

*Making an Impact on U.S. Manufacturing*

# MEP General Terms and Conditions

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## General Terms and Conditions

### Hollings Manufacturing Extension Partnership

The General Terms and Conditions set forth below apply to all Recipients of cooperative agreement awards under the Hollings Manufacturing Extension Partnership (MEP) Program, 15 U.S.C. Section 278k, as amended, and 15 C.F.R. part 290, unless otherwise noted in these General Terms and Conditions or in a Special Award Condition. Failure to comply with any or all of the provisions of the MEP award may be considered grounds for appropriate enforcement action (See Term and Condition 20). Questions concerning the interpretation or application of these General Terms and Conditions should be addressed to your NIST Federal Program Officer and to the NIST Grants Officer.

#### 1. Award Instrument

In accordance with 31 U.S.C. Section 6305 and 2 C.F.R. Section 200.24, financial assistance awards issued pursuant to the MEP Center program are issued in the form of a cooperative agreement, unless otherwise noted on the Form CD-450 or Form CD-451. A cooperative agreement is a funding instrument that provides for substantial involvement by and between the National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership Program (NIST MEP) and a Non-Federal Entity receiving Federal funding to support the operation of an MEP Center (referred to as a Non-Federal Entity or as a Center).

NIST involvement in connection with MEP Center awards may include the types of substantial involvement activities described in Final Office of Management and Budget (OMB) Guidance Implementing the Federal Grant and Cooperative Agreement Act, 43 Fed. Reg. 36860-65 (Aug. 18, 1978). In addition, NIST involvement in an MEP Center cooperative agreement may include the following NIST activities:

- Guidelines and assistance in developing required plans;
- Linkages to the National Manufacturing Extension Partnership Network (MEP National Network), which includes both the national NIST MEP Program Office and the national network of NIST MEP-funded Centers;
- Access to standard tools, training, and the experience developed to date within the MEP Network;
- Guidance for evaluation of performance and collection of data and information from the Non-Federal Entity organization;
- Approval of key personnel;
- Assistance, where possible, in accessing solutions to technical and managerial problems;
- A framework for performance to high standards and assistance in achieving and maintaining high standards;
- Assistance to the Non-Federal Entity to define, understand, and resolve issues pertaining to the successful implementation of the MEP project; and
- Such other substantial involvement by NIST as determined by the NIST Grants Officer, in consultation with the NIST MEP Program Office.

The Non-Federal Entity shall:

- Develop, submit, and follow required plans and budgets;
- Conduct the tasks necessary to provide the services or complete the objectives described in the award in a timely and comprehensive manner;
- Prior to development of new tools, products or resources, investigate existing tools, products, or resources available commercially, through NIST MEP, or the MEP network of centers, as appropriate;
- Participate in activities of the MEP National Network;
- Submit accurate, comprehensive, and verifiable technical and financial reports;
- Participate in Program Reviews; and
- Conform to terms and conditions of this cooperative agreement, including but not limited to applicable laws and regulations, Department of Commerce Financial Assistance Award Standard Terms and Conditions, MEP General Terms and Conditions and Special Award Conditions (SACs).

The specific terms and conditions of an MEP Center award are detailed in the NIST MEP cooperative agreement.

## **2. Applicability of Award Provisions**

Recipients of NIST MEP cooperative agreements are subject to applicable laws and regulations, Department of Commerce Financial Assistance Award Standard Terms and Conditions, MEP General Terms and Conditions and Special Award Conditions (SACs). In accordance with 2 C.F.R. Section 200.101(b), the terms and conditions of a NIST MEP cooperative agreement apply (i.e., flow down) to subawards made by an MEP Center to a subrecipient, unless a particular section of 2 C.F.R. part 200 or the terms and conditions of an MEP cooperative agreement specifically indicate otherwise. See 2 C.F.R. Section 200.331 for the due diligence requirements, flow down provisions and other information that are applicable to or that must be included in a subaward.

## **3. Order of Precedence of Terms and Conditions of Award**

Where the Center's required plans (see Section 5) are inconsistent with the terms and conditions of the MEP cooperative agreement, the terms and conditions of the MEP cooperative agreement shall prevail. The terms and conditions of an MEP cooperative agreement shall be applied by NIST in the following order of precedence: Federal laws (e.g., 15 U.S.C. 278k, as amended; Federal regulations (e.g., 2 C.F.R. part 200, 15 C.F.R. part 290); SACs; these MEP General Terms and Conditions; Department of Commerce Financial Assistance Award Standard Terms and Conditions; the Federal Register notice and Announcement or Notice of Federal Funding Opportunity pursuant to which the MEP cooperative agreement was originally issued by NIST; Federal and Department of Commerce policies applicable to Federal financial assistance awards, the Center's required plans; and lastly, the technical plan submitted by the Center with its request for NIST MEP funding. The Non-Federal Entity is required to bring to the attention of the NIST Grants Officer any perceived differences between the terms and conditions of the MEP cooperative agreement and the Center's required plans. The NIST Grants Officer is the ONLY authorized agent at NIST with the

authority to bind the Federal Government to a financial assistance award and to take actions to amend, suspend, and terminate the Award.

