

Annex A. MILLENNIUM CHALLENGE CORPORATION (MCC) STANDARD PROVISIONS FOR ASSISTANCE AWARDS

A.1. INTRODUCTION

The Recipient and any sub-recipient must flow down these standard provisions and comply with all applicable terms and conditions during the period of performance of the award. For any subawards made to subrecipients, the Recipient must ensure compliance with monitoring procedures.

All Standard Provisions **MUST BE FLOWN DOWN TO SUBAWARDS.**

A.2. CONTROLLING LANGUAGE

In accordance with 2 CFR 200.111, it is the MCC's policy that English is the official language of all award documents. If an award or any supporting documents are provided in both English and a foreign language, it must be stated in each version that the English language version is the controlling version.

A.3. MILLENNIUM CHALLENGE CORPORATION (MCC) RESPONSIBILITIES

MCC has overall responsibility for USG-funded awards, including providing oversight for technical, programmatic, financial and administrative performance.

1. MCC's Agreement Officer (AO) is responsible for all actions on behalf of the MCC, including entering into, changing, or terminating an award. The Agreement Officer is the only authorized individual to obligate USG funds. Warranted AOs act as public trust officials empowered with the authority to obligate the Government. The authority to appoint AO's is limited to the Millennium Challenge Corporation Senior Procurement Executive (SPE). The SPE for the Millennium Challenge Corporation (MCC) is the Managing Director of the Contracts and Grants Management Division. The SPE has not delegated this authority.

2. **MCC's Agreement Officer's Representative (AOR) and Project Monitor (PM).** The AOR is responsible for: monitoring the Recipient's performance and verifying that it conforms to the technical requirements and quality standards agreed to in the terms and conditions of the cooperative agreement; issuing technical directions or guidance in accordance with the terms of the cooperative agreement; approving work plans, approaches, solutions, designs, or refinements; providing financial management recommendations and monitoring of costs; participation in the periodic evaluation of the Recipient's performance, and recommending in writing (with justification for the proposed action) to the AO any changes needed in the program description of the cooperative agreement, including any changes to technical provisions of the cooperative agreement that affect the timing of the program performance or the overall cost of the cooperative agreement.

The PM is responsible for: monitoring the recipient's performance and verifying that it conforms to the technical requirements and quality standards agreed to in the terms and conditions of the cooperative agreement; participation in the periodic evaluation of the Recipient's performance; assisting in recommending in writing (with justification for the proposed action) to the AOR and AO any changes needed in the program description of the cooperative agreement; assisting the AOR in issuing technical directions or guidance in accordance with the terms of the grant/cooperative agreement; and assisting the AOR in administering financial management responsibilities.

A.4. RECIPIENT RESPONSIBILITIES AND COMPLIANCE WITH FEDERAL REQUIREMENTS

The Recipient is responsible for notifying MCC of any significant problems relating to the administrative, programmatic or financial aspects of the award.

The Recipient has full responsibility for the management of the program or activity supported under the award and for adherence to Federal regulations and the award terms and conditions. Although the Recipient is encouraged to seek the advice and opinion of the AO and/or the AOR on special problems that may arise, such advice does not diminish the Recipient's responsibility for making prudent and sound administrative judgments under the circumstances prevailing at the time the decision was made and should not imply that the responsibility for operating decisions has shifted to MCC.

A.5. ADVANCE PAYMENT AND REIMBURSEMENT

- a. When advance payments are authorized by the award, the Recipient must deposit such funds in a reputable bank and be able to account for the receipt and expenditure of funds and interest earned on the advances provided by the U.S. Government (USG).
- b. The Recipient must maintain advances of MCC funds in interest-bearing accounts.
- c. All interest earned by the Recipient on advances from MCC funds will be remitted back to MCC at the end of the quarter and MCC will report the collection back to Treasury.
- d. The Recipient may request advance payments for anticipated expenditures at time intervals as close as is administratively feasible to the actual disbursements by the Recipient, and for the minimum amounts necessary.
- e. To request an advance payment, or expenditure reimbursement payment for actual costs incurred, the Recipient must submit electronically or fax to the payment office the Standard Form SF270 Request for Advance or Reimbursement (See <http://www.gsa.gov/portal/forms/type/SF> for forms)

Fax: 303.969.5151/7281 ATTN: MCC Payments, or
Email: mcc_accounting_ibcdenver@ibc.doi.gov, or

As an alternative to electronic submission of advance or reimbursement payment requests, one copy of each request may be submitted to the following address:

Interior Business Center
M/S D-2773
7301 West Mansfield Avenue
Lakewood, CO 80235-2230

Each form must include the following information and/or attached documentation:

- (1) Name, address and telephone of the Recipient
- (2) Date of invoice and invoice number
- (3) Award number
- (4) Description of the services rendered.
- (5) A schedule depicting the following information:

Amount Expended This Period	Cumulative Amount Expended	Authorized Value of Award	Balance Remaining on Award

If the Recipient is billing for costs incurred over more than a single month, the costs for each month in which the costs were incurred shall be segregated into the month they were actually incurred.

(6) Name of Agreement Officer's Representative (AOR); and

(7) Signature of authorized representative of the firm with the following invoice certification:

"The undersigned hereby certifies to the best of my knowledge and belief that: the sum claimed under this contract is proper and due, and all the costs of contract performance have been paid, or to the extent allowed under the applicable payment clause, will be paid by the Recipient when due in the ordinary course of business; the work reflected by these costs has been performed, and amounts involved are consistent with the requirements of this CA.

BY: _____
TITLE: _____
DATE: _____

Inquiries regarding the status of payments may be directed to NBC Accounting. The email address is: mcc_accounting_ibcdenver@ibc.doi.gov.

The Recipient must submit Standard Form 425 - Federal Financial Report, quarterly, no later than 30 days after the end of the quarter, to the paying office specified above in order to adhere to federal financial reporting requirements. Failure to provide these quarterly reports may result in the suspension, disruption, or termination of additional payments.

