

**GENERAL PROVISIONS**

**FOR**

**NSA GRANTS**

**AND**

**COOPERATIVE AGREEMENTS**

March 2012

For further information, please contact the Government Program  
Manager for your Grant or Cooperative Agreement.

Maryland Procurement Office

ATTN: Associate Directorate for Education and Training (ADET) Grant Office (BA323)  
Research Directorate (RAD) Grant Office (BA331)  
Information Assurance Directorate (IAD) Grant Office (BA342)

9800 Savage Road

Fort George G. Meade, MD 20755

## TABLE OF CONTENTS

1.	THE AGREEMENT .....	3
2.	DEFINITIONS/ABBREVIATIONS .....	3
3.	RESPONSIBILITIES .....	4
4.	ADHERENCE TO ORIGINAL PROGRAM OBJECTIVES .....	4
5.	AVAILABILITY OF PRINCIPAL INVESTIGATOR .....	4
6.	REPROGRAMING OF EXPENDITURES .....	5
7.	EXPENDITURE LIMITATIONS .....	5
8.	ALLOWABLE COSTS .....	6
9.	INDIRECT COST RATE .....	6
10.	COST SHARING AND MATCHING .....	6
11.	COST SHARING ADJUSTMENTS .....	6
12.	STANDARD FOR FINANCIAL MANAGEMENT SYSTEMS .....	6
13.	PAYMENTS .....	7
14.	UNOBLIGATED FUNDS AND EARNED INTEREST .....	7
15.	PROGRAM INCOME .....	7
16.	REPORTS OF WORK .....	7
17.	FINANCIAL STATUS REPORTS .....	9
18.	PUBLICATION PROCEDURES .....	9
19.	RIGHTS IN INTANGIBLE PROPERTY/COPYRIGHTS .....	10
20.	PATENT RIGHTS .....	10
21.	PROCUREMENT STANDARDS .....	10
22.	TITLE OF EQUIPMENT UNDER AGREEMENTS FOR BASIC OR APPLIED SCIENTIFIC RESEARCH .....	10
23.	SITE VISITS .....	11
24.	CLOSEOUT PROCEDURES .....	11
25.	RETENTION OF RECORDS .....	11
26.	EXTENSION OF AGREEMENT PERIOD .....	11
27.	CONTINUATION OF FINANCIAL SUPPORT .....	11
28.	USE OF HUMAN SUBJECTS AND LABORATORY ANIMALS .....	11
29.	SECURITY .....	11
30.	TERMINATION AND ENFORCEMENT .....	12
31.	DISPUTES .....	14
32.	ASSURANCES AND CERTIFICATIONS .....	14

## GENERAL PROVISIONS FOR NSA GRANTS AND COOPERATIVE AGREEMENTS

### 1. THE AGREEMENT

An Agency grant or cooperative agreement for the performance of research or other activities is consummated through an instrument signed by the Agency Grants/Agreements Officer (G/AO) and an authorized representative of the Performing Organization. The instrument will consist of a basic agreement (the Agreement), the proposal and any other technical documents agreed upon by the parties. The Instrument establishes the conditions of the grant or cooperative agreement incorporating the general provisions contained herein and including such other special provisions as may be required.

Note: Any documents or regulations referenced in this Agreement and not appended will be made available upon request. Inquiries or request for copies should be directed to the Grants/Agreements Officer.

### 2. DEFINITIONS/ABBREVIATIONS

As used throughout this Agreement, the following terms have the meaning set forth below:

- a. Agency - The National Security Agency (NSA), an intelligence Agency of the Department of Defense.
- b. Authorized Organizational Representative - A representative of the Performing Organization authorized to enter into contracts, grants and/or cooperative agreements on behalf of the organization.
- c. Grants/Agreements/ (G/AO) - The Agency representative authorized to enter into, administer, and/or terminate contracts, grants or cooperative agreements on behalf of the Agency.
- d. CFR - Code of Federal Regulations
- e. DoDGARs - DoD Grant and Agreement Regulations (DoD 3210.6-R and 32 CFR Parts 21-37)
- f. FAC - Federal Acquisition Circular
- g. FAR - Federal Acquisition Regulation
- h. FMC - Federal Management Circular
- i. OMB - Office of Management and Budget
- j. Performing Organization - The non-Governmental entity responsible for the performance of this Agreement.
- k. Principal Investigator (PI) - The individual designated by the Performing Organization and approved by the NSA who will perform or direct the technical effort.