#### **4. Cooperative Agreement Award Periods**

MEP Centers will be funded by NIST pursuant to a multi-year cooperative agreement for a period of up to five-years, with the possibility of NIST renewing the cooperative agreement, at the end of the initial multi-year award period and on a non-competitive basis, for an additional multi-year award period of up to five years. Annual renewal funding for an existing MEP Center may be awarded without competition and may be increased or decreased from year-to-year of an award, contingent upon: successful annual reviews and Panel/Secretarial evaluations of the MEP Center in accordance with 15 U.S.C. Section 278k(g) and section 15 of these terms and conditions; the Non-Federal Entity's overall compliance with the terms and conditions of the MEP Center award; continued relevance of the MEP Center project to the mission and priorities of the MEP program, and the availability of Federal award funds and commensurate non-Federal cost share.

In considering renewals for a second five-year, multi-year award period, the Secretary will evaluate the Center's performance as described in section 15 of these terms and conditions and will further consider programmatic, policy, financial, administrative, and responsibility and risk assessments, and the availability of funds, consistent with Department of Commerce and NIST policies and procedures in effect at such time. The decision of whether to issue a second multi-year award is at the discretion of the NIST Grants Officer, in consultation with the MEP Program Office. After 10 consecutive years of receiving MEP Center funding, NIST will conduct a new award competition for such MEP Center, with incumbent Non-Federal Entity operators being eligible to compete provided such incumbent Non-Federal Entity is determined by NIST to be in good standing relative to prior MEP Center awards.

#### **5. Required Plans**

The tasks to be performed by the Non-Federal Entity under this award and the associated costs are detailed in the approved funding proposal/scope of work, and multi-year budget(s). Together with the intellectual property plan, these make up the Required Plans. The Required Plans must be consistent in form and substance with the current MEP guidelines, which may be amended from time to time. Guidance for the development and submission of Required Plans can be found in the NIST MEP Renewal Guidelines.

If any modifications are required to the Required Plans or to other plans during the operating period, these modifications must be submitted to the NIST MEP Federal Program Officer (NIST FPO) and NIST MEP Regional Manager (NIST RM) in writing. In accordance with 2 C.F.R. Section 200.407, actions requiring prior approval are not effective unless and until approved in writing by the NIST Grants Officer, if appropriate. These modifications will be incorporated as amendments to the cooperative agreement. Please contact your NIST RM or NIST FPO if you are unsure of which Required Plans apply to your Center.

## 6. Oversight Boards

In accordance with the MEP statute, 15 U.S.C. 278k(k), each MEP Center must establish and maintain an Oversight Board that complies with the requirements set forth in the statute, as well as with the standards set forth by the NIST Director in the Hollings Manufacturing Extension Partnership Oversight Board Standards (2017), which are incorporated by reference into these Standard Terms and Conditions and available via MEP's Enterprise Information System (MEIS) (<https://meis.nist.gov>). The MEP statute provides that the standards address:

1. Membership;
2. Board composition;
3. Term limits;
4. Conflicts of interest; and
5. Such additional requirements as the Director considers necessary;

and that the Oversight Board establish and submit to the MEP Director by-laws to govern the operation of the Board. See 15 U.S.C. 278k(k)(4).

As noted in the Oversight Board Standards (2017), the requirements differ depending on the type of non-Federal entity which receives an MEP Center cooperative agreement. The Oversight Board Standards address the requirements that must be adhered to by the MEP Center operator as well as the mandatory information that must be included in the by-laws submitted to the MEP Director, and also best practices, which are recommended, depending on the type of Oversight Board. In addition, the Non-Federal Entity receiving the MEP Center cooperative agreement has an affirmative obligation to promptly inform and provide copies of any amendments or other changes to its Oversight Board by-laws to NIST MEP.

If an MEP Center's Oversight Board does not satisfy the requirements of this section or the Oversight Board Standards at any time during the term of an MEP Center cooperative agreement, the Center must promptly disclose the deficiencies to the NIST FPO and NIST RM, and must ensure that its Oversight Board conforms to the requirements set forth herein within 90 calendar days from the initial date of the noncompliance, unless such time period is otherwise extended by the NIST Grants Officer based on a written request from an MEP Center.

## 7. Signatory Authority for Award Documents

For purposes of an MEP cooperative agreement, the Non-Federal Entity's signatory authority must be a duly authorized representative of the Non-Federal Entity and must possess the legal authority to bind the Non-Federal Entity to terms and conditions of an MEP Center award. Documents and award actions subject to this requirement include: CD-450, Financial Assistance Award; CD-451, Amendment to Financial Assistance Award; CD-511, Certification Regarding Lobbying; SF-424, Application for Federal Assistance; SF-424B, Assurance – Non-Construction Programs; SF-425, Federal Financial Report; Certification Regarding Federal Felony and Federal Criminal Tax Convictions, Unpaid Federal Tax Assessments and Delinquent Federal Tax Returns (including any successor forms) and all other required forms, agreements, certifications and other documents related to an MEP Center award executed on behalf of the Non-Federal Entity. Access to an MEP Center's ASAP account must be limited to a duly authorized representative of the Non-Federal Entity. NIST will return to the Non-Federal Entity

unprocessed any documents it receives that do not comply with this section. In addition, NIST may request appropriate documentation from a Non-Federal Entity confirming that certain person(s) are authorized to act on behalf of the Non-Federal Entity as an authorized representative.