Within 90 days following the expiration of this award, the Recipient must submit the final financial report using the Standard Forms SF-270, SF-425, showing total disbursements, total advances received, and any cash remaining on hand, which the Recipient must refund to MCC.

When this award expires, the Recipient must immediately return all unexpended funds that MCC has advanced to the Recipient, unless such advanced funds have already been spent or committed in a legally binding transaction during the period of this award, or are required for approved close-out costs.

MCC reserves the right, at any time, to 1) withhold or offset payments to or 2) require refund by the Recipient of any amount that the Recipient did not spend according to the terms and conditions of this award or are otherwise determined by the Agreement Officer to be unallowable. MCC retains the right to a refund of all amounts paid under this award until all outstanding audit findings and settlement claims have been resolved between MCC and the Recipient.

a) FUNDING CHARGES ON ADVANCES RECEIVED FROM MCC

Interest from dollar or dollar sourced foreign currency, shall be charged on advances at a rate established by the Secretary of Treasury under P.L. 92-41 (41 U.S.C §7109). The interest shall be computed on the amount of the outstanding principal advanced until it is refunded to or recovered by MCC. The interest earned for funds held in the local bank interest bearing account are to be returned to MCC on a quarterly basis via the International Treasury System (ITS.gov).

b) FUNDING RESTRICTIONS

None of the funds made available for this award can be used, obligated or expended for:

1. Alcoholic beverages, or
2. Entertainment expenses for activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks, or
3. To pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions.

Nothing in this paragraph shall be construed to alter any existing statutory prohibitions against abortion under section 104 of the Foreign Assistance Act of 1961. None of the funds made available under this Act may be used to lobby for or against abortion. In order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or

through referral to, or information about access to, a broad range of family planning methods and services, and that any such voluntary family planning project shall meet the following requirements:

- (1) Service providers or referral agents in the Project shall not implement or be subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (this provision shall not be construed to include the use of quantitative estimates or indicators for budgeting and planning purposes);
- (2) The Project shall not include payment of incentives, bribes, gratuities, or financial reward to: (A) an individual in exchange for becoming a family planning acceptor; or (B) program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning;
- (3) The Project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual's decision not to accept family planning services;
- (4) The Project shall provide family planning acceptors comprehensible information on the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method; and
- (5) The Project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.

A.6. ALLOWABLE COSTS

- a. The Recipient will be reimbursed for costs incurred in carrying out the purposes of this award in accordance with the terms of this award and the applicable cost principles in effect on the date of this award. The Recipient may obtain a copy of the applicable cost principles from the Agreement Officer (AO) or online by reviewing 2 CFR 200, Subpart E, Cost Principles or 48 CFR 31.2 Federal Acquisition Regulations (FAR) if applicable per [Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles](#).
- b. It is the Recipient's responsibility to ensure that costs incurred are in accordance with the applicable cost principles, meaning the costs are (1) reasonable: costs which are generally recognized as ordinary and necessary and would be incurred by a prudent person in the conduct of normal business; (2) allocable: incurred specifically for this award; and (3) allowable: conform to any limitations in this award. The Recipient must obtain any prior written approvals from the AO that are required by the applicable cost principles. The Recipient may obtain the AO's written determination on whether specific costs not clearly addressed in the applicable cost principles are allowable or allocable. The AO reserves the right to make a final determination on the allowability of costs.
- c. MCC will not pay any profit or fee to the Recipient or subrecipients of a grant or cooperative agreement.
- d. The Recipient must retain documentation to support charges to this award for a period of three years from the date of submission of the final expenditure report.
- e. This provision must be incorporated into all subawards and subcontracts.

A.7. AUDITS

For all MCC awards to a U.S. based non-federal entity, regardless of business type, the Recipients are subject to the audit requirements found in 2 CFR Part 200 Subpart F. In addition, the Recipients are subject to the audit requirements found in the Single Audit Act of 1984, 31 U.S.C. 7501-7507.

The Inspector General or any of his or her duly authorized representatives shall have access to any pertinent books, documents, papers and records of the Recipient. Information accessible to the Inspector

General includes written, printed, recorded, produced, or reproduced by any mechanical, magnetic, or other process or medium. MCC reserves the right to make audits, inspections, excerpts, transcriptions or other examinations as authorized by law of the Recipients' documents and facilities.

Audits of Foreign Recipient Organizations.

All Foreign organizations that expend \$750,000 or more in a fiscal year in MCC federal assistance must perform an independent, Recipient-contracted Single Audit or Program Specific Audit.

Program-specific Audit – means an audit of one Federal award program. Single Audit – means an audit which includes both the entity's financial statements and the Federal Awards to be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

The audits must be independently and professionally executed in accordance with GAGAS either prescribed by a government's Supreme Audit Institution with auditing standards approved by the Comptroller General of the United States, or in accordance with the host country's laws or adopted by the host country's public accountants or associations of public accountants, together with generally accepted international auditing standards. However, foreign entity audits consistent with International Standards for Auditing or other auditing standards are acceptable with the Grants Officer's approval. For sub-recipients expending \$750,000 or more in MCC award funding during their fiscal year, MCC standard audit provisions require that Prime Recipients certify that audits of sub-recipients are performed annually and according to the standards described above.

The cost of audits may be charged either as an allowable direct cost to the award, or included in the organizations established indirect costs in the award's detailed budget.

A.8. PROPERTY STANDARDS

The Recipient is held to the property standards found under [2 CFR 200: Subpart D – Property Standards §200.310 – §200.316](#), which cover real property, equipment, supplies, and intangible property, among others.

