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GRANT AND COOPERATIVE AGREEMENT PROVISIONS

I Reporting Program Technical Performance

Recipients are responsible for the performance under awards and other agreements and, where appropriate, must ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved.

A. Frequency of Performance Reports

Performance reports will be submitted in letter format within 30 calendar days after the end of every second calendar quarter of the performance period and a final report no later than 90 days after the expiration date of the award period indicated on the face page.

B. Copies of Performance Reports

One copy of the letter report shall be submitted to the Division of Contracts and Property Management (DCPM), three copies to the NRC Program Office (at the address indicated on the face page). On a case-by-case basis, reports may be sent electronically or on diskette.

C. Content of Performance Report

The report content shall be as follows:

- (1) A comparison of actual accomplishments with the goals established for the period, the findings of the investigator, or both. If the output of programs or projects can be readily quantified, such quantitative data

should be related to cost data for computation of unit costs.

- (2) Reasons why established goals were not met.
- (3) Other pertinent information including, when appropriate, analysis and explanation of anticipated cost overruns or high unit costs.
- (4) Between the required performance reporting dates, events may occur that have significant impact upon the project or program. In such instances, the recipient shall inform the Nuclear Regulatory Commission as soon as the following types of conditions become known:
 - a. Problems, delays, or adverse conditions that will materially 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 be accompanied by a statement of action taken, or contemplated, and any Federal assistance needed to resolve the situation.
 - b. Favorable developments or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected.
 - c. If any performance review conducted by the recipient discloses the need for change in the budget estimates in accordance with the criteria established in Circular A-110, the recipient shall submit a request to the Grants Officer for budget revision.

D. Publication of Results

The general conditions of the assistance instrument will specify the publications requirements of the award and a provision for the awarding to the Government a royalty free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of all copyrightable material first produced or composed in the recipient's performance under the award or cooperative agreement.

Recipients may be required to produce reports to be published by NRC in accordance with the provisions of NRC Management Directive/Handbook 3.8 and Management Directive/Handbook 3.10 or be given the option of publication in a recognized technical journal. Each journal article submission must be accompanied by the following statement: "The submitted manuscript has been authored by a recipient of the U.S. Government under Award No. _____.

Accordingly, the U.S. Government has a nonexclusive, royalty-free license to publish or reproduce the published form of this contribution, or allow others to do so, for U.S. Government purposes."

All open literature publications prepared under this award shall contain the following statement:

"This paper was prepared with the support of the U.S. Nuclear Regulatory Commission (NRC) under Award No. _____. The opinions, findings, conclusions and recommendations expressed herein are those of the author(s) and do not necessarily reflect the views of the NRC."

If requested by the journal or other publisher to transfer the copyright, the author shall respond to the journal or other publisher, in writing, in accordance with the sample letter shown below:

Sample Letter on Copyright Agreement

Dear _____:

We recently received a document for signature assigning copyright and republication rights in the submitted article (title) to (name of publication). This letter is offered in lieu of the document as a means of completing the transfer of ownership. Accordingly, we hereby expressly transfer and assign our rights of ownership in the above cited work to (name of publisher).

You are advised, however, that the above assignment and any publication or republication of the above cited work is subject to the following Government rights:

The submitted manuscript has been authored by a recipient of the U.S. Government under award No. _____. Accordingly, the U.S. Government has a nonexclusive, royalty-free license to publish or reproduce the published form of this contribution, or allow others to do so, for U.S. Government purposes.

Sincerely,

E. Reprints of Publications

At such time as any article resulting from work under the award is published in a scientific, technical or professional journal or publication, two reprints of the publication should be sent to the cognizant NRC Project Officer, clearly labeled with the award number and other appropriate identifying information.

II Patent Rights (Small Business Firms or Non-Profit Organizations, July, 1981)

A. Definitions

- (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 Section 101 of the United States Code (USC).
- (2) "Subject Invention" means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this award.
- (3) "Practicable Application" means to manufacture in the case of composition or product to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) "Small Business Firm" means small business concern as defined in Section 2 of Public Law 85-536 (15 USC 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard contained in Federal Acquisition Regulation Subpart 19.102 for small business concerns involved in Government procurement and for subcontracts will be used.
- (6) "Non-Profit Organization" means universities and other institutions of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC 501(c)(3)) or any non-profit scientific or educational organization qualified under a state non-profit organization statute.