- l. Treasury Financial Manual (TFM) – The Department of Treasury’s official publication for financial and reporting of all receipts and disbursements of the Federal Government.
- m. Program Manager - The Agency representative responsible for technical liaison with the Principal Investigator(s). Acting under delegation of authority from the CO, the Program Manager will provide general guidance and advice and will be the primary Agency point of contact regarding technical aspects of any Grant or Cooperative Agreement.

PLEASE NOTE THAT WHEN A FAC, FMC, OR OMB CIRCULAR IS MENTIONED, THE LATEST ISSUANCE IS TO BE USED.

### **3. RESPONSIBILITIES**

- a. Grants. While it is understood that the Agency and the Performing Organization share responsibility for the administration of any grant, it is primarily the responsibility of the Performing Organization and its Principal Investigator(s), (PI(s)) to determine the means by which its research can be conducted most effectively. NSA will promote and encourage the development of management policies and actions that will enhance the joint responsibility of the Agency and the Performing Organization to make sound technical and administrative judgments. Performing Organizations are encouraged to seek the advice and opinion of the NSA CO or Program Manager. However, the Performing Organization should not infer that advice by NSA shifts the responsibility for making management or performance decisions from the Performing Organization to NSA.
- b. Cooperative Agreements. It is understood that there is a greater sharing of responsibility for management of the program itself when NSA and the Performing Organization participate in a cooperative agreement rather than a grant. In that case, NSA may participate significantly in the conduct of the effort, providing more specific technical guidance, assistance, and collaboration.
- c. Objective. In either case, however, the abiding concern of NSA is that grants and cooperative agreements are always used to achieve a maximum contribution to the scientific or technical discipline being supported. It is expected that Performing Organizations and the PI's will direct their efforts toward this end.

### **4. ADHERENCE TO ORIGINAL PROGRAM OBJECTIVES**

Performing Organizations in which scientific or other technical effort is sponsored by grants and/or cooperative agreements are encouraged to discontinue or modify unpromising lines of investigation, or to explore interesting leads which may appear during the development of the program. NSA must, however, be consulted prior to any changes that might lead to significant deviations from the objectives or overall program of the original effort. Such changes should be proposed to the Program Manager by the PI in a written communication countersigned by the PI's Authorized Organizational Representative. If approved by the CO, the Grant or Cooperative Agreement will be formally modified to reflect the change.

### **5. AVAILABILITY OF PRINCIPAL INVESTIGATOR**

The Performing Organization will immediately inform the CO when it appears that the PI will not be able to devote substantially the time proposed or otherwise fulfill the agreed commitment to the project. Written approval of the CO will be required to change the PI or to continue the effort during a period of more than three months without the participation of an approved PI.

## **6. REPROGRAMING OF EXPENDITURES**

- a. 2 CFR Part 215 (formerly OMB Circular No. A-110) and implemented by the DoDGARs (32 CFR Part 32) sets forth the requirements for reporting deviations from financial plans and for granting approvals. In general, the PI working within the policies of the Performing Organization is considered to be best qualified to determine the most effective use of Agreement funds in accomplishing the proposed project. Recipients are required to report deviations from budget and program plans and request prior approvals for budget and program plan revisions. Prior written approval of the CO must be obtained before any of the following are accomplished with Agreement funds:
  - (1) Foreign travel must be specifically approved for each separate trip prior to departure. Foreign travel is any travel outside the United States and its territories and possessions. This approval must be specifically granted whether the trip(s) is/are itemized in the budget.
  - (2) Domestic travel exceeding the amount allotted by \$500 or 25 percent, whichever is greater.
  - (3) Personnel movements of a special or mass nature not approved in the budget.
  - (4) Purchase of general-purpose equipment, including office equipment and furnishings, air conditioning, reproduction or printing equipment, motor vehicles, computers, etc... not itemized in the approved budget.
  - (5) Purchase of nonexpendable property costing \$5,000 or more with a useful life of at least 2 years and not itemized in the approved budget, or which exceed the allotted amount by 25 percent.
  - (6) Expenditures for the acquisition of land or any interest therein.
  - (7) Expenditures for the utilization of the services of consultants not previously provided for under the Agreement or itemized in the budget.
  - (8) Expenditures for printing and binding unless otherwise specified in the Agreement.
  - (9) Any approvals required by 2 CFR Part 215 (32 CFR Part 32).
- b. Requests to use Agreement funds for any of the items listed above should be submitted in advance by the Performing Organization to the CO. The CO should respond within 30 calendar days.

