

National Institute of Standards and Technology (NIST) Hollings Manufacturing Extension Partnership (MEP)

General Terms and Conditions

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General Terms and Conditions

Hollings Manufacturing Extension Partnership Program

Executive Summary

The General Terms and Conditions set forth below apply to all Recipients of Cooperative Agreements under the National Institute of Standards and Technology (NIST) Hollings Manufacturing Extension Partnership (MEP) Program, 15 U.S.C. Section 278k, as amended, and the provisions of 15 C.F.R. Part 290 specified herein or in the applicable Notice of Funding Opportunity (NOFO), unless otherwise noted in these General Terms and Conditions or in a Specific Award Condition. Failure to comply with any or all the provisions of an MEP award will be considered grounds for appropriate enforcement action, up to and including termination of an MEP Center award.

For the purposes of these General Terms and Conditions the following terms should be noted. The NIST MEP Center Resource Management Team (CRMT) includes the NIST MEP Federal Program Officer (NIST FPO), NIST MEP Resource Manager (NIST RM) and/or the NIST Federal Program Manager (NIST FPM). 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 an award. Additionally, capitalized terms that are incorporated into a NIST MEP Center Cooperative Agreement or that are contained in these MEP Center General Terms and Conditions have the meanings ascribed to them in the definitions section at 2 C.F.R. § 200.1.

Questions concerning the interpretation or application of these General Terms and Conditions should be addressed to your NIST MEP CRMT and to the NIST Grants Officer.

NIST MEP-funded Centers, also known as NIST MEP Centers, should note that these terms and conditions establish both administrative and programmatic requirements pursuant to a NIST MEP Center Cooperative Agreement.

Section A – Applicable Authorities and Administrative Requirements

Section A of these General Terms and Conditions identifies applicable authorities governing an MEP Center Cooperative Agreement and also provides administrative requirements for NIST MEP Center Cooperative Agreements.

Section B – Programmatic Requirements

Section B of these General Terms and Conditions provides programmatic requirements that are specific to the NIST MEP Program and to a NIST MEP Cooperative Agreement. NIST MEP Centers should reference these requirements in coordination with the applicable authorities that are identified in Section A.

Section A – Applicable Authorities and Administrative Requirements

1. Applicability of Award Provisions

Recipients and subrecipients of NIST MEP Cooperative Agreements are subject to applicable laws and regulations, including but not limited to 15 U.S.C. § 278k and [2 C.F.R. part 200, U.S. Department of Commerce Financial Assistance Award Standard Terms and Conditions](#) (12 November 2020) (DOC Standard Terms and Conditions), which may be periodically updated, NIST MEP General Terms and Conditions, which may be periodically updated, and Specific Award Conditions (SACs). In accordance with 2 C.F.R. §200.101(b)(2), 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 NIST MEP Cooperative Agreement specifically indicate otherwise. See 2 C.F.R. §200.332 for the due diligence requirements, flow down provisions and other information that are applicable to or that must be included in a subaward.

2. 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 DOC Standard Terms and Conditions.

3. Automated Standard Application for Payments (ASAP)

Access to a NIST MEP Center's Automated Standard Application for Payments (ASAP) account must be limited to a duly authorized representative of the non-federal entity receiving a NIST MEP Cooperative Agreement. NIST will return to the non-federal entity unprocessed 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 NIST MEP Center as an authorized representative.

4. Award Closeout

The NIST MEP Grants Officer will closeout NIST MEP Center Cooperative Agreements in accordance with 2 C.F.R. §200.344. NIST MEP Centers should refer to 2 C.F.R. §200.344 and Section B.07. of the DOC Standard Terms and Conditions for guidance on allowable closeout activities and related costs.

5. Conflict of Interest Requirements

DOC Standard Terms and Conditions, Section F, and 2 C.F.R. §200.112 describe conflict of interest requirements for financial assistance awards that must be followed by recipients and subrecipients of MEP Center Cooperative Agreements. In particular, MEP Centers must promptly disclose in writing any potential conflict of interest, including but not limited to related party transactions, to the MEP CRMT and to the Grants Officer, and MEP Center subrecipients must promptly disclose in writing any potential conflict of interest to the MEP Center. See 2 C.F.R. §§ 200.112, 200.332.