B. Allocation of Principal Rights

The recipient may retain the entire right, title, and interest throughout the work to each subject invention subject to the

provisions of 42 USC 2182 and section 2189 and this clause. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world for which the recipient has elected to retain title.

C. Invention Disclosure Election of Title and Filing of Patent Applications by Recipient

- (1) After a subject invention has been disclosed in writing by the inventor(s) to recipient personnel responsible for the administration of patent matters, the recipient will:
 - (a) Disclose such invention to the Nuclear Regulatory Commission (NRC) within six months;
 - (b) Elect whether or not to retain title to any such invention by notifying the NRC within twelve months of disclosure to the recipient;
 - (c) File its initial patent application on an elected invention within two years after election; and
 - (d) File patent applications in additional countries within either ten months of the corresponding initial patent application, or six months from the date a license is awarded by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing was prohibited for security reasons.
- (2) Notwithstanding the requirements of subparagraph C(1) above:
 - (a) Disclosure to the NRC shall be made immediately after recipient personnel responsible for the administration of patent matters become aware of any manuscript describing the invention accepted for publication, or any duplication, or sale or public use of such invention; and
 - (b) In any case where publication, sale, or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title and filing of a United States patent application may be shortened by the NRC to a date that is no more than 45 days prior to the end of the statutory period.
- (3) Requests for extension of the time for disclosure to the NRC election and filing, where reasonable, will normally be awarded.

- (4) The disclosure to the NRC shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The report shall also identify any publication, sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and accepted at the time of disclosure.

D. Forfeiture of Title

- (1) The recipient will convey to the NRC, upon written request, title to any subject invention:
 - (a) If the recipient fails to disclose or elect the subject invention within the times specified in C above, or elects not to retain title.
 - (b) In those countries in which the recipient fails to file patent applications within the times specified in C above; provided, however, that if the recipient has filed a patent application in a country after the times specified in C above but prior to its receipt of the written request of the NRC, the recipient shall continue to retain title in that country; or
 - (c) 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 a reexamination or opposition proceeding of a patent on a subject invention.

E. Minimum Rights to Recipient

The recipient will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the recipient fails to disclose the subject invention within the times specified in C above. This license may be terminated, transferred, or modified as specified under 37 CFR 404.

F. Recipient Action to Protect Government's Interest

- (1) The recipient agrees to execute or to have executed and promptly deliver to the NRC all instruments necessary to:

- (a) Establish or confirm the rights the government has throughout the world in those subject inventions for which the contractor retains title; and
 - (b) Convey title to the NRC when requested under D above and to enable the Government to obtain patent protection throughout the world in that subject invention.
- (2) The recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient, each subject invention made under this award in order that the recipient can comply with the disclosure provisions of C above and execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by subparagraph C(4) above. The recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) The recipient will notify the NRC of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
- (4) The recipient agrees to include, within the specifications of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the award) awarded by the Nuclear Regulatory Commission. The Government has certain rights in this invention."

G. Notice and Assistance Regarding Patent and Copyright Infringement

The provisions of this clause shall be applicable only if the amount of this award exceeds \$10,000.

- (1) The recipient shall report to the Grants Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this award of which the recipient has knowledge.

- (2) In any event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this award or out of the use of any supplies furnished or work or services performed hereunder, the recipient shall furnish to the Government when requested by the Grants Officer, all evidence and information in possession of the recipient pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the recipient has agreed to indemnify the Government.
- (3) This clause shall be included in all subcontracts.

H. Subcontracts

- (1) The recipient will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed in the United States by a small business firm or a non-profit organization. The subcontractor will retain all rights provided for the recipient in this clause, and the recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- (2) The recipient will include in all other subcontracts, regardless of tier, for experimental, developmental or research work the appropriate patent rights clause required by Federal Acquisition Regulation Subpart 27.303.

I. Reporting on Utilization of Subject Inventions

The recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the recipient, and such other data and information as the NRC may reasonably specify. The recipient also agrees to provide additional reports as may be requested by the NRC in connection with any march-in proceeding undertaken by the NRC in accordance with paragraph J of this clause. To the extent data or information supplied under this section is considered by the recipient, its licensee or assignee to be privileged and confidential and is so marked, the NRC agrees that, to the extent permitted by 35 USC 202(c)(5), it will not disclose such information to persons outside the Government.