A.9. PROVISION ON PUBLIC COMMUNICATIONS AND PUBLICATIONS UNDER MCC-FUNDED AGREEMENTS

1. Publications and Media Releases

- a. If the Recipient intends to identify MCC's contribution to any publication, video, or other information/media product resulting from the award, the product must contain the following statement: *NOTICE: The views expressed herein do not necessarily reflect those of the Millennium Challenge Corporation (MCC) nor that of the U.S. Government. Any Acknowledgments published shall include the disclaimer cited in subsection 2.c of this clause.*
- b. The Recipient must provide MCC with one copy of all published works developed under the award and with lists of other written works produced under the award.
- c. Except as otherwise provided in the terms and conditions of the award, the author or the Recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under the award, but MCC reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for U.S. Government purposes.
- d. Each Party agrees that it shall not:
 - i. represent, or permit the representation of the other Party's views without that other Party's prior written consent;¹ or

¹ MCC's consent shall be acquired via MCC's Public Affairs Office with a copy to the Agreement Officer.

- ii. use, or permit the use of the other Party's name, marks or logos in any advertisements, promotional literature or information without the other Party's prior written consent, and that if the other Party does so consent, that it shall use the other Party's name, marks and logos strictly in accordance with the permission provided and with the insertion of such disclaimers as the other Party shall request.

2. Marking and Public Communications Under MCC-Funded Assistance

- a. Publications funded by this award will include an acknowledgement of support by MCC including the MCC Identity (the organization's official branding signature) where appropriate. Publications will also include an appropriate disclaimer where applicable.
- b. Recipients must use the MCC Identity, of a size and prominence equivalent to or greater than any other identity or logo displayed, to mark the following:
 - (1) Programs, projects, activities, public communications, and commodities partially or fully funded by MCC;
 - (2) Program, project, or activity sites funded by MCC, including visible infrastructure projects or other physical sites;
 - (3) Technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities, promotional, informational, media, or communications products funded by MCC;
 - (4) Commodities, equipment, supplies, and other materials funded by MCC, including commodities or equipment provided under humanitarian assistance or disaster relief programs; and
 - (5) Events financed by MCC, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities. If the MCC Identity cannot be displayed, the Recipient is encouraged to otherwise acknowledge MCC.
- c. Any "public communication" in which the content has not been approved by MCC must contain the following disclaimer:

"This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the U.S. Government through the Millennium Challenge Corporation (MCC). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of MCC or the United States Government."
- d. The Recipient must include the following marking provision in any sub-agreements entered into under this award:

"As a condition of receipt of this subaward, marking with the MCC Identity of a size and prominence equivalent to or greater than the Recipient's, subrecipient's, other donor's, or third party's is required. In the event the Recipient chooses not to require marking with its own identity or logo by the subrecipient, MCC may, at its discretion, require marking by the subrecipient with the MCC Identity."

A.10. PATENT RIGHTS

a. Patent Rights

(1) **Allocation of Principal Patent Rights.** The Recipient may retain the entire right, title, and interest throughout the world to each subject invention, subject to this provision. With respect to any subject invention in which the Recipient retains title, the U.S. Government must have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. Government the subject invention throughout the world, and to sublicense others to do the same. The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made

with U.S. Government support under (identify the agreement awarded by MCC). The U.S. Government has certain rights in this invention."

(2) **Definitions.** For purposes of this provision, the following terms will have the following meaning:

(i) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(ii) "Subject invention" means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award.

(3) The Recipient must disclose each subject invention to the National Institutes of Health (NIH) EDISON Patent Reporting and Tracking System (<http://www.iedison.gov>) within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. In addition, the Recipient agrees to submit, on request, periodic reports to the Agreement Officer's Representative, no more frequently than annually, on the utilization of a subject invention.

(4) **Conditions When the U.S. Government May Obtain Title.** The Recipient must convey title to any subject invention to MCC, upon written request, subject to Recipient's retention of a nonexclusive, royalty-free license throughout the world, in each subject invention:

- (i) If the Recipient fails to file a U.S. patent application or to disclose the subject invention to MCC at least 60 days prior to the statutory period for filing a patent in the United States, fails to file any non-U.S. patent applications 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, or elects not to retain title.
- (ii) 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.

b. **Subawards and Subcontracts:** Recipient must include this Standard Provision, suitably modified to identify the parties, in all subawards and subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The Recipient must retain all rights provided for the USG in this the Standard Provision, and the Recipient must not, as part of the consideration for awarding the subcontract or subaward, obtain more rights in the contractor's or subrecipient's subject inventions than provided in this provision.

A.11. SUBAGREEMENTS

Subawardees and subcontractors have no relationship with MCC under the terms of this award. All required MCC approvals and technical directions must be directed through the Recipient to MCC. Notwithstanding any other term of this award, subawardees and contractors have no right to submit claims directly to MCC and MCC assumes no liability for any third party claims against the Recipient.

The prime Recipient must flow down the appropriate terms and provisions to all sub recipients and such subrecipients must be appropriately addressed in the performing organization's sub-award instruments.

Recipients must adhere to the Code of Federal Regulations (2 CFR 200.300 – 303) standards for financial management systems and methods for making payments, and rules for satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of costs, and establishing funds availability.

A.12. REMEDIES FOR NON COMPLIANCE TO SPECIFIC CONDITIONS

If the Recipient fails to comply with Federal statutes, regulations or the terms and conditions of this cooperative agreement, MCC may impose additional conditions, as described in 2 CFR 200.207 Specific conditions which states:

200.207 Specific conditions.

- (a) The Federal awarding agency or pass-through entity may impose additional specific award conditions as needed, in accordance with paragraphs (b) and (c) of this section, under the following circumstances:
 - (1) Based on the criteria set forth in §200.205 Federal awarding agency review of risk posed by applicants;
 - (2) When an applicant or Recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;
 - (3) When an applicant or Recipient fails to meet expected performance goals as described in §200.210 Information contained in a Federal award; or
 - (4) When an applicant or Recipient is not otherwise responsible.
- (b) These additional Federal award conditions may include items such as the following:
 - (1) Requiring payments as reimbursements rather than advance payments;
 - (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
 - (3) Requiring additional, more detailed financial reports;
 - (4) Requiring additional project monitoring;
 - (5) Requiring the non-Federal entity to obtain technical or management assistance; or
 - (6) Establishing additional prior approvals.
- (c) The Federal awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:
 - (1) The nature of the additional requirements;
 - (2) The reason why the additional requirements are being imposed;
 - (3) The nature of the action needed to remove the additional requirement, if applicable;
 - (4) The time allowed for completing the actions if applicable, and
 - (5) The method for requesting reconsideration of the additional requirements imposed.
- (d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