The additional conflict of interest requirements set forth below are unique to NIST MEP Center Cooperative Agreements. In accord with 15 U.S.C. 278k(k)(4), each

NIST MEP Center is required to adopt bylaws for its Oversight Board, which must include policies to minimize conflicts of interest, including such policies relating to disclosure of relationships, and recusal and other corrective actions as may be necessary to minimize conflicts of interest.

In addition, each MEP Center must have conflict of interest policies and procedures for NIST MEP Center personnel, which similarly must include policies to minimize conflicts of interest, including such policies relating to disclosure of relationships, and recusal and other corrective actions as may be necessary to minimize conflicts of interest. NIST MEP Centers are also responsible for ensuring that each of its subrecipients also implement appropriate conflict of interest policies and procedures consistent with the requirements set forth in this section. See 2 C.F.R. § 200.332(a), (d).

During the annual review process, NIST MEP Centers will be required to provide their conflict-of-interest policies and procedures for Oversight Boards and for NIST MEP Center personnel, which will be reviewed by the MEP CRMT, and be posted within MEP's Enterprise Information System (MEIS). Additionally, conflict-of-interest policies and procedures for Oversight Boards and for NIST MEP Center personnel will be provided to the NIST Grants Officer and will be added to the official award file for the subject MEP Center Cooperative Agreement. During the annual review, the MEP CRMT will also confirm that the NIST MEP Center is reviewing conflict-of-interest policies for its subrecipients (see 2 C.F.R. §200.332, Requirements for pass-through entities).

6. Definitions

Capitalized terms that are incorporated into a NIST MEP Center Cooperative Agreement or that are contained in these MEP Center General Terms and Conditions have the meanings ascribed to them in the definitions section at 2 C.F.R. § 200.1. The definitions below are provided as a quick reference; however, NIST MEP Centers and its subrecipients should consult the formal definitions contained in 2 C.F.R. § 200.1.

- **Contract** means a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award.
- **Subaward** means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program.
- **Third Party In-Kind Contributions** means the value of non-cash contributions (*i.e.*, property or services) that benefit a federally assisted project or program; and are contributed by non-federal third parties, without charge, to a non-Federal entity under a federal award.
- **Program Income** means gross income earned by the non-federal entity that is directly generated by a supported activity, or earned as a result of the federal award, during the period of performance, except as provided in 2 C.F.R. §200.307(f). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal

award, license fees and royalties on patents and copyrights, and principal and interest on loans made with federal award funds.

- **Offset** Unspent federal funds from a prior budget period are used to reduce the amount of new federal funds awarded in a current budget period. The prior year federal funds replace all or a portion of new federal funds on the award.
- **Carry Forward** Unspent federal funds from a prior budget period are used to increase the amount of federal funding available in a current budget period. The carry forward of federal funds may be used in conjunction with new NIST MEP funding being obligated to an award.

7. Enforcement and Termination

Failure to comply with the terms and conditions of a NIST MEP Center Cooperative Agreement, including but not limited to maintaining a satisfactory or better performance rating or equivalent evaluation, will result in appropriate enforcement action pursuant to 2 C.F.R. §§200.339 and Section A.06 of the DOC Standard Terms and Conditions, including but not limited to:

1. Imposition of additional award conditions to address the area(s) of noncompliance (see 2 C.F.R. §200.207);
2. Changing the method of payment under the NIST MEP award from advance to reimbursement only;
3. Withholding payment of funds under the NIST MEP award pending corrective action by the NIST MEP Center;
4. Disallowance of costs and establishment of an account receivable;
5. Suspension of the MEP award;
6. Termination of the MEP award; and
7. Taking such other remedies that may be legally available.