## 8. Notifications and Prior Approvals

The Non-Federal Entity must obtain the prior written approval from the NIST Grants Officer for certain budget and programmatic changes as set forth in 2 C.F.R. Sections 200.308 and 200.407, and in the DOC Financial Assistance Standard Terms and Conditions. Failure to do so may result in material non-compliance and result in appropriate enforcement action under the award.

For program or budget changes requiring prior approval from the NIST Grants Officer, a Center is to work with the NIST FPO/NIST RM to update, and amend, if necessary, the Required Plans. Changes will become effective via an amendment to the award (which may be in the form of a CD-451 or an official letter) issued by the NIST Grants Officer. Program or budget changes requiring prior NIST Grants Officer approval include, but are not limited to, the following items:

- A. Scope Changes.** Changes in the scope or objective of the project even if there is no associated budget revision requiring prior approval. A change in the scope or objective of the project may occur, for example, based on material changes to the activities to be performed, or contributions to be made, by the Non-Federal Entity, subrecipients, contractors, or third-party contributors, including but not limited to the development of tools, systems, or other resources not discussed in the Center's Required Plans and included in the currently approved project budget(s).
- B. Key Personnel Changes.** Additions or changes in Key Personnel or the absence for more than three (3) months or a 25 percent reduction in time devoted to the project in any year by the approved Center Director. Key Personnel include Center Directors and Chief Financial Officers (CFOs) and, as identified as part of a Non-Federal Entity's Required Plans or as identified in a special award condition, may also include Managers and Technical Staff whose work on the project directly and materially impact the Non-Federal Entity's performance under an MEP award.
- C. Equipment Purchases.** Acquisitions of equipment where prior approval is required under the Federal cost principles applicable to the award, **unless** the purchase of such equipment is specifically identified in the currently approved project budget.
- D. Budget Changes, Revisions, Transfers.** Identified in 2 C.F.R. Section 200.308, or in Section B.04 of the DOC Financial Assistance Standard Terms and Conditions (March 31, 2017).
- E. Non-Federal Entity Changes.** A Non-Federal Entity shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing or financial institution without the prior written approval of the NIST Grants Officer. In addition, a Non-Federal Entity must immediately notify the NIST Grants Officer in writing concerning any name changes or

changes to a Non-Federal Entity's EIN, DUNs number or unique entity identifier number. See Section A.04. of the DOC Financial Assistance Standard Terms and Conditions (March 31, 2017).

- F. Subawards, Contracts, and Third Party Contributor Agreements.** Subawards, contracts, and third party contributor agreements will be reviewed as part of NIST's overall approval of the Non-Federal Entity's Required Plans. An explanation of the Non-Federal Entity's valuation and allocation to the MEP award of cost share contributions in accordance with applicable Federal cost principles must be submitted to NIST as part of the Non-Federal Entity's Required Plans. NIST requires that copies of all fully executed subawards, contracts, and third party contributor agreements incorporated into a Non-Federal Entity's Required Plans, with budgeted amounts of \$150,000 or more (combined Federal and non-Federal) during the Center's current operating year, including subawards, contracts, and third party contributor agreements to or by the same (or affiliated) entity with a total combined value of \$150,000 or more, be submitted to the NIST Grants Officer and to the NIST FPO and NIST RM. This provision does not apply to the purchase of supplies, material, equipment, or general support services, unless prior approval is otherwise required under the Federal cost principles applicable to the award. See 2 C.F.R. Section 200.308(c)(1)(vi).

For subawards, contracts, and third party contributor agreements to or with the same (or affiliated) entity with a total combined value of \$150,000 or more, in lieu of submitting copies of each agreement, Centers may be permitted to submit a summary list of the agreements that includes information sufficient for determining the reasonableness, allowability, and allocability of the agreements being funded under the award, and a copy of the fully executed agreement that causes total funding for a single entity to exceed the \$150,000 threshold for prior approval. Requests to submit a summary list in lieu of copies of individual agreements should be submitted to the NIST FPO and NIST RM. Permission or rejection for inclusion of these items in the approved budget will be communicated in writing by the NIST Grants Officer.

Note that the review of subawards is necessary for verifying estimated costs and proposed activities and ensuring compliance with the terms and conditions of the award. NIST will not review the agreements for legal sufficiency. As such, Centers will receive a letter noting the agreement's incorporation into the award instead of a complete award amendment.

- G. Cost Share.** Per 2 C.F.R. 200.308(c)(1)(vii), for any changes in source or amount of cost share, Centers must submit copies of any agreements not included in the approved budget, regardless of amount.

The Center is responsible for ensuring that all costs charged against, and that all non-Federal contributions credited to, the MEP award adhere to the substantive and documentation requirements set forth in 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and with the terms and conditions of this cooperative agreement, including the Department of Commerce Financial Assistance Standard Terms and Conditions. Recipients shall conduct all procurement transactions in accordance with the requirements set forth in 2 C.F.R. Sections 200.110(a) and 200.317-200.326.