If MCC determines that noncompliance cannot be remedied by imposing additional conditions, per 2 CFR 200.338 – Remedies for Noncompliance, MCC may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the Recipient or more severe enforcement action by MCC.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the cooperative agreement.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations.
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

A.13. DISPUTES AND APPEALS

- (a) **Per 2 CFR 200.341 - Opportunities to object, hearings and appeals** – Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

- (b) Any dispute under this award will be decided by the Agreement Officer (AO). The AO must furnish the Recipient a written copy of the decision.
- (c) Decisions of the AO are final unless the Recipient appeals the decision to MCC's Deputy Vice President for Administration & Finance. Any appeal made under this provision must be in writing, postmarked within 30 calendar days of receipt of the AO's decision; include all relevant and material evidence; and be addressed to the MCC's Deputy Vice President for Administration & Finance. A copy of the appeal must be concurrently furnished to the AO. No hearing will be provided.
- (d) A decision under this provision by MCC's Deputy Vice President for Administration & Finance is final.

A.14. AWARD TERMINATION AND SUSPENSION

This Cooperative Agreement is subject to the following termination procedures per 2 CFR §200.339:

- (a) The Federal award may be terminated in whole or in part as follows:
 - (1) By MCC or pass-through entity if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
 - (2) By MCC or pass-through entity for cause;
 - (3) By MCC or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
 - (4) By the non-Federal entity upon sending to MCC or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if MCC or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, MCC or pass-through entity may terminate the Federal award in its entirety.
- (b) When MCC terminates a Federal award prior to the end of the period of performance due to the Recipient's material failure to comply with the agreement terms and conditions, MCC must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).
- (c) When a Federal award is terminated or partially terminated, both MCC or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

The **MCC Agreement Officer** may terminate this award in whole or in part for any of the circumstances stated below, which are non-exhaustive:

1. USG National Security or USG Foreign Policy Interests

If at any time MCC determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance is not consistent with the national security or foreign policy interests of the United States, or would be in violation of an applicable law. In such cases, MCC may, following notice to the Recipient, suspend or terminate the award in whole or in part and prohibit the Recipient from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension. If a suspension is affected and the situation causing the suspension continues for 60 days or more, then MCC may terminate the award in whole or in part on written notice to the Recipient and cancel any portion of the award which has not been disbursed or irrevocably committed to third parties.

2. Narcotics offense or engagement in drug trafficking

In the event the Recipient or any of its employees, subrecipients, or contractors are found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR 140, MCC reserves the right to terminate this award, in whole or in part, or take any other appropriate measures including, without limitation, refund or recall of any award amount. Additionally, the Recipient

must make a good-faith effort to maintain a drug-free workplace and MCC reserves the right to terminate or suspend this award if the Recipient materially fails to do so.

3. Violation of the Provision of Trafficking in Persons (see provision below)

4. Partial suspension or whole termination

MCC may suspend this award, in whole or in part, at any time, following notice to the Recipient, and prohibit the Recipient from incurring additional obligations chargeable to this award other than those costs specified in the notice of suspension during the period of suspension.

Termination and Suspension Procedures

In case of termination, MCC will provide a notice of termination to the Recipient per 2 CFR §200.340.

The termination notice must contain the reason(s) for the termination; the effective date; and, in the case of a partial termination, the portion to be terminated. If the termination is based on non-compliance, note that this termination decision may be considered in selection for future Federal awards.

Upon receipt of, and in accordance with, a termination or suspension notice from MCC as specified above, the Recipient must take immediate action to minimize all expenditures and, in the event of termination, cancel all obligations financed by this award to the greatest extent possible. Except as provided in this provision or as approved in writing by the AO, the Recipient is not entitled to costs incurred after the effective date of termination.

Within 30 calendar days after the effective date of such termination, the Recipient must repay to the U.S. Government all unexpended MCC funds as of the effective date of termination, which are not otherwise obligated by a non-cancelable legally binding transaction applicable to this award.

Should the funds paid by MCC to the Recipient prior to the effective date of the termination of this award be insufficient to cover legally binding obligations to third parties by the Recipient, the Recipient may submit to MCC within 90 calendar days after the effective date of a termination a written claim covering such Recipient obligations. The AO must determine the amount(s) to be paid by MCC to the Recipient under such claim.

The Recipient must include this provision in all and subcontracts, affording the Recipient the right to terminate the subaward or subcontract in the event MCC terminates this award.

A.15. RECIPIENT AND EMPLOYEE CONDUCT

1. The Recipient must have written policies and procedures in place to prevent personal conflicts of interest and to prevent its officers, employees, or agents from using their positions for personal gain or presenting the appearance of a personal conflict of interest. A personal conflict of interest is a situation in which an officer, employee, or agent of the Recipient has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially when performing under the award. The Recipient's written policy must state that an employee, officer, or agent of the Recipient, or any member of an employee's immediate family cannot receive a subaward, or have a financial or other interest in the entity selected for a subaward without disclosing the conflict and following the Recipient's written policies and procedures for mitigating the conflict. In addition, the written policy must state that the officers, employees, and agents of the Recipient must neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or prospective subrecipients.
2. The Recipient, its employees, and consultants are private individuals, are not employees of the U.S. Government, and must not represent themselves as such.

3. Any outside business dealings of the Recipient's employees must be legal and not conflict in any manner with this award. Outside business dealings include, but are not limited to, any investments, loans, employment, or business ownership by the Recipient's employees, other than work to be performed under this award.
4. In the event the conduct of any Recipient employee is not in accordance with this provision or this award, the Recipient must coordinate with MCC to resolve the situation with regard to such employee including, if necessary, termination of the employee. In the case of termination of a non-host country national, the Recipient must use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.
5. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized or mitigated, the Federal awarding agency will terminate the award unless continued performance is determined to be in the best interest of the Federal government.