See also 2 C.F.R. §§200.340 through 200.343, which concern the termination of a MEP Center Cooperative Agreement and the impacts of such a termination. In addition, the failure to comply with the provisions of a NIST MEP Center Cooperative Agreement may adversely impact the availability of funding under other active DOC or federal awards and may also have a negative impact on a non-federal entity's eligibility for future DOC or federal awards.

8. Internal Controls

The NIST MEP Center must establish and maintain internal controls consistent with the requirements set forth in 2 C.F.R. §200.303.

9. Monitoring of Subrecipients

NIST MEP Centers are required to adhere to the subrecipient monitoring and management standards set forth in 2 C.F.R. §§200.331 – 200.333 including, but not limited to, ensuring that subrecipients adhere to these MEP General Terms and Conditions including the conflict of interest requirements. NIST MEP Center subrecipient monitoring and management further includes compliance with the Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. Section 6101 note) regarding reporting subawards and executive compensation.

10. Order of Precedence of Terms and Conditions of Award

Any inconsistency or conflict in the terms and conditions specified in a NIST MEP

Center Cooperative Agreement will be resolved according to the following order of precedence: Federal laws (e.g., 15 U.S.C. Section 278k, as amended) and Federal regulations (e.g., 2 C.F.R. Part 200, the provisions of 15 C.F.R. Part 290 specified herein or in the applicable Notice of Funding Opportunity (NOFO)); Executive Orders; OMB Circulars; DOC Standard Terms and Conditions; these NIST MEP Center General Terms and Conditions; Specific Award Conditions (SACs), including incorporation of the Notice of Federal Funding Opportunity pursuant to which a specific MEP Center Cooperative Agreement was awarded; and the required plans submitted by an MEP Center. Note that a specific award condition may amend or take precedence over a DOC Standard Term and Condition or a NIST General Term and Condition on a case-by-case basis, when indicated by the specific award condition. The recipient of a MEP Center Cooperative Agreement is required to raise attention to any perceived differences or perceived conflicts between the terms and conditions of the NIST MEP Cooperative Agreement and the NIST MEP Center's required plans by promptly contacting the NIST Grants Officer and the NIST CRMT.

11. Periodic Updates to the MEP Center General Terms and Conditions

These MEP Center General Terms and Conditions are subject to periodic updates to reflect Federal Government, Department of Commerce and NIST legal, policy, and programmatic requirements. By accepting a NIST MEP Center Cooperative Agreement and the associated federal funding, the Recipient agrees to accept and to be bound by such periodic updates to the MEP General Terms and Conditions, which will be formally incorporated into the subject MEP Center award through an award amendment.

12. Record-Keeping and Access to Records

The NIST MEP Center must keep and must provide certain access to complete, accessible, and contemporaneous records on administrative and financial matters in accordance with record retention and access requirements set forth in 2 C.F.R. §§200.334 through 200.338.

13. Waivers and Deviations

It is the general intent of NIST MEP not to deviate from or waive any of the provisions set forth in these NIST MEP General Terms and Conditions. However, under extraordinary circumstances and when it is in the best interest of the Federal Government, NIST MEP, upon its own initiative or when requested by the recipient of an NIST MEP Center Cooperative Agreement, may deviate from or waive the terms and conditions set forth herein. Deviations and waivers may only be granted for requirements that are discretionary and that not mandated by statute, regulations or other applicable law. A request for a deviation or waiver must set forth in detail the extraordinary circumstances supporting the request and will be responded to in writing by the MEP Grants Officer.