**H. MEP Core Management and Oversight Functions.** An MEP Center, as a direct Non-Federal Entity Recipient of Federal financial assistance funds under an MEP cooperative agreement, must possess and maintain, at all times during an MEP award period, accountability to directly manage and execute all functions material and inherent to the successful operation of a Center, which include, but are not limited to, the following:

1. **Budget execution**, including the responsibility for determining and executing budget policy, guidance and strategy, and the determination of program priorities and associated budget or funding requests;
2. **Policy implementation**, including the responsibility for determining the content and implementation of financial and program policies and procedures impacting the Non-Federal Entity's MEP project;
3. **Human resources management**, including the responsibility for selecting individuals for Center employment and for selecting contractors and the direction, control, and performance management of Center employees and oversight of contractors; and
4. **Strategic planning and project execution and management**, including the responsibility for:
  - a. **Strategic planning functions** such as the following: determination of project requirements, approval of a project implementation strategy, and the development and monitoring of agreements and statements of work with subrecipients, vendors, third-party contributors and other strategic partners; and
  - b. **Project execution and management functions** such as submission of required financial and technical reports and Required Plans; maintenance of a functioning financial management system that satisfies the requirements found in 2 C.F.R. Section 200.302, to ensure that costs charged against an MEP award are reasonable, allocable, and allowable under applicable Federal cost principles; and adherence to the terms and conditions of the MEP award.

In extraordinary situations, the NIST Grants Officer may allow a Non-Federal Entity to temporarily outsource its management and oversight responsibilities under an MEP award. If a Non-Federal Entity is proposing such a structure, it must provide the NIST FPO and the NIST RM with a detailed explanation and accompanying documentation (e.g., copies of draft contracts or other agreements) supporting its outsourcing request. The NIST Grants Officer, in consultation with the MEP Program Office, will inform the Non-Federal Entity in writing as to whether its temporary outsourcing request is approved.

- I. **Unexpended Program Income (UPI).** Carryover of **unexpended** program income as described in these MEP General Terms and Conditions, Section 12.
- J. **Unexpended Federal Funds (UFF).** Carryover of **unexpended** Federal funds from prior funding period(s), as discussed in these MEP General Terms and Conditions, Section 13.
- K. **Foreign Travel.** The Non-Federal Entity shall comply with the provisions of the Fly America Act (49 U.S.C. Section 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. Sections 301-10.131 through 301-10.143. The Non-Federal Entity must **receive** prior approval of the NIST Grants Officer in accordance with 41 C.F.R. Section 301-10.142 if a foreign air carrier is anticipated to be used for any part of foreign travel under an

MEP cooperative agreement. See also Section G.05.c. of the DOC Financial Assistance Standard Terms and Conditions (March 31, 2017).

**L. Intellectual Property (IP) Plan Changes.** IP Plans developed and submitted by the Centers to NIST should cover all years of the cooperative agreement and must be updated, as necessary, by the Centers during the term of the cooperative agreement. NIST MEP will review the IP Plans during each revision and may provide comments on their suitability as it pertains to the Center's execution of the cooperative agreement.

## 9. Interactions with NIST And MEP Centers

It is anticipated that a Center will enter into agreements with other entities such as private companies, universities, other non-profit organizations, and State governments to accomplish programmatic objectives and access new and existing resources that will further the impact of the Federal investment made on behalf of small and medium-sized companies. 15 U.S.C. 278k(f)(3)(B).

To facilitate a more rapid transfer of advanced manufacturing technology on a national scale and to avoid duplication of effort, the Non-Federal Entity is expected to cooperate with NIST, other MEP Centers, and the other organizations identified by NIST MEP as sources of technology (e.g., Manufacturing USA institutes) or business practices of value to small and mid-sized manufacturers by participating in coordinated joint program activities. Such activities may include, but are not limited to the following: participation in NIST MEP national and regional meetings, communities of practice, working groups, and sharing of expertise, products and resources within the MEP National Network.

The interactions of NIST MEP under this cooperative agreement include direct involvement in helping the Non-Federal Entity define, understand, and resolve problems in the organization's operations and promoting continuous improvement. MEP may recommend that a Center leverage the expertise or experience of outside consultants or MEP National Network peers with special expertise or experience. See Section 1 of these MEP General Terms and Conditions.

NIST may take other appropriate steps, or provide other appropriate assistance, to ensure that the organization operates in a manner which most effectively promotes U.S. manufacturing competitiveness, including initiating and facilitating revision of Required Plans (or other required plans), as soon as the need for such revisions are identified either by NIST or the Non-Federal Entity.

## 10. Cost Sharing and Matching

In accordance with 15 U.S.C. 278k(e)(2) and 15 C.F.R. § 290.4, the minimum non-Federal cost share for MEP Center cooperative agreements is 50 percent of the total approved project budget, which is determined on an annual basis. As the MEP statute requires that minimum cost share requirements must be met annually; there can be no carryover of excess cost share from one year to the next.