A.16. DRUG-FREE WORKPLACE

The Recipient must comply with drug-free workplace requirements in subpart B (or subpart C, if the Recipient is an individual) of 2 CFR 782, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. §§701–707).

A.17. MANDATORY DISCLOSURES

Consistent with 2 CFR §200.113, applicants and Recipients must disclose, in a timely manner, in writing to the MCC's Office of the Inspector General, with a copy to the cognizant Agreement Officer, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Subrecipients must disclose, in a timely manner, in writing to the MCC's Office of the Inspector General and to the prime Recipient (pass through entity) all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Section 614 of the Millennium Challenge Act of 2003 designates the Inspector General of the U.S. Agency for International Development as the inspector general for the Millennium Challenge Corporation (MCC). This designation authorizes USAID OIG to review, inspect, audit, and investigate MCC programs and operations worldwide. Under the Inspector General Act of 1978, USAID OIG operates independently of the agencies for which it has oversight authority.

Disclosures must be sent to:

MCC Hotline at:

<https://oig.usaid.gov/content/mcc-hotline-report-fraud-or-corruption>

Phone: 1-800-230-6539 or 202-712-1023

Email: mcchotline@usaid.gov

Alternatively, you may submit the completed complaint form (pdf) by fax at 202-216-3801 or by mail to the following address:

U.S. Agency for International Development
Attn: MCC Hotline
Office of Inspector General
P.O. Box 657
Washington, DC 20044-0657

Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM.

Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment (See 2 CFR 180, 2 CFR 780 and 31 U.S.C. 3321).

The Recipient must include this mandatory disclosure requirement in all subawards and subcontracts under this award.

A.18. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

Per 2 CFR §200, Appendix XII – Award Term and Condition for Recipient Integrity and Performance Matters

1. General Reporting Requirement. If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the Recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. §2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings about Which You Must Report. The Recipient must submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency. During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not

reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. *Definitions.* For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (1) Only the Federal share of the funding under any Federal award with a Recipient cost share or match; and
 - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

A.19. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- a. The Recipient agrees to notify the Agreement Officer (AO) immediately upon learning that it or any of its principals:
 - (1) Are presently excluded or disqualified from covered transactions by any Federal department or agency;
 - (2) Have been convicted within the preceding three-year period preceding this proposal; been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
 - (3) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated; and
 - (4) Have had one or more public transactions (Federal, State, or local) terminated for cause or default within the preceding three years.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this award.

- b. The Recipient agrees that, unless authorized by the AO, it will not knowingly enter into any subagreements or contracts under this award with a person or entity that is included on the System for Award Management (SAM) (www.sam.gov/). The Recipient further agrees to include the following provision in any subagreements or contracts entered into under this award:

The Recipient/contractor certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any Federal department or agency.

A.20. BLOCKING PROPERTY AND PROHIBITING TRANSACTIONS WITH PERSONS WHO COMMIT, THREATEN TO COMMIT, OR SUPPORT TERRORISM, EXECUTIVE ORDER 13224

Executive Order 13224 designated certain individuals and entities that commit or pose a significant risk of committing terrorist acts and authorized the Secretary of State to designate additional individuals and entities. The Order also authorized the Secretary of the Treasury to designate additional individuals and entities that provide support or services to, are owned or controlled by, act for or on behalf of, or are “otherwise associated with,” an individual or entity who has been designated in or under the order. All property and interests in property of the individual or entity in the United States or in the possession or control of United States persons are blocked. The order prohibits all transactions and dealings in blocked property or interests in the United States or by United States persons, and also prohibits transactions with, and provision of support for, individuals or entities listed in or subject to the Order. The Recipients should be aware of Executive Order 13224 and the names of the individuals and entities designated thereunder. A list of these names can be found in the exclusions section of the SAM.gov. The web site is: <http://www.sam.gov>. The Recipient is reminded that U.S. Executive Orders and U.S. laws prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the recipient/contractor to ensure compliance with these Executive Orders and laws.

The Recipient must not engage in transactions with, or provide resources or support to, individuals and organizations associated with terrorism, including those individuals or entities that appear on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury (online at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or the United Nations Security designation list (online at: http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml).

This provision must be included in all subawards and subcontracts issued under this award.

A.21. TRAVEL AND INTERNATIONAL AIR TRANSPORTATION

All travel costs must comply with the applicable cost principles and must be consistent with those normally allowed in like circumstances in the Recipient's non-MCC-funded activities. Costs incurred by employees and officers for travel, including air fare, costs of lodging, other subsistence, and incidental expenses, may be considered reasonable and allowable only to the extent such costs do not exceed reasonable charges normally allowed by the Recipient in its regular operations as the result of the Recipient organization's written travel policy and are within the limits established by the applicable cost principles.

In the absence of a reasonable written policy regarding international travel costs, the standard for determining the reasonableness of reimbursement for international travel costs will be the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as from time to time amended. The most current Standardized Regulations on international travel costs may be obtained from the AO. In the event that the cost for air fare exceeds the customary standard commercial airfare (coach or equivalent) or the lowest commercial discount airfare, the Recipient must document one of the allowable exceptions from the applicable cost principles.

Travel expenses incurred during the award performance may be reimbursed as allowed by the Federal Travel Regulations (FTR) in effect at the time of travel. MCC's supplemental policy interpretations are derived from the FTR and cannot grant additional benefits or adjust processes defined in the FTR.