## **7. EXPENDITURE LIMITATIONS**

- a. Any commitments or expenditures incurred by the Performing Organization in excess of the funds provided by the Agreement shall be the responsibility of the Performing Organization.
- b. Unless otherwise authorized by this Agreement, expenditures incurred prior to the effective date of this instrument may not be charged against federally authorized funds.
- c. The Performing Organization must notify NSA promptly whenever the amount of federally authorized funds obligated in the instrument is expected to exceed the expenditures of the institution by more than \$5,000 or 5% of the award, whichever is greater.

## **8. ALLOWABLE COSTS**

- a. Payment up to the amount specified in the Agreement shall be made only for allowable costs actually incurred in conducting the work under the terms of the Agreement.
- b. Allowable costs shall be made in accordance with the following applicable Federal Costs Principles:
  - (1) Educational Institutions: 2 CFR Part 220 (formerly OMB Circular A-21)
  - (2) States and Local Governments: 2 CFR Part 225 (formerly OMB Circular A-87)
  - (3) Non-profit Organizations: 2 CFR Part 230 (formerly OMB Circular A-122)
- c. NSA provides no amounts for indirect costs for grants or cooperative agreements solely for the support of (1) travel, (2) equipment, (3) doctoral dissertation research, or (4) participant support costs.
- d. In all cases the cost of any Lobbying activities are unallowable.

## **9. INDIRECT COST RATE**

Unless otherwise provided for by special provision of this Agreement, the indirect cost rate as defined in 2 CFR Part 215 and implemented by the DoDGARs (32 CFR Part 32) used in establishing the negotiated project shall be fixed for the period covered by the Agreement.

## **10. COST SHARING AND MATCHING**

- a. Cost sharing will be established in accordance with guidelines of FMC 73-3 and administered in accordance with 2 CFR Part 215 (32 CFR Part 32).
- b. All contributions, both cash and in kind, shall be accepted as a part of the Performing Organization's cost sharing if all of the criteria specified within 2 CFR Part 215 (32 CFR Part 32) are met.
- c. The Performing Organization must maintain records of all costs, which are claimed as cost sharing, as well as records of cost to be paid by the Agreement funds.

## **11. COST SHARING ADJUSTMENTS**

- a. If a cost sharing percentage has been negotiated and, at the end of the Agreement period that total actual cost is less than the total estimated cost, the Performing Organization shall apply the agreed Federal-Share percentage to the actual costs and return Federal funds received in excess of the computed amount.
- b. In the event the CO authorizes a significant departure from the original objectives defined for this Agreement, the Performing Organization may request adjustments of the cost sharing percentage agreed upon.

## **12. STANDARD FOR FINANCIAL MANAGEMENT SYSTEMS**

2 CFR Part 215.21 (32 CFR 32.21) sets forth standards for financial management systems that apply to this Agreement.

### **13. PAYMENTS**

- a. Payments are to be made on a reimbursement or advanced basis, IAW 2 CFR 215.22 (32 CFR 32.22). This sets forth the applicable methods of making payments, which shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants or payment by other means by the Performing Organization. Unless otherwise provided by special provision to the Agreement, payments shall be made on a reimbursement or advanced basis. The schedule of payments and remittance address will be set forth in the Agreement. The established schedule may be amended by mutual consent. Standard Form 270 (Request for Advance or Reimbursement) should be used. Four collated copies of the invoice and any attachments must be sent.
- b. Any monies (Public monies as defined in 1 TFM Part 6 Chapter 9000) advanced which are subject to the control or regulation of the United States, or any of its officers, agents or employees, must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) . insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.
- c. When the reimbursement method is used, payments shall be made within 30 days after receipt of the billing, unless the billing is improper. Invoices shall be submitted by the Performing Organization to the address designated in the PAYMENTS section of the award document.