Section B – Programmatic Requirements

1. Allocation of Rights and License and Use of NIST MEP Trademarks

- A. *Allocation of Intellectual Property Rights* – Each applicant shall include in the application a proposal for the allocation of the legal rights associated with any intellectual property which may result from the activities of the Center. See 15 U.S.C. § 278k(f)(4).
- B. *License for Use of Trademarks* – NIST MEP Centers via their Cooperative Agreement are hereby granted an exclusive license to use the variety of NIST MEP registered and unregistered trademarks within their areas of service.

i. *Description of NIST MEP Trademarks*

The National Institute of Standards and Technology, U.S. Department of Commerce, through its Hollings Manufacturing Extension Partnership Program, is using the marks HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP, MANUFACTURING EXTENSION PARTNERSHIP®, MEP®, MEP – MANUFACTURING EXTENSION PARTNERSHIP®, MEP NATIONAL NETWORK™, MEP NATIONAL NETWORK, MEPNN, MAKE IT IN AMERICA and ExporTech® (collectively, the “Marks”), and is also using the interlocking hands marks, and considers all of the foregoing Marks and MEP Logos, and their derivatives related to manufacturing extension, to be NIST trademarks and/or service marks. NIST has registered the marks noted above with the U.S. Patent and Trademark Office as service marks, having Registration Numbers 4142814, 5073413, 5073414, 5123325, 5123332, 5123337, 5123339, 5123341, 5123342, 5136198, 5179713, and 5203278.

NIST has also registered domain names and extensions consisting of the state name or abbreviation of the type <statename>mep.com, .org, .co and .net and <stateabbreviation>mep.com, .org, .co and .net, and considers them to be unregistered trade names that are an integral part of the MEP National Network identity (collectively, the “Domains”).

ii. *License*

The NIST MEP Center, regardless of how organized, is expected to make use of the Marks, MEP Logos, Domains, or combinations thereof in association with their activities in support of the MEP program, under the conditions set forth below. Each NIST MEP Center acknowledges that it may not assert trademark rights in the Marks or the MEP Logos, or elements or variants thereof, nor will trademark rights vest and/or inure to the NIST MEP Center’s benefit from the use of the Marks, the MEP Logos, or the Domains, or elements or variants thereof, by the NIST MEP Center.

1. **Grant of License:** NIST hereby grants to the NIST MEP Center a non-exclusive, royalty-free right to use the Marks, MEP Logos, and the Domains (hereinafter referred to collectively as “the Licensed Marks”) for the purposes described herein.
2. **Quality Control:** In addition to the guidelines set forth in this section , the NIST MEP Center shall use the Licensed Marks in accordance with

“Guidelines for Using the MEP National Network Brand,” (“Guidelines”) as established by NIST MEP for awardees and as may be amended from time to time, published at https://nistgov.sharepoint.com/:u:/r/sites/MEP_Connect/SitePages/The-MEP-National-Network-Brand.aspx?csf=1&web=1&e=lq7OdW and incorporated into this Agreement by reference. Apart from compliance with the guidelines set forth herein, the NIST MEP Center’s use of the Marks shall not depart from the Guidelines without advance written permission of NIST MEP. NIST shall have the right, at all reasonable times, to inspect the NIST MEP Center’s goods, services and promotional activities employing the Marks to ensure that such use is of proper quality and otherwise consistent with this Agreement.

3. **Duration and Termination:** This Agreement shall terminate immediately upon the Cooperative Agreement recipient no longer having a valid Cooperative Agreement for operation of a NIST MEP Center and all rights of the NIST MEP Center and its host organization to use the Licensed Marks shall immediately terminate. In the event of a breach of any of the terms and conditions of this License by the NIST MEP Center, NIST shall give the NIST MEP Center written notice of such breach. In the event the NIST MEP Center or its host organization does not cure such breach within thirty (30) days, NIST may immediately terminate this License and shall notify the NIST MEP Center in writing of such termination.
4. **Assignments and Sub-Licenses:** The use of the Licensed Marks and the rights granted the NIST MEP Center hereunder are not assignable but may be sub-licensed to the NIST MEP Center’s subrecipients under the same terms and conditions applicable to the recipient. Sub-licensed Marks must include the same terms and conditions as this section and be of the same scope as the NIST non-exclusive License to the NIST MEP Center.
5. **Sale or Change in Status of Licensee:** If the NIST MEP Center is dissolved, or if the NIST MEP Center (or the majority of the assets thereof) is sold to, acquired by or merged with another entity, or if the Cooperative Agreement recipient loses its status as an eligible applicant for an NIST MEP Center award, NIST shall have the right to terminate the use of the Licensed Marks at will.
6. **Validity and Ownership of Mark:** The NIST MEP Center agrees that it is prohibited from interfering with NIST’s rights in the Licensed Marks, including challenging NIST’s use, registration of, or application to register any of the Marks, alone or in combination with other words or designs. The Cooperative Agreement holder is further prohibited from attempting to register any Marks, or any confusingly similar mark, whether or not registered by NIST, alone or in combination with other words or designs, as a U.S. or foreign trademark, and from asserting trademark rights in such mark through the Cooperative Agreement holder or NIST MEP Center’s use. Any rights asserted by the NIST MEP Center in such mark shall vest in NIST, and any goodwill from use of such mark by the NIST MEP Center shall inure to the benefit of NIST.