Supplemental policies of MCC set forth below:

a) *Traveler Responsibilities.* All contractor travelers must:

- 1) Exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business;

- 2) Travel in accordance with the FTR and the MCC policies included in this document; and
- 3) Pay any charges or fees associated with non-compliance of FTR or any MCC policies included in this document, and any expenses incurred for personal convenience. For example, the traveler may become personally responsible for travel costs associated with unauthorized use of other than coach class accommodations, failing to follow the Fly America Act requirements, exceeding per diem rates, changing departure or return flights, purchasing unapproved items, etc. regardless of the fact that travel arrangements may have been booked by others (e.g., Travel Agency).

b) Cabin Class Standards

- 1) The standard cabin class for contractor air-travel is coach class, regardless of destination or travel time.
- 2) Coach “premium” class may be authorized for destinations which have a travel time of more than 14 hours, consistent with the Federal Travel Regulations and the approval standards outlined in paragraph (f) of this document.
- 3) Business class travel accommodations will NOT be authorized except as determined through the approval process outlined in paragraph (f) of this document. This approval process is considered to be exceptional, to be part of a trip by trip analysis, and at the discretion of the government regardless of the destination or travel time.

c) Airlines and Flights. In accordance with the Fly America Act, contractors must use a U.S. flag air carrier service for all travel funded by the government beginning or ending in the U.S. unless a specific exemption to the “Fly America” rule applies. Flights on U.S. air carrier pairings with foreign carriers (i.e., code share flights) are regarded as meeting Fly America requirements if the ticket is issued on the American carrier and there is an American carrier flight number.

d) Limitations. Travel reimbursement, which is part of ODC, shall not exceed the authorized ODC amount on the contract. To be reimbursable, the travel expenses must be:

- 1) Allowable under the FTR and the provisions of this contract/order and associated technical directives;
- 2) Approved prior to travel expenditure by the AOR; and
- 3) Allocable and necessary for performance of this contract/order and associated technical directives.

e) Reimbursement Requests. Travel reimbursement requests must be submitted in sufficient time for the AOR to give prior approval, and must identify:

- 1) The name of the traveler.
- 2) Destination (s) including itinerary.
- 3) Purpose of the travel; and
- 4) Cost breakdown.
- 5) To be reimbursed, invoices including travel expenses must provide a detailed breakdown of the actual expenditures invoiced. Contractor shall maintain the original or legible copy of receipts for all travel expenses invoiced when the expenditure is \$75.00 or more. MCC reserves the right to request evidence of any travel expense paid.

f) Approvals. All travel expenses, including rental cars, must be approved by the MCC AOR in writing in advance of booking any travel and incurring travel expenses. The following expense types require additional MCC pre-approvals beyond that of the AOR. These additional approvals and associated justifications will be documented in writing:

1) Business class

Business class travel is considered to be exceptional, to be determined as part of a trip by trip analysis, and at the discretion of the government regardless of the destination or travel time. To reflect the exceptional nature of this approval, the justification for use of business class must be prepared by the AOR and approved in writing by the relevant Managing Director or Deputy Vice President of the organization requesting the contractor to travel. The single exception to requiring this justification and approval for every trip in question is when an approved medical

accommodation has been granted. In this case, the approval of the AOR and the Contracting Officer only is required after verifying that the medical accommodation is effective for the trip in question and that sufficient funds are available. All justifications must verify that the contractor is required to report for duty the following day or sooner, that the travel time for the trip is at least 14 hours, and that a rest stop will not be taken en route. For audit purposes, all justifications and approvals to this effect must be retained by the AOR and the contractor until contract closeout at which point all documentation must be provided to the Contracting Officer for incorporation in the contract file.

Below are possible justifications supporting these exceptional requests:

- A) **Medical accommodation** – MCC has engaged the services of the U.S. Department of Health & Human Services (HHS), Federal Occupational Health Service (FOH), and Medical Employability Program (MEP) for medical accommodations due to disability adjudication. Requests for, and HHS determinations on, medical accommodations for business class travel will be confidential, with only MCC's Travel Office receiving copies of the request and the MED/DP determination. Contractor travelers requesting medical accommodations based upon disability must complete the steps below. Forms are available from the MCC AOR and/or PM.
 - 1) Contractor traveler completes the Medical Employability Case Transmittal Form, A127523-S192701-W190333. Form can be faxed to (301) 492-4783 or e-mailed to medical.employability@foh.hhs.gov with a copy to the MCC Travel Office at mccmedical@mcc.gov.
 - 2) Contractor traveler forwards Physician a copy of the Medical Accommodation Physician's form, which the physician completes, dates, and signs. Once signed, the traveler OR their physician e-mails a scanned .pdf attachment to HHS at medical.employability@foh.hhs.gov. Alternatively, it can be faxed Attn: Medical Employability Program (301) 492-4783.
 - 3) Once both forms have been completed and sent, HHS makes a medical determination based on the information provided by the traveler and the traveler's physician on the HHS/FOH/EMP forms. FOH will send a letter to the POC listed on the transmittal form with recommendations. MCC will not approve any business class accommodations beyond normal MCC guidelines unless the traveler has completed the medical accommodation paperwork and received a positive response from FOH/MEP.
 - 4) Contractor must note that the process can take several weeks and will depend on how quickly HHS/FOH/MED receives the information (including communication with treating physicians).
 - B) **Sanitation/Health** – Coach accommodations on an authorized/approved foreign air carrier do not provide adequate sanitation or health standards.
 - C) **Savings** – Flying in non-coach status would involve significant cost savings to MCC when compared to the lowest price non-refundable or restricted coach class fare.
 - D) **Availability** – No space is available in coach-class accommodations in time to accomplish the mission, which is urgent and cannot be postponed. (Note: this justification should not be used based on the lack of advanced planning by the contractor or the AOR).
 - E) **Security** – Exceptional security circumstances require other than coach-class airline accommodations.
 - F) **Mission critical agency requirement** – circumstances in which a critical agency priority or project will incur delay or degradation without the intervention of a contractor and that intervention urgently requires other than coach class ticketing.
- 2) Coach "premium" class – coach "premium" class must be approved by the AOR, subject to the availability of funds on the contract/order, and:
- A) The origin and/or destination are OCONUS; and

- B) The scheduled flight time including non-overnight stopovers and change of planes, is in excess of 14 hours. Scheduled flight time is the flight time between the originating departure point and the ultimate arrival point including scheduled non-overnight time spent at airports during plane changes. Scheduled non-overnight time does not include time spent at the originating or ultimate arrival airports. And;
- C) The contractor is required to report to duty the following day or sooner; and
- D) The contractor does not take a rest stop en route or a rest period upon arrival at the duty site.