The Non-Federal Entity may establish a cost share ratio exceeding the minimum requirement. Centers that commit to providing cost share in an amount greater than the minimum requirement in their Required Plans must fulfill that commitment. Centers unable to meet the proposed cost share in their Required Plans must submit revised documents as soon as possible.

If a Non-Federal Entity will not be able to meet the non-Federal cost share amount identified in the award, it must submit a budget modification request to the NIST Grants Officer. The budget modification request must provide for at least the minimum amount of non-Federal cost share on an annual basis, and the Non-Federal Entity must also include a detailed explanation for the requested reduction to the original amount of non-Federal cost identified in the award. Prior written approval of the NIST Grants Officer is required for any reduction to the amount of non-Federal cost share.

Any cost sharing must be in accordance with the Non-Federal Entity's approved project budget and must adhere to the "cost sharing or matching" provisions of 15 U.S.C. 278k(f)(3), 15 C.F.R. Section 290.4, 2 C.F.R. Section 200.306, Section B.03 of the Department of Commerce Financial Assistance Standard Terms and Conditions (March 31, 2017) and the requirements set forth in these MEP General Terms and Conditions, and any Special Award Conditions. Costs included as cost share must be allocable to the project and allowable under the Federal cost principles set forth in 2 C.F.R. part 200, Subpart E, and are subject to the audit requirements as set forth in 2 C.F.R. part 200, Subpart F. The disallowance of any contributed costs as a result of an audit could result in a Non-Federal Entity not meeting its required cost share under the cooperative agreement and a refund being due the Federal Government for the excess Federal share.

**A. Sources of Non-Federal Cost Share.** Non-Federal cost share can be contributed by the Center, subrecipients, and third parties. However, contractors and MEP Center clients may not provide any form of cost share, including but not limited to discounts or rebates in connection with client billing for services provided or in-kind contributions of staff time by MEP Center clients, without the prior written approval of the MEP Grants Officer based on a detailed written request and justification submitted by an MEP Center. Non-Federal cost share contributions must satisfy the criteria set forth in 2 C.F.R. Section 200.306 and in these Standard Terms and Conditions.

**B. Documenting Cash Contributions of Non-Federal Cost Share.** Centers must have documented evidence of all non-Federal cost share contributions received from any contributor in the form of cash. This evidence may be in the form of a letter from the Center to the contributor acknowledging the contribution, a bank account statement displaying an electronic funds transfer from a cash contributor to the Center's bank account, or in any other format that would allow the NIST Grants Officer or an auditor to verify such cash contribution. See 2 C.F.R. Section 200.306(b).

**C. Documenting Third Party In-kind Contributions.** Per 2 C.F.R. Section 200.96, "Third-party in-kind contributions means the value of non-cash contributions (i.e., property or services) that (a) Benefit a Federally assisted project or program; and (b) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award."

Third party in-kind contributions are counted towards a Non-Federal Entity's non-Federal

share contribution in accordance with 2 C.F.R. Section 200.306 and to the extent that such third-party contributions are reflected in the approved project budget.

Third party in-kind contributions must be evidenced by written documentation that is signed by the contributor and the Center that describes the contribution, its value, and when and for what purpose it was donated. For this purpose, a Center may provide an acknowledgement of the contribution and include all the information required by IRS Instructions for Form 8283. This form can be found at <http://www.irs.gov/pub/irs-pdf/f8283.pdf>.

Centers must have documented evidence of all third party in-kind contributions to an MEP project, which must be provided to the NIST Grants Officer upon request. In addition, as set forth below, certain information concerning the valuation of third party contributions must be submitted to NIST MEP as part of a Center's Required Plans.

- A comprehensive listing of all third party in-kind contributions to the MEP project;
- The value of each third party in-kind contribution established in accordance with 2 C.F.R. Section 200.306 and the Federal cost principles set forth in 2 C.F.R. part 200, Subpart E.; and
- The allocation method(s) used by the Non-Federal Entity for purposes of allocating third party in-kind contributions to the MEP award. See 2 C.F.R. Section 200.405.

**D. Documenting Subrecipient Cost Contributions.** Non-Federal cost share contributions by subrecipients must comply with the allowability and documentation requirements set forth in 2 C.F.R. Section 200.306 and with the record access and record retention requirements set forth in 2 C.F.R. Section 200.331(a)(5) and 200.333. At a minimum, the following documents should be maintained by the Center and made available upon request of the Grants Officer or in the event of an audit:

- Subaward Agreement with detailed budget;
- Documentation to support valuation of non-Federal cost share being contributed by the subrecipient; and
- Subrecipient Financial Reporting to the Non-Federal Entity.

## 11. Monitoring of Subrecipients

Recipients are required to adhere to the subrecipient monitoring and management standards set forth in 2 C.F.R. Sections 200.330 – 200.332. In particular, pursuant to 2 C.F.R. Section 200.331(d), Centers must monitor the activities of each subrecipient to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.

## 12. Program Income

Program income is defined in 2 C.F.R. Section 200.80, and generally includes gross income earned by a Center or by a subrecipient that is directly generated by a NIST MEP supported

activity or earned by the Non-Federal Entity or by a subrecipient as a result of a NIST MEP cooperative agreement.

