions with respect to each construction contract for more than \$2,000 to be awarded using funding provided under this Contract: a) place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor; b) condition the decision to award the contract upon Seller's acceptance of the prevailing wage determination; c) include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations (29 CFR part 5

"Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction") to require Seller's compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C 3141-44, 3146, and 3147); and d) report all suspected or reported violations to the Awarding Agency.

- 4.3 **Copeland "Anti-Kickback" Act (40 U.S.C. 3145).** If this Contract is in excess of \$2,000 and pertains to construction or repair, Seller shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that Seller shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the employee is otherwise entitled. Seller shall report all suspected or reported violations to WSU and the responsible Awarding Agency.
- 4.4 **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Contract is in excess of \$100,000 and involves construction and/or other purposes that involve the employment of mechanics or laborers, Seller shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Seller shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 4.5 **Intellectual Property Rights.** Seller represents and warrants that the scope of works/services to be performed by Seller underneath the Contract will not result in the creation or further development of technical data, computer software, copyright materials, and/or inventions. Accordingly, the provisions in Exhibit A-1 below are reserved. To the extent that the Contract results in the creation (or further development) of technical data, computer software, copyrightable



materials, and/or inventions, the provisions in Exhibit A-1 shall apply.

- 4.6 **Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387), as amended.** If the Contract is in excess of \$150,000, Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations shall be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

- 4.7 **Debarment and Suspension (E.O. 12549 and 12689).** Seller represents and warrants that it is not listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM) in accordance with OMB guidelines at 2 CFR Part 180 that implement E.O.s 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Seller must comply with 2 CFR Part 180, Subpart C and must include a requirement to comply with this regulation in any lower tier covered transaction it enters into. Seller shall have an ongoing duty during the term of this Contract to disclose to WSU on an ongoing basis any occurrence that would prevent Seller from making the certifications contained in this section. Such disclosure shall be made in writing to WSU within five (5) business days of when Seller discovers or reasonably believes there is a likelihood of such occurrence. This certification is a material representation of fact relied upon by WSU. If it is later determined that Seller did not comply with 2 CFR Part 180, Subpart C, in addition to remedies available to WSU, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment.

- 4.8 **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** If the Contract is for \$100,000 or more, Seller and its subcontractors shall file the certification required by this statute and associated regulations. Seller certifies to WSU that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Seller shall disclose to WSU any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Each tier shall also disclose any lobbying with non-

Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier.

- 4.9 **Procurement of recovered materials.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. If applicable, Seller shall comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 4.10 **Domestic preferences for procurements (2 CFR 200.322).** As appropriate and to the extent consistent with law, Seller should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section must be included in all subawards including all contracts and purchase orders for work or products under this Contract. For purposes of this section: (a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes from the initial melting stage through the application of coatings, occurred in the United States; and (b) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- 4.11 **Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216).** Seller must comply with 2 C.F.R. § 200.216, which implements Section 889 of the Fiscal Year (FY) 2019 NDAA (Pub. L. 115-232) and forbids Federal award recipients from using government funds to enter into contracts (or extend or renew them) with entities utilizing covered telecommunications equipment or services. 2 CFR



200.216 prohibits federal award recipients from using government funds to enter into contracts (or extend or renew contracts) with entities that use “covered telecommunications equipment or services,” even if the contract is not for the purchase of such equipment or services. Covered telecommunications equipment or services is defined as telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

4.12 Fly America Requirements. If this Contract involves international air travel or transportation for people or property, Seller must:

- a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the “Fly America” Act), as implemented by the General Services Administration at 41 CFR 301-10.131 through 301-10.143, which provides that U.S. Government financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing arrangement with a U.S. carrier, if such service is available; and
- b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

4.13 Cargo preference for United States flag vessels. If this Contract involves equipment, material, or commodities being shipped by oceangoing vessels, Seller agrees: (a) to utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in subsection (a) of this section to WSU and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and (c) to insert the substance of the provisions of this paragraph in all subcontracts issued pursuant to this Contract.