3) Rest Stops – must be approved by the AOR and cannot exceed 24 hours.

NOTE: Travelers may upgrade flight accommodations at their own expense or through the use of frequent flyer miles if the coach airfare is upgradeable at no extra cost to MCC.

A.22. TRAFFICKING IN PERSONS

a. The Recipient, subawardee, or contractor, at any tier, or their employees, labor recruiters, brokers or other agents, must not engage in:

- (1) Trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime) during the period of this award;
- (2) Procurement of a commercial sex act during the period of this award;
- (3) Use of forced labor in the performance of this award,
- (4) Acts that directly support or advance trafficking in persons, including the following acts:
 - i. Destroying, concealing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
 - ii. Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:
 - a) exempted from the requirement to provide or pay for such return transportation by MCC under this award; or
 - b) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;
 - iii. Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;
 - iv. Charging employees recruitment fees; or
 - v. Providing or arranging housing that fails to meet the host country housing and safety standards.

b. In the event of a violation of section (a) of this provision, MCC is authorized to terminate this award.

c. For awards that exceed an estimated value of \$500,000, the Recipient must submit to the Agreement Officer, the annual "Certification regarding Trafficking in Persons" as required prior to this award.

d. Procedures for the Recipient to prevent any agents or subawardee at any tier and at any dollar value from engaging in trafficking in persons activities described in section a of this provision. The Recipient must also have procedures to monitor, detect, and terminate any agents or subawardee or subawardee employees that have engaged in such activities.

e. For purposes of this provision, "employee" means an individual who is engaged in the performance of this award as a direct employee, consultant, or volunteer of the Recipient or any subrecipient.

f. The Recipient must include in all subawards and subcontracts, a provision prohibiting the conduct described by the subrecipient, contractor or any of their employees.

A.23. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS

The Recipient must maintain financial records, supporting documents, statistical records, and all other records pertinent to an award for a period of three years from the date of submission of the final expenditure report.

Timely and Unrestricted Access.

MCC authorized officials, the Inspector General, Chief Financial Officer, Agreement Officer or any of their duly authorized representatives (AOR and PM) have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipients that are pertinent to the award, in order to make audits, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to a Recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but must last as long as records are retained.

A.24. NONDISCRIMINATION AND DISABILITY

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination on the basis of race, color, national origin, age, disability, or sex under any program or activity funded by this award.

MCC prohibits discrimination, including harassment, in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee.

In addition, the MCC strongly encourages its Recipients and their subrecipients and vendors (at all tiers), performing both in the U.S. and overseas, to develop and enforce comprehensive nondiscrimination policies for their workplaces that include protection for all their employees on these expanded bases, subject to applicable law.

Section 504 of the Rehabilitation Act provides that no otherwise qualified individual with a disability in the United States, shall, solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance. A Recipient of federal financial assistance must provide programs and services in a manner that does not discriminate based on disability and ensures equal access and opportunity for people with disabilities. For the purpose of Section 504, the term individual with a disability means any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such impairment, or (c) is regarded as having such impairment.

A.25. WHISTLEBLOWER PROTECTION

The Recipient must:

1. Inform its employees working under this award in the predominant native language of the workforce that they are afforded the employee whistleblower rights and protections provided under 41 U.S.C. § 4712; and
2. Include such requirement in any subaward or subcontract made under this award.

41 U.S.C. § 4712 states that an employee of a Recipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

Whistleblowing is defined as making a disclosure "that the employee reasonably believes" is evidence of any of the following:

- Gross mismanagement of a Federal contract or grant;
- A gross waste of Federal funds;

- An abuse of authority relating to a Federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a Federal contract or grant (including the competition for, or negotiation of, a contract or grant).

To qualify under the statute, the employee's disclosure must be made to:

- A Member of the U.S. Congress, or a representative of a U.S. Congressional Committee;
- A cognizant U.S. Inspector General;
- The U.S. Government Accountability Office;
- A Federal employee responsible for contract or grant oversight or management at the relevant agency;
- A U.S. court or grand jury; or,
- A management official or other employee of the Recipient who has the responsibility to investigate, discover, or address misconduct.

A.26. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND COMMUNITY ORGANIZATIONS

The Recipient may not discriminate against any beneficiary or prospective beneficiary under this award on the basis of religion or belief. Accordingly, in providing services supported in whole or in part by this agreement or in its outreach activities related to such services, the Recipient may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution. Therefore, if the Recipient engages in explicitly religious activities, including activities that involve overt religious content such as *worship, religious instruction, and proselytization*, it must perform such activities and offer such services at a different time or location from any programs or services directly funded by this award, and participation by beneficiaries in any such explicitly religious activities must be voluntary. If the Recipient makes sub-awards under this agreement, faith-based organizations should be eligible to participate on the same basis as other organizations, and should not be discriminated against on the basis of their religious character or affiliation.

A.27. RELIGIOUS PERSECUTION

The Recipient must ensure that its personnel take into account in their work the considerations reflected in the International Religious Freedom Act concerning country-specific conditions, the right to freedom of religion, methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.

A.28. UNIVERSAL IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT (SAM)

Exceptions. The requirements of this provision to obtain a Data Universal Numbering System (DUNS) number and maintain a current registration in the System for Award Management (SAM) do not apply, at the prime award or subaward level, to:

- (1) Awards to individuals
- (2) Awards less than \$25,000 to foreign recipients to be performed outside the United States
- (3) Awards where the AO determines, in writing, that these requirements would cause personal safety concerns.

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

b. **Requirement for Data Universal Numbering System (DUNS) numbers.** If you are authorized to make subawards under this award, you:

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

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

c. **Definitions.** For purposes of this award term:

(1) System of Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a Recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at www.sam.gov).