### **14. UNOBLIGATED FUNDS AND EARNED INTEREST**

Each performance period supported by this Agreement or any amendment thereto shall be treated separately for budgetary and fiscal purposes. At the end of each period, the negotiated budget shall be reconciled with the Agreement funds actually obligated. When the effort is to be continued for an additional period by amending the existing Agreement, the reconciliation shall be performed during negotiations for the follow-on support. If unobligated Agreement funds are anticipated, either the current performance period will be extended or the funds provided for the subsequent performance period will be reduced accordingly. The Performing Organization shall notify the CO in writing 30 days prior to the expiration of the performance period if unobligated funds are anticipated, or not. If no unobligated funds were anticipated during negotiations for follow-on support, the reconciliation shall be accomplished based upon the Financial Status Report prepared by the Performing Organization. At the time the report is submitted, any obligated funds and any interest over \$250 earned by Federal funds on deposit shall be returned to the CO by check made payable to the Treasurer of the United States. The instrument number shall appear on the check.

### **15. PROGRAM INCOME**

2 CFR 214.24 (32 CFR 32.24) sets forth standards for the control and disposition of program income, if any.

### **16. REPORTS OF WORK**

- a. 2 CFR Part 215.51 (32 CFR 32.51) sets forth procedures for monitoring and reporting performance. All documents must contain the award number of the Instrument. (H98230-XX-1-XXXX).
- b. The minimum requirements for technical performance reports under this Agreement shall be semi-annual progress reports, and a final report when performance is completed. Informal interim reports may be submitted by the Performing Organization or requested by the Program Manager.

- (1) **Semi-annual Performance Report:** This report should present a concise and factual discussion of significant accomplishments and progress. Two copies of the report are due within 60 days after the first half year of the project. Subsequent semi-annual reports are required for each extended half year of the effort, except the last half year which shall be covered by the final report. The body of the report should address:
  - (a) A comprehensive list of the objectives of the statement of work
  - (b) Status of the project, a substantive statement of significant accomplishments and progress toward achieving the project objectives, summary of overall programs.
  - (c) A cumulative chronological list of written publications prepared for technical journals, include those accepted for publications as well as manuscripts planned for later publication. Indicate likely journals, authors and titles.
  - (d) A list of the professional personnel associated with the effort; if applicable, list any advanced degrees awarded, date, recipient, type of degree, and thesis title.
  - (e) Interactions (coupling activities);
    - (i) Papers presented at meetings, conferences, seminars, etc.
    - (ii) Consultative and advisory functions performed for other laboratories and agencies especially other Department of Defense laboratories or agencies. Provide factual information about the subject matter, institution, locations, dates and the names of individuals involved.
  - (f) New discoveries, inventions, or patent disclosure and specific applications stemming from this effort.
  - (g) A summary of work to be accomplished during succeeding semi-annual period.
  - (h) An indication of any current problems or favorable or unusual developments.
  - (i) Any other statement that can provide additional insight and information to the Program Manager for the evaluation of the progress.
- (2) **Final Performance Report:** This report shall provide, in a single document, a permanent record of the progress and significant accomplishments achieved in the performance of the total effort. Two copies of the Final Performance Report are due within 60 days after the expiration or termination of the effort.
  - (a) The report shall be a comprehensive, cumulative, substantive summary of the entire project period of performance (from date of inception to completion). Generally, where the project has been a continuing effort for several years and the semi-annual performance reports have been prepared acceptably, the preparation of the Final Performance Report shall not impose an unusual burden. The format and content for the semi-annual performance reports shall also normally serve as the basis for preparation of the Final Performance Report.



- (b) Where the results of the effort were not adequately reported in scientific or technical publications, the Final Performance Report must provide sufficient, substantive, and detailed discussions of the findings and accomplishments. In such cases, and prior to the completion, duplication and submission of the Final Performance Report, two draft copies will be sent (in advance of the due date) to the Program Manager for preliminary inspection and acceptance.
- (3) Report of Significant Events: Between the required performance reporting dates, events may occur that have significant impact upon the project or program. In such instances, the Performing Organization shall inform the Program Manager as soon as the following types of conditions become known:
- (a) Problems, delays, or advance conditions that will affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall include reasons why established programs objectives or goals were not met, and be accompanied by a statement of action taken or contemplated and any Agency assistance needed to resolve the situation.
  - (b) Favorable developments or events that enable time schedules to be met sooner than anticipated or more work to be produced than originally projected.
  - (c) Significant technical results or milestones, which have been obtained.

## **17. FINANCIAL STATUS REPORTS**

Financial information shall be reported annually on Standard Form 425 (Federal Financial Report) and SF 425A (Federal Financial Report Attachment), as needed, and will show the expenditure of Agreement funds and the Performing Organization's contribution. When the Agreement period is greater than one year, an Interim Financial Status Report shall be submitted within 60 days after completion of each year of effort. The final report is required within 90 days after the Agreement expiration date.