EXHIBIT A-1
INTELLECTUAL PROPERTY RIGHTS

1. **Standard Patent Rights**

a. **Definitions.** Unless otherwise provided herein, the following terms shall have the following means, regardless of capitalization.

- i. 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.).
- ii. Subject invention means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.
- iii. 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.
- iv. Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- v. 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.
- vi. 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.

- vii. The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.
- viii. The term Subcontractor means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Contract 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

b. **Allocation of Principal Rights.** The Subcontractor 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 Subcontractor 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 Subcontractor.**

- i. The Subcontractor will disclose each subject invention to the Awarding Agency through WSU within two months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Subcontractor will promptly notify



- the agency through WSU of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor.
- ii. The Subcontractor will elect in writing whether or not to retain title to any such invention by notifying the Awarding Agency through WSU within two years of disclosure to the Awarding Agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
 - iii. The Subcontractor 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. If the Subcontractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Subcontractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Contract.
 - iv. For any subject invention with Awarding Agency and Subcontractor co-inventors, where the Awarding Agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Awarding Agency employing such co-inventor, at its discretion and in consultation with the Subcontractor, may file such application at its own expense, provided that the Subcontractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).
 - v. Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Awarding Agency, be granted. When a Subcontractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Awarding Agency notifies the Subcontractor within 60 days of receiving the request.
- d. **Conditions When the Government May Obtain Title.** The Subcontractor will convey to the Awarding Agency, upon written request, title to any subject invention –
- i. If the Subcontractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.
 - ii. In those countries in which the Subcontractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Subcontractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Awarding Agency, the Subcontractor shall continue to retain title in that country.
 - iii. In any country in which the Subcontractor decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.
- e. **Minimum Rights to Subcontractor and Protection of the Subcontractor Right to File.**
- i. The Subcontractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Subcontractor fails to disclose the invention within the times specified in (c), above. The Subcontractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Subcontractor is a party and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the contract was awarded.



The license is transferable only with the approval of the Awarding Agency except when transferred to the successor of that party of the Subcontractor's business to which the invention pertains.

- ii. The Subcontractor's domestic license may be revoked or modified by the funding Awarding Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Awarding Agency to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- iii. Before revocation or modification of the license, the funding Awarding Agency will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed thirty days (or such other time as may be authorized by the funding Awarding Agency for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor 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. Subcontractor Action to Protect the Government's Interest.

- i. The Subcontractor agrees to execute or to have executed and promptly deliver to the Awarding Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and (ii)

convey title to the Awarding Agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

- ii. The Subcontractor 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 Subcontractor each subject invention made under contract in order that the Subcontractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the Subcontractor the entire right, title and interest in and to each subject invention made under contract, 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 paragraph (c)(i) of this clause. The Subcontractor 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.
- iii. For each subject invention, the Subcontractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Awarding Agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental



examination.

- iv. The Subcontractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Awarding Agency). The government has certain rights in the invention."
- v. The Subcontractor must submit a final report listing all subject inventions made under the award or stating that there were none. The final report is due 90 calendar days after the end date of the period of performance unless you request, and the Awarding Agency grants, an extension of the due date.

g. Subcontracts.

- i. The Subcontractor 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 sub-subcontractor. The sub-subcontractor will retain all rights provided for the Subcontractor in this clause, and the Subcontractor will not, as part of the consideration for awarding the subcontract, obtain rights in the sub-subcontractor's subject inventions.
- ii. The Subcontractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).
- iii. In the case of subcontracts, at any tier, when the prime award with the Awarding Agency was a contract (but not a grant or cooperative agreement), the agency, sub-subcontractor, and the Subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the sub-contractor and the Awarding 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 Subcontractor 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 Subcontractor 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 Subcontractor, and such other data and information as the agency may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the Subcontractor.