- A. Treatment of Program Income.** In accordance with 2 C.F.R. Section 200.302, ALL program income generated pursuant to an MEP Center award or subaward, including program income in excess of the non-Federal cost sharing requirements under the award or subaward, must be accounted for and expended by the Non-Federal Entity in accordance with the requirements of this term. Centers must be in compliance with the financial management requirements in 2 C.F.R. § 200.302, including and especially as they relate to identifying and tracking the collection and expenditure of program income generated as a result of the MEP award (see 2 C.F.R. § 200.80). Consistent with the financial management and access to records requirements governing this award, NIST reserves the right to request additional information and documentation regarding a Center’s accounting, safeguarding and expenditure of program income.
- B. Program Income Earned by Centers.** In accordance with 2 C.F.R. Section 200.307(e), program income earned by a Center during the project period shall be retained by the Center and shall be used by the Center in the following order of priority:
- 1. First,** to finance the non-Federal share of the project;
  - 2. Second,** all program income earned in excess of that required to meet the minimum non-Federal share shall be added to the funds committed to the project by MEP and the Non-Federal Entity and must be used for the purposes and under the conditions of the MEP award (commonly referred to as the “additive approach”). Program income to be expended under the additive approach must be explained in detail in the Center’s Required Plans or in a separate written communication to the NIST FPO and NIST RM and to the NIST Grants Officer, and is subject to the prior written approval of the NIST Grants Officer; and
  - 3. Third,** any remaining program income shall be deducted from the total allowable project costs to determine the net allowable program costs upon which the Federal share of project costs is based, in accordance with written instructions from the NIST Grants Officer (commonly referred to as the “deductive approach”). In lieu of the deductive approach and in accordance with Section H. below, an MEP Center may request that NIST approve a carry forward of program income not used by the MEP Center as non-Federal share or expended under the additive approach.
- C. Program Income Earned by Subrecipients.** In accordance with 2 C.F.R. Section 200.307(e), program income earned by subrecipients during the project period shall be retained by the subrecipients and shall be used by the subrecipients in the following order of priority:
- 1. First,** to finance the non-Federal share of the subaward;
  - 2. Second,** all program income earned in excess of that required to meet the minimum non-Federal share shall be added to the Federal and non-Federal funds committed to the subaward, and must be used for the purposes and under the conditions of the MEP award as set forth in the terms of the subaward (commonly referred to as the “additive approach”). Program income to be expended under the additive approach must be explained in detail in the Center’s Required Plans or in a separate written communication to the NIST FPO and NIST RM and to the NIST Grants Officer, and is subject to the prior written approval of the NIST Grants Officer; and

3. **Third**, any remaining program income generated by a subrecipient must be remitted to the Center by the subrecipient and shall be deducted from the total allowable project costs to determine the net allowable program costs upon which the Federal share of project costs is based, in accordance with written instructions from the NIST Grants Officer (commonly referred to as the “deductive approach”). In lieu of the deductive approach and in accordance with Section H below, an MEP Center may request that NIST approve a carry forward of program income not used by the subrecipient as non-Federal share or expended under the additive approach.
- D. Recipients and subrecipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period, unless otherwise provided in a special award condition.
  - E. Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.
  - F. Proceeds from the sale of property shall be handled in accordance with the requirements set forth in 2 C.F.R. Sections 200.310 through 200.316, as applicable.
  - G. Recipients and subrecipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award, unless otherwise provided in a special award condition.
- H. Unexpended Program Income (UPI)**
1. Program income in excess of what is required annually to meet the non-Federal portion of the annual operating budget, and that cannot be expended during the operating period using either the additive and/or deductive approaches during the operating period, may be carried over by the Center to the subsequent funding period in accordance with the requirements below.
  2. Requests for carry forward of UPI to a subsequent operating year must be specifically identified and explained within the “revenue section” of the Center’s Required Plans or in a separate written communication to the NIST FPO and NIST RM and to the NIST Grants Officer, and approved in writing by the NIST Grants Officer.
  3. The NIST Grants Officer generally will only approve the carry forward of 50% or less of the annual Federal funding amount in UPI with the expectation that the Center will work with its assigned NIST RM to ensure that it reinvests unexpended and future program income strategically into the project. Based on the explanation provided by a Center, the NIST Grants Officer may approve the carry forward of UPI in an amount greater than 50% of a Center’s annual Federal funding amount, although such approvals will generally be limited to cases where the large amounts of UPI were reasonably unforeseeable by the Center or in other extraordinary circumstances faced by a Center. The NIST Grants Officer will provide the Non-Federal Entity with written approval or denial of a request to carry forward UPI.
  4. Additional NIST MEP funding may be withheld until a Non-Federal Entity’s UPI level is acceptable to NIST.
  5. Upon close-out of an MEP award, the NIST Grants Officer will provide the Non-Federal

Entity with closeout instructions, including instructions regarding disposition of program income.

### 13. Unexpended Federal Funds (UFF)

NIST MEP does not anticipate Centers having Unexpended Federal Funds (UFF) at the end of an annual funding period; however, if a Center has UFF at the end of the current operating period, it may request that the NIST Grants Officer approve the carry forward of those funds into the next operating year. Requests should be included in the “revenue section” of a Center’s Required Plans or in a separate written communication to the NIST FPO and to the NIST Grants Officer, and is subject to the prior written approval of the NIST Grants Officer. There are two options available for carrying UFF forward, as outlined below.