iii. *Uses of Trademarks*

- 1) **Use of Marks:** In addition to the provisions of Section B immediately above, the NIST MEP Center shall abide by the following guidelines:
 - a. NIST considers the Licensed Marks to be its trademarks and service marks and holds them out to the public as such. The NIST MEP Center, in using any of the Licensed Marks that are or hereafter become federally registered, shall clearly indicate that the mark is federally registered with the U.S. Patent & Trademark Office and that it is the property of the National Institute of Standards and Technology, U.S. Department of Commerce. Such indication of registration shall be in the form of the "®" ("R in a circle") designation. The NIST MEP Center, in using any of the Licensed Marks that is not federally registered, shall clearly indicate that the mark is the property of the National Institute of Standards and Technology, U.S. Department of Commerce. Such indication shall be in the form of the "™" or "SM" designation. Where possible, a statement such as "The MANUFACTURING EXTENSION PARTNERSHIP is a federally registered trademark and service mark of NIST" or "The HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP™ is a trademark and service mark of NIST" shall also be used.
 - b. The NIST MEP Center shall include the following statement as a running link labeled "Trademarks" on its web site pages, as well as on any printed literature of the NIST MEP Center that includes any of the Licensed Marks: "MANUFACTURING EXTENSION PARTNERSHIP®, MEP®, ExporTech® and the interlocking hands logo are federally registered trademarks and service marks, and The HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP and depictions or representations thereof, are trademarks and service marks of the National Institute of Standards and Technology of the U.S. Department of Commerce."
 - c. The NIST MEP Center shall not use any of the Licensed Marks, or a confusing similar element or variant thereof, as a second level domain name.
 - d. The NIST MEP Center further agrees that it shall use the Licensed Marks in such a way that there does not exist any appearance of Government endorsement, authorization or affiliation of the Licensor with the Licensee.
- 2) **Infringement:** The NIST MEP Center is required to notify NIST of any potential infringement of the Licensed Marks of which the NIST MEP Center is aware, or reasonably should be aware. NIST retains the right to determine what constitutes infringement and the course of action to be taken to address it. The NIST MEP Center shall also notify NIST of any claims of which the NIST MEP Center is aware that the Licensed Marks are infringing the name, logo or trademark of another.
- 3) **Insolvency or Bankruptcy:** NIST shall have the right to immediately terminate the license if the Licensee discontinues business, or becomes insolvent, or if any action relating to the bankruptcy or insolvency of the NIST MEP Center is instituted.
- 4) **Governing Law:** This Agreement shall be interpreted and implemented in accordance with the Federal law.
- 5) **U.S. and Foreign Trademark and Service Mark Registrations:**

Licensee agrees to provide all lawful assistance, as reasonable, to Licensor should Licensor decide to register any of the Licensed Marks in the U.S. or foreign countries. Licensee shall comply with all applicable legal requirements governing trademark and service mark use, including but not limited to, registered user requirements. Licensee agrees that all use of the Licensed Marks by Licensee shall inure to the benefit of the Licensor.

