

**Federal Demonstration Partnership
Terms and Conditions Committee Meeting
September 22, 2003**

1. Prior approval matrix

The prior approval matrix posted on the FDP Terms and Conditions website has not been updated since July 2000. The Committee has collected updates from the agencies, and will post the new version on or about October 1, 2003. DOE and EPA have requested minor changes, and these will be incorporated before the matrix is posted.

2. DOD Cost-Sharing Update: Mark Herbst, Office of the Secretary, Department of Defense

The 1996 Presidential Review Directive identified this as an issue that needs to be addressed. This policy is analogous to the NSF cost sharing policy. The draft policy appeared in the Federal Register in June, and was included in the meeting book. It was intended to provide guidance to DOD funding agencies about when it is appropriate to use cost sharing, and how to show it in program announcements when it is appropriate.

In the 106-107 implementation activities, the universities again cited cost sharing and the need for more guidance and direction. The DOD cost sharing policy seeks to apply different stimuli for the commercial contractors than for basic research performers. In the case of commercial contractors, they may be asked to provide cost sharing to demonstrate their confidence in the commercial viability of a product. The objective in requiring cost sharing from the university and non-profit research community is quite different.

The committee noted that there is a need for a clear statement when cost sharing is required, because this requirement drives decision making about institutional commitment towards a funding opportunity. The response is that that is not always possible in funding opportunities targeted at commercial entities, some of whom may be small businesses who would be ineligible if there were a non-negotiable cost-sharing requirement.

Only 5-10 comments were received from the public and another 5-10 internal to DOD. DOD is assembling a working group to review comments, and it is expected that the resolution of comments will come with final notice sometime this winter.

3. NASA changes to Agency-Specific Requirements:

In the interim since the last meeting, NASA circulated its proposed changes, most of which were discussed at the last meeting, and the committee agreed that these changes can be made effective October 1, 2003. NSF will post the changes on the official FDP Terms and Conditions Website.

Attachment 1 to these minutes shows future changes that NASA is contemplating for its Handbook, and subsequently to its FDP Agency-Specific Requirements. NASA invites comments on these proposed changes. They can be submitted to Rita Svarcas [Rita.Svarcas@nasa.gov]. Other NASA policy staff included Susan Moody, Paul Brundage, and Tom Sauret.

4. Cybersecurity R&D Act: Jean Feldman, National Science Foundation

When provisions related to this Act began appearing in FDP awards, some awardee institutions raised a question about the applicability of these provisions, and whether they represented a change in agency-specific requirements. The provisions of this Act apply only to some awards made by the CISE directorate, and there will therefore be no change to NSF ASR's. Act has record-keeping requirements, such as participation in SEVIS. NSF will not issue amendments for awards made before the regulation went into affect.

5. Old Business: General Terms and Condition change for acknowledgments and disclaimers

At the last meeting, the Committee asked the Faculty Standing Committee to weigh in on this question, and that response was not available at the time of this meeting. The Committee agreed to recommend this change to the Executive Committee, contingent upon the approval of the Faculty Standing Committee. NIH is checking to see whether its appropriations language applies both to acknowledgements and disclaimers. If it does, NIH will propose an Agency-Specific term for this.

The Faculty Committee unanimously supported the proposed change to de-couple acknowledgements and disclaimers so that acknowledgements are required in all publications, but disclaimers are required only in publications outside the scientific literature. NIH has no appropriations language that would require disclaimers in the scientific literature.

Attachment 2 shows the FDP Executive Committee's approval of this change in the FDP General Terms and Conditions.

6. Other Business: Publication Restrictions in DOE FDP Awards

Such restrictions are appearing in awards made by especially by DOE entities who are not major funders of university/non-profit research. Institutions are cautioned to review their DOE FDP awards to look for this language. The FDP terms and conditions committee representative has been working on this issue.