## **18. PUBLICATION PROCEDURES**

- a. It is expected that the recipient may make formal public disclosure of the scientific and technical information resulting from this Agreement, e.g. release articles for appropriate professional publications or present papers at scientific meetings or symposia. The Performing Organization agrees to provide to the Government, concurrent with public disclosure, a copy of such articles, reports, or information resulting from this work in consulting or discussing this and related information with other qualified individuals or groups of individuals, where appropriate, for furthering research. In the event that the researcher believes information generated during the research may require classification, the researcher shall notify NSA and request that the information be reviewed. The parties shall work expeditiously to evaluate the information and mutually establish appropriate handling and disposition guidelines.
- b. Acknowledgment of Government Rights and Sponsorship:

- (1) All manuscripts submitted for publication may include the following statement:

“Project sponsored by the National Security Agency under Grant/Cooperative Agreement (select appropriate title) Number H98230-XX-1-XXXX (insert appropriate number). The United States Government is authorized to reproduce and distribute reprints notwithstanding any copyright notation herein”.

(2) The following notation shall accompany each submission for publication:

“This manuscript is submitted for publication with the understanding that the United States Government is authorized to reproduce and distribute reprints”.

(3) New releases, interviews, and all other public statements referring to the project sponsored by this Agreement may acknowledge the NSA as the supporting Agency.

## **19. RIGHTS IN INTANGIBLE PROPERTY/COPYRIGHTS**

2 CFR Part 215.36 (32 CFR 32.36) provides information pertaining to Rights in Technical Data and computer software apply to this Agreement.

## **20. PATENT RIGHTS**

37 CFR Part 401, “Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” addresses the provisions that apply to Patent Rights.

## **21. PROCUREMENT STANDARDS**

- a. 2 CFR sections 215.41 through 215.48 (32 CFR sections 32.41 through 32.48) provide procurement standards for the Performing Organization and applies to this Agreement.
- b. Unless the special provisions of this Agreement provide otherwise, prior written approval shall be obtained from the CO before any of the work or other substantive project effort is sub-awarded. Requests shall be forwarded to the CO with an explanation, which shall include a proposed performance statement, justification for the price of estimated cost (including a detailed budget for cost-reimbursement type arrangements), and the basis for selecting the sub-awardee.
- c. The requirements of this Agreement are applicable to sub-awardees.
- d. The Performing Organization shall establish policies and procedures to prohibit employees from using their positions for a purpose that neither gives the appearance of being motivated by, a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

## **22. TITLE OF EQUIPMENT UNDER AGREEMENTS FOR BASIC OR APPLIED SCIENTIFIC RESEARCH**

In accordance with the authority of 31 USC 6306, title to equipment and tangible personal property acquired under this Agreement for the conduct of basic or applied scientific research by a non-profit institution of higher education or a non-profit organization whose primary purpose is the conduct of scientific research shall vest in the Performing Organization unless otherwise specified in the Agreement. The Performing Organization shall obtain the required approval for use of equipment/property on other federally funded projects. 2 CFR 215.34 provides Property

Management Standards and Reporting Requirements. All reports on non-expendable property required by this Attachment shall be furnished by the Performing Organization.

### **23. SITE VISITS**

The Agency, through its authorized representatives, may make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by the Agency to the Performing Organization or a subawardee under this Agreement, the Performing Organization shall provide, or shall require its subawardees to provide all reasonable facilities and assistance for the safety and convenience of the Agency representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as to not unduly delay the work.

### **24. CLOSEOUT PROCEDURES**

2 CFR sections 215.71 through 215.73 (32 CFR sections 32.71 through 32.73) prescribe uniform closeout procedures, which are applicable to this Agreement. Property reports, patent reports (DD 882), Performing Organization's release and assignment of claims (if any) shall be submitted prior to payment of the final invoice.

### **25. RETENTION OF RECORDS**

2 CFR 215.53 (32 CFR 32.53) sets forth retention and access requirements regarding records and applies to this Agreement.

### **26. EXTENSION OF AGREEMENT PERIOD**

- a. Any request for extension of the Agreement must be submitted in writing by the Performing Organization to the CO. Mutually agreeable time extensions will be affected by written modification to the Agreement. Extension of time shall not, of itself, entitle the Performing Organization to additional funds.
- b. A request for extension exceeding six months must be accompanied by a revised cost estimate indicating the planned use of unexpended funds during the extension period.