**Option A – Carry Forward Towards Base:** If a Center has UFF at the end of its current operating year that it wishes to carry forward towards the normal base funding in the new operating year, then the Center’s new Federal funding will be reduced by the amount of UFF being carried forward towards base. This offset cannot be recovered later in the Operating Year or in a subsequent Operating Year unless otherwise identified in the Center’s five-year budget, which was approved by the NIST Grants Officer.

**Option B – Carry Forward Above Base:** If a Center has UFF at the end of its operating year that it wishes to carry forward above its annual award amount, then the Center should include in its Required Plans a request that explains why the funds were not expended in the previous operating year and detail how the UFF will be applied in the new Operating Year to expand the Center’s normal scope of operation. A Center wishing to carry forward UFF above its base award amount must also provide the requisite non-Federal cost share attributable to the UFF during the operating year in which the UFF will be expended by the Center.

If the NIST Grants Officer, with NIST MEP’s recommendation, approves the Center’s request, the UFF from the previous operating year will be applied towards the NIST funding for the upcoming operating year, as specifically directed in writing by the NIST Grants Officer.

Any Federal funds remaining at the end of a five-year award period will be de-obligated.

### 14. Reporting Requirements

Unless otherwise required by a Special Award Condition, the following reporting requirements shall apply to MEP cooperative agreements:

- A. **Financial Reports.** The Non-Federal Entity shall submit an SF-425, Federal Financial Report, into the MEP’s Enterprise Information System (MEIS) on a semi-annual basis after the sixth and twelfth month of each operating year. Reports will be due within 30 days after the end of each semi-annual reporting period. The Non-Federal Entity shall submit a final SF-425 within 90 days after the expiration date of the award via MEIS.
- B. **Technical Reports.** The Non-Federal Entity shall submit a Technical Report (completing all required MEIS fields) on a semi-annual basis after the sixth and twelfth month of each operating year. Reports are due in MEIS no later than 30 days following the end of each

reporting period. The Non-Federal Entity shall submit a final Technical/Quarterly report within 90 days after the expiration date of the award via MEIS. Technical/Quarterly Report details are accessible on the MEIS website (<https://meis.nist.gov/>).

- C. **Operating Outcome Plan.** Centers must maintain updated operating outcomes on file at NIST. The Operating Outcome Plan describes detailed and specific goals and objectives a center plans to accomplish over a multi-year timeframe. Operating Outcomes are reviewed during the Center's Annual Review and, if necessary, revised as part of the Center's annual renewal process. All changes to the Operating Outcome Plan should be submitted via MEIS for review and approval by NIST MEP.
- D. **Other MEP Reporting.** While the Financial and Technical reports are due on a semi-annual basis, the remaining MEP reporting requirements continue to be due on a calendar quarterly basis. These additional reporting requirements include: Center information (locations, contacts, staff, board members, partners, etc.), Success stories, and Client and Project information.

The due dates for semi-annual financial and technical reports set forth in this MEP General Term and Condition apply in lieu of the due dates for semi-annual financial and technical reports referenced in Sections A.01 of the Department of Commerce Financial Assistance Standard Terms and Conditions (March 31, 2017).

## 15. Program Performance Reviews

Renewal funding for MEP Centers is contingent, in part, upon successful annual reviews, and panel and Secretarial evaluations in accordance with 15 U.S.C. 278k(g) and 15 C.F.R. Section 290.8. NIST MEP also measures a Center's performance relative to client project follow-up conducted by NIST MEP pursuant to Section 17 of these General Terms and Conditions.

- A. **Annual Reviews.** Within the 12-month operating year and in operating years where a Panel or Secretarial Evaluation is not conducted, NIST MEP will conduct an annual review. This review will focus on the Center's strategic alignment to NIST MEP's overall program objectives, the Center's activities, progress and performance in implementing the NIST MEP award, lessons learned, monitoring of subrecipients, resource expenditures, activities planned for the next year, and any proposed changes to the project plan or budget. The Non-Federal Entity will be provided guidelines on the format for the review approximately 30 days prior to the Program Review. The results of the annual review will be communicated to the Non-Federal Entity which will have 30 days to provide comments on the draft report. Following receipt and consideration of the comments from the Non-Federal Entity, NIST will notify the Non-Federal Entity in writing of the final recommendations stemming from the annual review.
- B. **Panel Evaluations.** NIST MEP will conduct a panel evaluation during the third and eighth years of each Center's operation, in accordance with 15 U.S.C. 278k(g)(1)(A). The evaluation will be conducted by a panel of private experts, none of whom are connected with the Center being evaluated by the panel, and Federal officials. An official of NIST shall be appointed as the panel's chairperson. The Center will be evaluated in accordance with the performance measures described in 15 U.S.C. 278k(g)(3). Following each evaluation, a



draft report will be provided to the Center, noting the panel's observations, deficiencies (if any), recommendations for improvement and commendations on the Center's performance. Centers will have 30 days to provide comments on the draft report. Following receipt and consideration of the comments from the Non-Federal Entity, NIST will notify the Non-Federal Entity in writing of the final recommendations stemming from the panel evaluation. Upon receipt of the final recommendations from NIST, Centers shall, as appropriate, incorporate such recommendations into the Required Plans and submit revised documents to NIST for prior approval.