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
FEDERAL DEMONSTRATION PARTNERSHIP (FDP) IV
AGENCY SPECIFIC REQUIREMENTS
(October 1, 2003)**

Deleted: 2002

Grants and Cooperative Agreements Updates: <http://ec.msfc.nasa.gov/hq/library/grants.html>

NASA Grant and Cooperative Agreement Handbook: <http://ec.msfc.nasa.gov/hq/grcover.htm>

OMB Circulars: <http://www.whitehouse.gov/omb/circulars/index.html>

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Article 1. Awards covered by FDP Terms and Conditions.

Research, education, and training grants to FDP members are covered by FDP terms and conditions. FDP terms and conditions do not apply to cooperative agreements, contracts, or other transactions with FDP members.

Article 2. Prior approval requirements not included in the general terms and conditions.

None.

Article 3. Unallowable direct costs aside from those in A-21/A-122.

None.

Article 4. Contact information for technical matters.

Questions regarding technical matters should be referred to the Technical Officer cited on the cover page of the grant.

Article 5. Contact information for administrative matters.

Questions regarding administrative matters should be referred to the Grant Administrator cited on the cover page of the grant.

Article 6. Contact information for intellectual property matters.

The address of the cognizant patent counsel office is set forth on the distribution list page of the Required Publications and Reports form, which is attached to the grant.

Article 7. Revised budget requirements.

Revised budgets should be submitted in the same format as the original budget submission. Questions on budget format and content should be directed to the Grant Administrator.

Article 8. Technical Publications and Reports.

Technical reporting requirements are addressed in NASA's addendum to FDP General Terms and Conditions Section 51 "Monitoring and reporting program performance," set forth below.

Reference 14 CFR § 1260.22 Technical publications and reports (February 2000)

(a) NASA encourages the widest practicable dissemination of research results at any time during the course of the investigation.

(1) All information disseminated as a result of the grant shall contain a statement which acknowledges NASA's support and identifies the grant by number (e.g., "The material is based upon work supported by NASA under award No(s), etc.").

(2) Except for articles or papers published in scientific, technical, or professional journals, the exposition of results from NASA supported research should also include the following disclaimer: "Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration."

(b) Reports shall be in the English language, informal in nature, and ordinarily not exceed three pages (not counting bibliographies, abstracts, and lists of other media). The recipient shall submit the following reports:

(1) A Progress Report for all but the final year of the grant. Each report is due 60 days before the anniversary date of the grant and shall briefly describe what was accomplished during the reporting period as outlined in § 1260.151(d). A special condition specifying more frequent reporting may be required.

(2) A Summary of Research (or Educational Activity Report in the case of Education Grants) is due within 90 days after the expiration date of the grant, regardless of whether or not support is continued under another grant. This report shall be a comprehensive summary of significant accomplishments during the duration of the grant.

(c) Progress Reports, Summaries of Research, and Educational Activity Reports shall include the following on the first page:

- (1) Title of the grant.
- (2) Type of report.
- (3) Name of the principal investigator.
- (4) Period covered by the report.
- (5) Name and address of the recipient's institution.
- (6) Grant number.

(d) Progress Reports, Summaries of Research, and Educational Activity Reports shall be distributed as follows:

- (1) The original report, in both hard copy and electronic format, to the Technical Officer.
- (2) One copy to the NASA Grant Officer, with a notice to the Administrative Grant Officer, (when administration of the grant has been delegated to ONR), that a report was sent.

(e) For Summaries of Research and published reports, one micro-reproducible copy shall also be sent to the NASA Center for AeroSpace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076.

Article 9. Financial reporting.

Financial reporting requirements are addressed in NASA's addendum to FDP General Terms and Conditions Section 52 "Financial reporting," set forth below.

| Reference 14 CFR § 1260.26 Financial management (August 2003)

Deleted: October 2001

(a) Advance payments through a Letter of Credit will be made by the Financial Management Office of the NASA Center assigned financial cognizance of the grant, using the Department of Health and Human Services' Payment Management System (DHHS/PMS), in accordance with procedures provided to the recipient. The recipient shall a submit Federal Cash Transaction Report (SF 272) and, when applicable, a

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Continuation Sheet (SF 272A) electronically to DHHS/PMS within 15 working days following the end of each Federal Fiscal quarter (i.e., December 31, March 31, June 30, and September 30). One Federal Cash Transactions Report shall be submitted for all grants financed under a letter of credit arrangement with each NASA Center.