- i. **Preference for United States Industry.** Notwithstanding any other provision of this clause, the Subcontractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Awarding Agency upon a showing by the Subcontractor 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 Subcontractor agrees that with respect to any subject invention in which it has acquired title, the Awarding Agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Subcontractor, 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 Subcontractor,



assignee, or exclusive licensee refuses such a request the Awarding Agency has the right to grant such a license itself if the Awarding Agency determines that:

- i. Such action is necessary because the Subcontractor 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.
 - ii. Such action is necessary to alleviate health or safety needs which are not reasonably
 - iii. satisfied by the Subcontractor, assignee or their licensees;
 - iv. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee or licensees; or
 - v. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- k. **Special Provisions for Contracts with Nonprofit Organizations.** If the Subcontractor is a nonprofit organization, it agrees that:
- i. Rights to a subject invention in the United States may not be assigned without the approval of the Awarding Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Subcontractor;
 - ii. The Subcontractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
 - iii. The balance of any royalties or income earned by the Subcontractor 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
 - iv. It will make efforts that are reasonable under

the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Subcontractor 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 Subcontractor 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 Subcontractor. However, the Subcontractor agrees that the Awarding Agency may review the Subcontractor's licensing program and decisions regarding small business applicants, and the Subcontractor will negotiate changes to its licensing policies, procedures, or practices with the Awarding Agency when the Awarding Agency's review discloses that the Subcontractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). In accordance with 37 CFR 401.7, the Awarding Agency or the Subcontractor may request that the Secretary review the Subcontractor's licensing program and decisions regarding small business applicants.

2. Copyright Rights under the Contract. (2 CFR 200.315(b), modified))

- a. Title. (2 CFR 200.315(a), modified)
 - i. Title to copyrights acquired under this Contract vests upon acquisition in the Seller. The Seller must use the copyrights for the originally-authorized purpose, and must not encumber the data without approval of the Awarding Agency and the Federal Government.
- b. Seller may assert copyright in any work that is eligible for copyright protection if Seller acquires ownership of it under this award, either by developing it or otherwise.
- c. With respect to any work developed by Seller or otherwise acquired by Seller under this award, the Awarding Agency and the Federal Government



reserves a royalty-free, nonexclusive and irrevocable license to:

- i. Reproduce, publish, or otherwise use the work; and
 - ii. Authorize others to reproduce, publish, or otherwise use the work.
- d. With respect to any work developed by Seller or otherwise acquired by Seller under this award, Seller hereby grants WSU a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use the work to the extent necessary to fulfill WSU's obligations under the Prime Contract, as well as for any other purpose.

must provide the data to the Awarding Agency or Federal Government within a reasonable time after it is requested so that the data can be made available to the public through procedures established under the FOIA.

- ii. For purposes of this requirement under Section 3(b) of this section, 2 CFR 200.315(e) provides definitions of the phrases "published research findings," "used by the Federal Government in developing an agency action that has the force and effect of law," and "research data."

3. Data Rights under the Contract.

- a. Title. (2 CFR 200.315(a), modified)
 - i. Title to data acquired under this Contract vests upon acquisition in the Seller. The Seller must use the data for the originally-authorized purpose, and must not encumber the data without approval of the Awarding Agency and the Federal Government.
- b. Data in General. (2 CFR 200.315(d), modified)
 - i. For data produced by Seller under this Contract, the Federal Government has the right to:
 1. Obtain, reproduce, publish, or otherwise use the data produced under this award; and
 2. Authorize others to receive, reproduce, publish, or otherwise use the data produced under this award.
 - ii. For data produced by Seller under this Contract, WSU also has the right to obtain, reproduce, publish, or otherwise use the data produced under this award.
- c. Research data requested under the Freedom of Information Act (FOIA). (2 CFR 200.315(e), modified)
 - i. If the Awarding Agency or Federal Government receives a request under the FOIA for "research data" that are related to "published research findings" produced under this award and that were "used by the Federal Government in developing an agency action that has the force and effect of law," Seller