- C. **Secretarial Evaluations.** In the fifth year of a Center's operation, the Secretary shall conduct a review of the Center. The Center will be evaluated in accordance with the performance measures described in 15 U.S.C. 278k(g)(3). The Secretarial Evaluations will be conducted by the MEP Director and Deputy Director. Following each evaluation, a draft report will be provided to the Center, noting the Secretary's observations, deficiencies (if any), recommendations for improvement and commendations on the Center's performance. Centers will have 30 days to provide comments on the draft report. Following receipt and consideration of the comments from the Non-Federal Entity, NIST will notify the Non-Federal Entity in writing of the final recommendations stemming from the Secretarial Evaluation. Upon receipt of the final recommendations from NIST, Centers shall, as appropriate, incorporate such recommendations into the Required Plans and submit revised documents to NIST for approval.
- D. **Evaluation Outcomes.** If a Center receives a positive performance evaluation from the Panel or Secretarial Evaluations, the Secretary may continue to provide financial assistance in accordance with 15 U.S.C. 278k(g)(4). If a Center receives other than a positive performance evaluation, the Center shall be placed on probation and NIST will follow the provisions set forth in 15 U.S.C. 278k(g)(5). This includes but is not limited to development and implementation of a performance improvement plan and quarterly reviews of progress against the plan. A reevaluation of the Center shall take place not later than 12 months after the Center has been notified that it is on probation. In the event a Center is unable to remedy any deficiencies or demonstrate significant improvement in performance before the end of the probation period, a competition for a new operator for that Center shall be initiated.

## 16. Post Project Client Follow-Up

On a quarterly basis, Recipients are required to provide client and project data in the specified format to the organization identified by NIST MEP in order for post-project follow-up data to be obtained (OMB Control Number 0693-0021). For further information regarding the NIST MEP Reporting Process, Recipients may download a copy of the NIST MEP Reporting Guidelines at [http://www.nist.gov/mep/ffo\\_state-competitions.cfm](http://www.nist.gov/mep/ffo_state-competitions.cfm).

## 17. Reports, Surveys, Studies, And Manuals

All reports, plans, surveys, studies, and manuals developed, produced, or distributed under this cooperative agreement shall be submitted to the NIST FPO and NIST RM. Each item shall consist of an electronic or paper copy, submitted in the format and within the timeframe specified within the cooperative agreement.

## 18. Record-Keeping

The Non-Federal Entity shall keep complete, accessible, and contemporaneous detailed records on administrative and financial matters in accordance with the terms and conditions of the MEP cooperative agreement, including in accordance with the record retention and access requirements set forth in 2 C.F.R. Sections 200.333 through 200.337.

## 19. Audits

Audit requirements applicable to this award are set forth in 2 C.F.R. part 200, Subpart F, Audit Requirements, and in Section D. of the Department of Commerce Financial Assistance Standard Terms and Conditions (March 31, 2017).

## 20. Enforcement and Termination

Failure to perform the work in accordance with the terms of the award and to maintain at least a satisfactory performance rating or equivalent evaluation may result in appropriate enforcement action under an MEP award. Pursuant to 2 C.F.R. Sections 200.338 through 200.342 and Section A.06 of the DOC Financial Assistance Standard Terms and Conditions (March 31, 2017), a Non-Federal Entity's failure to materially comply with the provisions of an MEP cooperative agreement may be considered grounds for appropriate enforcement actions, including but not limited to:

- Imposition of additional award conditions to address the area(s) of noncompliance (see 2 C.F.R. Section 200.207);
- Changing the method of payment under the MEP award from advance to reimbursement only;
- Withholding payment of funds under the MEP award pending corrective action by the Non-Federal Entity;
- Disallowance of costs and establishment of an account receivable;
- Suspension of the MEP award; and
- Termination of the MEP award.

Depending on the nature and severity, a Non-Federal Entity's failure to materially comply with the provisions of the MEP cooperative agreement award may also result in appropriate enforcement actions under other DOC awards and may also have a negative impact on the receipt of future funding from the Department of Commerce.

## 21. Award Closeout

The NIST Grants Office will contact the Non-Federal Entity via email with closeout instructions 30 days prior to the end of the MEP award, per 2 C.F.R. Section 200.343. The Non-Federal Entity is required to comply with the award closeout procedures within 90 days of the award expiration date, unless an extension is requested and approved by the NIST Grants Officer in writing.

No costs shall be incurred or funds obligated for any purpose pertaining to the program scope of work after the program expiration date. The closeout-related costs incurred during the 90-day closeout period following the expiration date can be claimed in the FINAL invoice. Closeout activities are limited to the preparation of final reports in accordance with Section B.07 of the Department of Commerce Financial Assistance Standard Terms and Conditions (March 31, 2017),

MEP Closeout documents are required to be submitted through MEIS in accordance with the 90-day closeout letter received from NIST.