(b) In addition, the Recipient shall submit a final SF 272 in paper form to NASA within 90 calendar days after the expiration date of the grant. The final SF 272 shall pertain only to the completed grant and shall include total disbursements from inception through completion. The report shall be marked "Final". The final SF 272 shall be submitted to the Financial Management Office, with a copy sent to the NASA Grant Officer.

(c) Unless otherwise directed by the Grant Officer, any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. This includes allowing the carry over of funds to the second and subsequent years of a multiple year grant. This provision also applies to subcontractors performing substantive work under the grant. For grant renewals, the estimated amount of unexpended funds shall be identified in the grant budget section of the Recipient's renewal proposal. NASA reserves the right to remove unexpended balances from grants when insufficient efforts have been made by the grantee to liquidate funding balances in a timely fashion.

Article 10. Incremental funding actions.

No additional documentation is required to trigger an increment; however, non-compliance with reporting requirements or unacceptable expenditure rates reported on NASA Form 272 Cash Transaction Report may delay incremental funding, but not without prior discussion with recipient.

Deleted: to the aforementioned office and to the Administrative Grant Officer (if NASA has delegated administration) within 15 working days following the end of each Federal fiscal quarter. The final SF 272 is due within 90 days after the expiration date of the grant. The final SF 272 shall be submitted to the Financial Management Office, with copies sent to the NASA Grant Officer.

Deleted: Unless otherwise directed by the Grant Officer, any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. This includes allowing the carry over of funds to the second and subsequent years of a multiple year grant. This provision also applies to subcontractors performing substantive work under the grant. For grant renewals, the estimated amount of unexpended funds shall be identified in the grant budget section of the recipient's renewal proposal. NASA reserves the right to remove unexpended balances from grants when insufficient efforts have been made by the grantee to liquidate funding balances in a timely fashion.

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NASA ADDENDA TO FDP GENERAL TERMS AND CONDITIONS

FDP ARTICLES

- 11. Payments.**
- 12. Revision of program and budget plans.**
- 13. Equipment**
- 14. Intangible property**
- 15. Security Requirements**
- 16. Safety**

(1). Payments.

Refer to Article 9 Financial reporting.

12. Revision of program and budget plans.

Paragraph 25(e)(4) of the Article is revised as follows: If uncommitted carry-over funds are likely to be substantial, the estimated amount shall be included in any continuation proposal.

Paragraph 25(m) of the Article is revised as follows: Any extension that would require additional funding must be supported by a proposal submitted at least three months in advance of the expiration date of the grant.

Article 13. Equipment.

Reference 14 CFR § 1260.27 Equipment and other property (February 2000)

(a) On an exceptional basis, NASA permits acquisition of special purpose and general purpose equipment specifically required for use exclusively for research activities.
(b) The recipient shall submit an annual Inventory Report, to be received no later than October 31 of each year, which lists all reportable (non-exempt equipment and/or Federally owned property) in its custody as of September 30. Negative responses for annual Inventory Reports (when there is no reportable equipment) are not required. A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, will be submitted by the recipient no later than 60 days after the expiration date of the grant. Negative responses for Final Inventory Reports are required.

(1) All reports will include the information listed in paragraph (f)(1) of § 1260.134, Equipment. No specific report form or format is required, provided that all necessary information set forth at § 1260.134(f)(1) is provided.

(2) The original of each report shall be submitted to the Center Deputy Chief Financial Officer, Finance (DCFO(F)). Copies shall be furnished to the Center Industrial Property Officer and to ONR.

Article 14. Intangible property.

Reference 14 CFR § 1260.28 Patent rights (February 2000)

As stated at § 1260.136, this award is subject to the provisions of 37 CFR 401.3(a) which requires use of the standard clause set out at 37 CFR 401.14 "Patent Rights (Small Business Firms and Nonprofit Organizations)" and the following:

(a) Where the term "contract" or "contractor" is used in the "Patent Rights" clause, the term shall be replaced by the term "grant" or "recipient," respectively.