J. Preference for United States Industry

Notwithstanding any other provision of this clause, the recipient agrees that neither it nor any assignee will award to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the NRC upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to award licenses or similar terms to potential licensees that would likely to be manufactured substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

K. March-in Rights

The recipient agrees that with respect to any subject invention in which it has acquired title, the NRC has the right in accordance with the procedures in 37 CFR 401.6 to require the recipient, an assignee or exclusive licensee of a subject invention to award a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the recipient assigns, or exclusive licensee refuses such a request, the NRC has the right to award such a license itself if the NRC determines that:

- (1) Such action is necessary because the recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or its licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph I of this clause has not been obtained or waived or because a licensee or the exclusive right to use or sell any subject invention in the United States is breach of such agreement.

L. Special Provisions for Awards with Non-Profit Organizations

If the recipient is a non-profit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the NRC, except where such assignment is made to an organization, which has as one of its primary functions the management of inventions, and which is not itself engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the recipient);
- (2) The recipient may not award exclusive licenses under United States patents or patent application in subject inventions to persons other than small business firms for a period in excess of the earlier of:
 - (a) five years from commercial sale or use of the invention; or
 - (b) eight years from the date of the exclusive license excluding that time before regulatory agencies necessary to obtain pre-market clearance, unless on a case-by-case basis, the Federal agency approves a longer exclusive license. If exclusive field of use licenses are awarded, commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention.
- (3) The recipient will share any royalties collected on a subject invention with the inventor; and
- (4) The balance of any royalties or income by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

III Reporting of Royalties

If this award is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the award or are reflected in the award price to the Government, the recipient agrees to report in writing to the Patent Counsel, NRC (with notification by Patent Counsel to the Grants Officer) during the performance of this award and prior to its completion or final

settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this award together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of NRC of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

IV Changes in Principal Investigator or Technical Objectives

- A. The recipient shall be permitted to change the methods and procedures employed in performing the research without the need to make special reports on proposed actions or obtain NRC approval. Significant changes in methods or procedures shall be reported to NRC in status reports and final technical reports. However, in the event the methodology or experiment is proposed as a specific stated objective of the research work, it shall not be changed without approval of the Grants Officer.
- B. The stated objective of the research effort shall not be changed, except with the approval of the NRC Grants Officer.
- C. The phenomenon or phenomena under study, i.e., the broad category of research, shall not be changed except with the prior approval of the NRC Grants Officer.
- D. The recipient shall obtain the approval of the NRC Grants Officer to change the principal investigator, or to continue the research work during a continuous period in excess of three months without the participation of an approved principal investigator.
- E. The recipient shall consult with the NRC Grant Officer if the principal investigator plans to, or becomes aware that he will devote substantially less effort to the work than that anticipated in the approved award. If NRC determines that the reduction of effort would substantially impair the successful performance of the research, it may request a change of principal investigator or other appropriate modification of the award or may suspend or terminate the award pursuant to the clause 3 (in Section VII) and 4 (in Section VIII) herein entitled, Suspension or Termination for Cause and Termination for Convenience.

V Procurement Standards

- A. NRC recipients shall follow the requirements of Attachment 0 to OMB Circular A-110.
- B. In addition, unless these provisions provide otherwise, prior written approval shall be obtained from the NRC Grants Officer before:
 - (1) Any of the research or other substantive project effort is contracted or otherwise transferred.
 - (2) Contracting for the commercial production or distribution of books, films, or similar materials.
- C. NRC approvals will be made by the Grants Officer, who will specify which requirements of this award must be flowed-down to satisfy the purposes of OMB Circular A-110.
- D. Recipient requests for approvals shall include an explanation of the need for the contracting, a proposed performance statement, justification for the price or estimated cost (including a detailed budget for cost-reimbursement type arrangements), and the basis for selecting the contractor.