### **27. CONTINUATION OF FINANCIAL SUPPORT**

A request for additional financial support (other than requested initially) should be submitted at least six months before the expiration date of the current Agreement, including any options or extensions specified in "Period of Performance". Such a new request must follow the same procedures required for obtaining a new grant or cooperative agreement. Support for years initially requested, and included in the Agreement, will be provided without this request, and shall be subject to the Performing Organization providing the letter provided under Unobligated Funds and Earned Interest.

### **28. USE OF HUMAN SUBJECTS AND LABORATORY ANIMALS**

The use of human subjects or laboratory animals is not authorized by this Agreement.

### **29. SECURITY**

Personnel of the Performing Organization will not be granted access to classified information under this Agreement.

### **30. TERMINATION AND ENFORCEMENT**

Termination and enforcement procedures set forth at 2 CFR sections 215.61 and 215.62 (32 CFR sections 32.61 and 32.62) are applicable to this Agreement.

#### **a. Termination by mutual consent:**

- (1) Circumstances may arise in which either NSA or the Performing Organization wishes to terminate performance of a project in whole or in part. If both parties agree that continuation of the project would not produce beneficial results, or if classification restrictions are imposed, the Agreement may be terminated.
- (2) If the Performing Organization wishes to terminate the project, its Authorized Organizational Representative will advise the CO in writing with a copy to the Program Manager.
- (3) If NSA wishes to terminate the project, the CO will, in writing, advise the Performing Organization's Authorized Organizational Representative with copies to the PI and the Program Manager.
- (4) Within 30 days after receipt of a request for termination by mutual consent, the other party will provide an appropriate written response. The two parties shall agree upon the termination conditions, including effective date, and, in the case of partial termination, the portion to be terminated. The Performing Organization shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. NSA shall allow full credit to the Performing Organization for the NSA share of the noncancellable obligations properly incurred by the Performing Organization prior to termination.

In the event of disagreement between the parties, the CO will make a final determination subject to the review procedures described in the provisions entitled "Termination Review Procedure."

#### **b. Enforcement**

- (1) When it has been determined by NSA that a Performing Organization has materially failed to comply with the terms and conditions of the Agreement, NSA may:
  - (a) Disallow all or part of the cost of the activity or action not in compliance; or
  - (b) Temporarily withhold cash payments pending correction of the deficiency by the Performing Organization; or
  - (c) Withhold further awards for the project or program; or
  - (d) Suspend the agreement, in whole or in part; or
  - (e) Terminate the agreement for cause, in whole or in part; or
  - (f) Take other remedies that may be legally available.
- (2) NSA prefers that deficiencies be corrected whenever practicable; therefore, action to suspend or terminate the Agreement enforcement action(s) normally will be taken only after the Authorized Organizational Representative has been informed by letter of the nature of the problem with notification that failure to correct the deficiency within a reasonable time

may result in suspension or termination of the Agreement. However, this does not preclude immediate enforcement action(s) when such action is reasonable under the circumstances and necessary to protect the interest of NSA.

- (3) When it is believed that a Performing Organization has materially failed to comply with the terms and conditions of the Agreement, the CO will advise the Authorized Organizational Representative by letter of the nature of the problem and that failure to correct the deficiency may result in enforcement action(s). The Performing Organization will be requested to respond in writing within 30 days, describing the action taken or the plan designed to correct the deficiency. The Performing Organization will furnish copies of this correspondence to the PI and the Program Manager.
- (4) If a satisfactory response is not received within 30 days of receipt of such a notice by the Performing Organization, the CO may issue a notice suspending authority to further obligate funds, in whole or in part. The notice of suspension shall be sent by certified mail (return receipt requested) to the Authorized Organizational Representative with a copy to the PI. The notice will set forth the activities covered by the suspension and its effective date and the corrective action required of the Performing Organization in order to lift the suspension.
- (5) In the event the deficiency is not corrected to the satisfaction of NSA, the CO may issue a notice of termination, in the same manner as described in subparagraph (4) above. The notice of termination will establish the reasons for the action and its effective date.
- (6) If an Agreement is suspended under this clause, no obligations incurred by the Performing Organization during the period of suspension will be allowable under the suspended Agreement except those costs which are allowable and allocable under the applicable Federal Cost Principles, and that are associated with the suspension.
- (7) If an Agreement is terminated under this clause, the Performing Organization shall not incur new obligations after the effective date of the termination notice and shall cancel as many outstanding obligations as possible. The settlement of termination costs will be in accordance with the applicable Federal Cost Principles.
- (8) Within 90 days of the effective date of termination, the Performing Organization will furnish an itemized accounting of funds expended for allowable cost prior to the effective date of termination and the unexpended funding balance. The Performing Organization may request a review of the termination decision in accordance with procedure described in clause 30(c) entitled "Enforcement Action Review Procedure."