(b) In each instance where the term "Federal Agency," "agency," or "funding Federal agency" is used in the "Patent Rights" clause, the term shall be replaced by the term "NASA."

(c) The NASA regulation applicable to paragraph (e) of the "Patent Rights" clause is at 37 CFR part 404, Licensing of Government-owned Inventions.

(d) The following item is added to the end of paragraph (f) of the "Patent Rights" clause:

“(5) The recipient shall include a list of any Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal. A complete list (or a negative statement) for the entire award period shall be included in the summary of research.”

(e) The term "subcontract" in paragraph (g) of the "Patent Rights" clause shall include purchase orders.

(f) The NASA implementing regulation for paragraph (g)(2) of the "Patent Rights" clause is at 48 CFR 1827.304-4(a)(i)(B).

(g) The following requirement constitutes paragraph (l) of the "Patent Rights" clause:

“(l) Communications. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Center Patent Counsel and the NASA Grant Officer in addition to any other

submission requirements in the grant provisions. If any reports contain information describing a "subject invention" for which the recipient has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the recipient identify the information and the "subject invention" to which it relates at the time of submittal. If required by the NASA Grant Officer, the recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the recipient has applied for patents."

(h) *NASA Inventions*. NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this agreement and, upon timely request, will use reasonable efforts to grant the recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

OTHER AGENCY REQUIREMENTS

Article 15. Security requirements.

Reference 14 CFR § 1260.35 Investigative requirements (February 2000)

- (a) As requested by NASA, the recipient of each grant, and any other individuals to perform on the grant, agree to provide sufficient personal/biographical information necessary to conduct an investigation of the individual's background. The purpose of the investigation is to allow access to a NASA Center, or to NASA information, for performance of this grant. The recipient acknowledges that NASA reserves the right to perform security checks, and to deny or restrict access to a NASA Center, facility, computer system, or technical information as appropriate.
- (b) All visit requests must be submitted in a timely manner in accordance with instructions provided by the Center(s) to be visited.

Article 16. Safety

Reference 14 CFR § 1260.37 Safety (February 2000)

- (a) The recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this grant. The recipient shall comply with all applicable federal, state, and local laws relating to safety. The recipient shall maintain a record of, and will notify the NASA Grant Officer of any accident involving death, disabling injury or substantial loss of property. The recipient will advise NASA of hazards that come to its attention as a result of the work performed through routine status reports furnished in compliance with this grant.
- (b) Where the work under this grant involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the recipient. Compliance with this provision by subcontractors shall be the responsibility of the recipient.

Article 17. Buy American Encouragement.

Reference 14 CFR § 1260.39 Buy American encouragement. (October 2003)

Deleted: July 2002

| As stated in Section 319 of Public Law 106-391, the NASA Authorization Act of 2000,
Recipients are encouraged to purchase only American-made equipment and products.

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Deleted: (b) The Recipient will observe
property standards and provisions set
forth in §§ 1260.131 through 1260.137.

**Proposed Change to General Terms and Conditions Related to
Disclaimer Requirement in Publications.**

**Federal Demonstration Partnership
General Terms and Conditions—July 2000**

On the recommendation of the Standing Committee on Terms and Conditions, with the unanimous support of the Faculty Standing Committee, the Executive Committee approved the following change in the General Terms and Conditions, effective October 1, 2003.

Article 51, Section (a)

(a) **Publications.** The recipient is expected to publish or otherwise make publicly available the results of the work conducted under the award. An acknowledgment of awarding agency support must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

(1) The acknowledgment will be: "This material is based upon work supported by the [name of awarding agency(ies) under Award No. [recipient should enter the awarding agency(ies) award number(s)]]."

(2) For all materials, except scientific articles or papers published in scientific journals, the disclaimer will be: "Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the [name(s) of awarding agency(ies)]."

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This change reinstates the requirements that existed prior to the adoption of the 2000 version of the Federal Demonstration Partnership General Terms and Conditions, and is considered a technical correction.