(2) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at fedgov.dnb.com/webform).

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

- (i) A governmental organization, which is a State, local government, or Indian tribe;
- (ii) A foreign public entity;
- (iii) A domestic or foreign nonprofit organization;
- (iv) A domestic or foreign for-profit organization; and
- (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

(4) Subaward:

- (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you, as the Recipient, award to an eligible subrecipient.
- (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 subpart F Audit Requirements).
- (iii) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

(5) Subrecipient means an entity that:

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

A.29. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

This provision is required in accordance with 2 CFR 170, Award Term for Reporting Subawards and Executive Compensation.

Exemptions:

(1) *The requirements to report under this provision do not apply to:*

- (i) *Awards to individuals*
- (ii) *Awards less than \$25,000*

(2) *When the AO determines, in writing, that these requirements would cause personal safety concerns, reporting under this provision can be accomplished using generic information.*

a. **Reporting of First-Tier Subawards.**

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

(2) Where and when to report.

(i) You must report each obligating action described in paragraph a.(1) of this award term to www.fsrs.gov.

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

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

b. Reporting Total Compensation of Recipient Executives.

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

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

(ii) In the preceding fiscal year, you received—

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

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

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

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

(i) As part of your registration profile at www.sam.gov/.

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

c. Reporting of Total Compensation of Subrecipient Executives.

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

(i) In the subrecipient's preceding fiscal year, the subrecipient received—

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

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

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

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

- (i) To the Recipient.
- (ii) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (for example, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

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

- (1) Subawards, and
- (2) The total compensation of the five most highly compensated executives of any subrecipient.

e. **Definitions.** For purposes of this award term:

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

- (i) A governmental organization, which is a State, local government, or Indian tribe;
- (ii) A foreign public entity;
- (iii) A domestic or foreign nonprofit organization;
- (iv) A domestic or foreign for-profit organization;
- (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

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

(3) Subaward:

- (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the Recipient award to an eligible subrecipient.
- (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 subpart F Audit Requirements).
- (iii) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

(4) Subrecipient means an entity that:

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

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

- (i) Salary and bonus.
- (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- (iii) Earnings for services under nonequity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (v) Above-market earnings on deferred compensation which is not tax-qualified.

- (vi) Other compensation, if the aggregate value of all such other compensation (for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

A.30. INDIRECT COSTS – CHARGED AS A FIXED AMOUNT (NONPROFIT)

APPLICABILITY: This provision is applicable to awards where all of the following are true: 1) the Recipient has never received a Negotiated Indirect Cost Rate Agreement (NICRA); 2) the Recipient has chosen not to use the 10% de minimis rate authorized in 2 CFR §200.414(f); and 3) the indirect costs are not included as other direct costs in the budget. When using this provision, all indirect costs must be charged as a fixed amount and must be shown as a separate line item in the budget.

- a) The Recipient will be paid a fixed amount to cover indirect costs, as provided below. Indirect costs are common costs that benefit the day-to-day operations of the organization, including categories such as salaries and expenses of executive officers, personnel administration, and accounting, or that benefit and are identifiable to more than one program or activity, such as depreciation, rental costs, operations and maintenance of facilities, and telephone expenses. In determining the fixed amount, these costs must be prorated equitably and consistently across all programs and activities of the Recipient using a base that measures the benefits of that particular cost to each program or activity to which the cost applies. The bases must be established in accordance with reasonable criteria, and be supported by current data. Indirect costs must then be charged to the programs they benefit.
- b) The fixed amount for indirect costs and a schedule for payments must be incorporated into the award budget. This award must specify the categories of costs, as described in paragraph a., that are covered by the fixed amount, and the Recipient must not charge such costs separately as direct costs. Any deviations must be approved, in advance, in writing, by the Agreement Officer (AO).
- c) MCC will not pay the Recipient in excess of the negotiated fixed amount for indirect costs, as authorized in this award. Similarly, where the actual costs are less than the agreed fixed amount for indirect costs included in the award budget, the Recipient will not be liable to return the difference to MCC. However, if the total costs, including direct costs and the indirect costs described in a., that MCC is supporting through this award change significantly (that is, by 20 percent or more in the aggregate), the AO reserves the right to adjust the fixed amount for indirect costs to equitably charge the indirect costs that benefit this award.

A.31. CONTRACT PROVISION FOR DBA INSURANCE UNDER RECIPIENT PROCUREMENTS (SUBCONTRACTS)

All subcontracts made by the Recipient under this award for services to be performed overseas must contain the following provision, as applicable.

- (a) The Contractor must—

(1) Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing Defense Base Act (DBA) insurance. The Contractor must continue to maintain these provisions to provide such Defense Base Act benefits until contract performance is completed.

(2) Within ten days of an employee's injury or death or from the date the Contractor has knowledge of the injury or death, submit Form LS-202 (Employee's First Report of Injury or Occupational Illness) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 930(a), 20 CFR 702.201 to 702.203).

(3) Pay all compensation due for disability or death within the timeframes required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914, 20 CFR 702.231 and 703.232).

(4) Provide for medical care as required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 907, 20 CFR 702.402 and 702.419).

(5) If controverting the right to compensation, submit Form LS-207 (Notice of Controversion of Right to Compensation) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(d), 20 CFR 702.251).

(6) Immediately upon making the first payment of compensation in any case, submit Form LS-206 (Payment of Compensation Without Award) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c), 20 CFR 702.234).

(7) When payments are suspended or when making the final payment, submit Form LS-208 (Notice of Final Payment or Suspension of Compensation Payments) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914 (c) and (g), 20 CFR 702.234 and 702.235).

(8) Adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at 20 CFR Parts 701 to 704.

For additional information on the Longshore and Harbor Workers' Compensation Act requirements see <http://www.dol.gov/owcp/dlhwc/lbdba.htm>.

The Contractor must insert the substance of this clause in all subcontracts to which the Defense Base Act applies.