c. Enforcement Action Review Procedure

- (1) Any request for review of an enforcement action should be addressed to the Chief BA3, NSA Contracting Office, 9800 Savage Road, Fort George G. Meade, MD 20755-6623. It must be postmarked no later than 30 days after the receipt of notification of enforcement action.
- (2) The request for review must contain a full statement of the Performing Organizations position and the pertinent facts and reasons in support of such position.

- (3) In connection with the review proceedings, the appellant shall have the same rights and obligations as if filing an appeal of a final decision of the CO in accordance with the provision of this Agreement entitled "Disputes."

### **31. DISPUTES**

- a. **CO's Final Decision:** Any disputes under this Agreement shall be decided at the request of the appellant or Performing Organization by the CO. Each final decision shall adequately notify the appellant or Performing Organization in writing (with proof of delivery) that the decision is a final decision which shall become final and conclusive unless timely appealed.

An Agency official who receives a notice of appeal from final decision shall preserve the envelope in which the appeal was transmitted and other data evidencing the date of mailing of the notice of appeal (or the date of receipt, if the notice was otherwise delivered) and shall promptly forward such information and the original of the notice of appeal to the Office of General Counsel.

- b. **Notice of Appeal:** A decision of the CO made pursuant to these procedures shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, and appellant mails (certified mail, return receipt requested) or otherwise delivers to the CO a written appeal addressed to the NSA Board of Grant Appeals, ATTN: C/BA3, 9800 Savage Road, Fort George G. Meade, MD 20755-6623.
- c. **Rights of the Appellant and the Government:** In connection with an appeal proceeding, the appellant shall be afforded an opportunity to be heard, to be represented by legal counsel, to offer evidence and testimony in support of any appeal, and to cross-examine Government witnesses and to examine documentation or exhibits offered in evidence by the Government or admitted to the appeal record (subject to the Government's right to offer its own evidence and testimony, to cross-examine the appellant's witnesses, and to examine documentation or exhibits offered in evidence by the appellant or admitted to the appeal record). The appeal shall be determined solely upon the appeal record.
- d. **Decision of the NSA Board of Grant Appeals:** The decisions of the NSA Board of Grant Appeals, or their duly authorized representative for the determination of such appeal, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith.
- e. **Questions of Law:** Any question of law may be considered in connection with decisions provided for by this procedure. Nothing in the agreement or related regulations, however, shall be construed as making final the decision of any administrative official, representative, or board, or a question of law.
- f. **Delegation of Authority:** The NSA General Counsel is authorized to appoint hearing examiners to hear and decide appeals from final dispute determinations under these procedures.

### **32. ASSURANCES AND CERTIFICATIONS**

The Performing Organization hereby assures and certifies that it is in compliance with and will comply in the course of this Agreement with all applicable Federal laws, regulations, executive orders, and CFRs, and that:

- a. It possesses legal authority to enter into this Agreement; that a resolution, motion or similar action has been duly adopted or passed as an official act of its governing body, authorizing the acceptance of this Agreement including all understanding and assurances contained herein and directing and authorizing the person identified as the official representative of the Performing Organization to act in connection with the Agreement and to provide such additional information as may be required.
- b. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and that in accordance with Title VI of the Act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity for which the Performing Organization received Federal financial assistance.
- c. It will give NSA or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Agreement.
- d. It will comply with all requirements imposed by NSA concerning special requirements of law, program requirements, security and other administrative requirements.
- e. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed in the Environmental Protection Agency (EPA) List of Violating Facilities and if the Agreement amount exceeds \$100,000 the Performing Organization will comply with the following: (a) Clean Air Act (42 U.S.C. 1857) as amended, (b) The Federal Water Pollution Control Act (33 U.S.C. 1251) as amended, and (c) Executive Order No. 11738.