VI Non-Federal Audits

Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

VII Suspension or Termination for Cause

- A. When in the opinion of NRC, a recipient has materially failed to comply with the terms and conditions of a award, NRC may (1) suspend the award or (2) terminate the award for cause.
- B. NRC prefers that deficiencies be corrected whenever practicable. When it is believed that a recipient has failed to comply with one or more of the terms and conditions of an award, the Grants Officer will advise the recipient by letter of the nature of the problem and that failure to correct the deficiency may result in suspension or termination of the award. The recipient will be requested to respond in writing within 30 days of receipt of such letter, describing the action taken or the plan designed to correct the deficiency. Copies of such correspondence will be furnished to the Principal Investigator (PI) and the NRC Project Officer. If a timely satisfactory response is not received, the Grants Officer may issue a suspension notice. The notice of suspension will be sent by certified mail (return receipt

requested) to the recipient with a copy to the PI. The notice will set forth the activities covered under the suspension and its effective date, and the corrective action required by the recipient in order to lift the suspension. However, this policy does not preclude immediate termination when such action is reasonable under the circumstances and necessary to protect the interests of the Government.

- C. If an award is suspended pursuant to this article, no obligations incurred by the recipient during the period of suspension will be allowable under the suspended award other than necessary and proper costs that the recipient could not reasonably avoid during the period of suspension; provided that such costs would otherwise be allowable under the applicable Federal cost principles.
- D. The suspension will remain in effect for a maximum of 90 days during which time the recipient will take corrective action to the satisfaction of NRC or give assurances satisfactory to NRC that corrective action will be taken. In that event, the Grants Officer will issue a notification to the recipient that the suspension is lifted.
- E. In the event the deficiency is not corrected to the satisfaction of NRC, the Grants Officer may issue a notice of termination. The notice will establish the reasons for the action and its effective date.
- F. If an award is terminated pursuant to this article, financial obligations incurred by the recipient prior to the effective date of termination shall be allowable to the extent they would have been allowable had the award not been terminated, except that no obligation incurred during the period in which the award was suspended (except those allowed pursuant to c, above) will be allowed. The settlement of termination costs will be in accordance with the applicable Federal cost principles.
- G. Within 90 days of the effective date of termination, the recipient will furnish an itemized accounting of funds expended for allowable costs prior to the effective date of termination and the unexpended award balance.

VIII. Termination for Convenience

- A. Circumstances may arise in which either NRC or the recipient wishes to terminate its performance of a project in whole or in part. If both parties agree, the award may be terminated by mutual agreement.
- B. If the recipient wishes to terminate the project, it shall advise the NRC Grants Officer, with a copy to the cognizant NRC Project Officer.

- C. If NRC wishes to terminate the project, the Grants Officer will advise the recipient with copies to the PI and the cognizant NRC Project Officer.
- D. Within 30 days after receipt of a request from either party for termination by mutual agreement, other party will provide an appropriate written response.
- E. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Nuclear Regulatory Commission shall allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

IX Dispute Review Procedure

- A. Any request for review of a notice of termination or a poor performance notice should be addressed to the Grants Officer. It must be postmarked no later than 30 days after the postmarked date of such notice.
- B. The request for review must contain a full statement of the recipient's position and the pertinent facts and reasons in support of such position.
- C. The Grants Officer will promptly acknowledge receipt of the request for review and shall forward it to the Director, Office of Administration, who shall appoint a review committee consisting of a minimum of three persons.
- D. Pending resolution of the request for review, the NRC may withhold or defer payments under the award during the review proceedings.
- E. The termination review committee will request the Grants Officer who issued the notice of termination to provide copies of all relevant background materials and documents. It may, at its discretion, invite representatives of the recipient and the NRC program office to discuss pertinent issues and to submit such additional information as it deems appropriate. The chairman of the review committee will ensure that all review activities or proceedings are adequately documented.
- F. Based on its review, the committee will prepare its recommendations to the Director, Office of Administration, who will advise the parties of his/her decision.

X Travel

- A. Domestic travel is an appropriate charge to this award, and prior authorization for specific trips is not required. Foreign travel must be clearly essential to the award effort and must have prior explicit approval of the Grants Officer to be charged against this award, regardless of its inclusion in the approved award budget.
- B. All common carrier travel reimbursable hereunder shall be via the least expensive class rates consistent with achieving the objective of the travel. If not available, reimbursement vouchers will be annotated that economy class accommodations were not available. First-class air travel is not authorized.