- 6) **Indemnification:** The NIST MEP Center agrees to indemnify and hold NIST harmless from any and all claims, damages and attorneys' fees arising from the use of the Licensed Marks by the NIST MEP Center and its operations under the Agreement, except to the extent that any such claims, damages or attorneys' fees arose in connection with any act or failure to act by the U.S. Department of Commerce or any agency, department or subdivision thereof.
- 7) **Equitable Relief:** The NIST MEP Center recognizes and acknowledges that a breach by the NIST MEP Center of this Agreement may cause NIST MEP irreparable damage which cannot be readily remedied in monetary damages in an action at law, and may, in addition thereto, constitute an infringement of the Licensed Marks. In the event of any default or breach by the NIST MEP Center that could result in irreparable harm to NIST or NIST MEP or cause some loss or dilution of NIST's goodwill, reputation, or rights in the Licensed Marks, the NIST MEP Center agrees that NIST shall be entitled to seek immediate injunctive relief to prevent such irreparable harm, loss, or dilution in addition to any other remedies available.
- 8) **Prior Agreements:** This Agreement sets forth and contains the entirety of representations, understandings and agreements of the parties hereto and merges all prior representations, understandings and agreements. This Agreement may be amended only through a written instrument executed by a duly authorized representative of each of the Parties hereto.
- 9) **Web Domain Names:** NIST agrees to take such steps as are necessary to ensure that the NIST MEP Center's content is displayed at the appropriate, licensed domain name, as identified by the NIST MEP Center as the correct location for the public to view information about it.

2. Award Instrument

In accordance with the MEP Center authorizing statute at 15 U.S.C. § 278k(e)(1), the Federal Grant and Cooperative Agreement Act (31 U.S.C. Sections 6301-08) and the definition of "Cooperative Agreement" in 2 C.F.R. §200.1, financial assistance awards issued pursuant to the NIST MEP Center program are issued in the form of a Cooperative Agreement. A Cooperative Agreement is a funding instrument that provides for substantial involvement by and between NIST MEP and a non-federal entity receiving federal funding to support the operation of an NIST MEP Center. NIST's substantial involvement will generally include close collaboration with the recipient organization in developing and implementing the approved scope of work. *See also Section B.7. – Interactions with NIST and NIST MEP Funded Centers, of these MEP Center General Term and Conditions.*

3. Compensation

Compensation paid to NIST MEP Center personnel must be allowable as determined by the criteria set forth in 2 C.F.R. §§ 200.403-405 and 200.430-431. NIST MEP and NIST GMD will review all proposed NIST MEP Center personnel compensation, including proposed executive compensation, for allowability in accordance with these MEP General Terms and Conditions and 2 CFR §§ 200.403-405 and 200.430-431. This review will include an assessment of the reasonableness of proposed salaries in relation to industry and geographic standards. Any proposed NIST MEP Center compensation, including performance pay/bonus, that is above OPM Executive Level I (see <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>) will be required to provide supporting information and documentation establishing the allowability of such compensation levels. The review of NIST MEP Center compensation will occur at the time of award, annually as part of the renewal of funding, part of compliance reviews, and during any budget revisions made by the recipient during the life of the award. NIST MEP will provide NIST MEP Center's with instructions to submit the required information.

For purposes of these MEP General Terms and Conditions, NIST MEP Center personnel compensation includes salary, plus the value of any benefits, including but not limited to bonuses and commissions, such as, but not limited to, performance pay or bonus or short- and long-term incentive pay or bonus that are part of a recipient's or subrecipient's project budget.

4. Cooperative Agreement Award Periods

NIST MEP Centers will generally be funded pursuant to a multi-year Cooperative Agreement with a specified Period of Performance as described in the NOFO upon which the award is based and in the resulting Cooperative Agreement. Annual renewals of funding for an existing NIST MEP Center may be awarded without competition and may be increased or decreased from year- to-year of an award, contingent upon: positive or other than positive (probation) evaluation on program performance reviews in accordance with 15 U.S.C. Section 278k(g) (*See Section B.13. – Program Performance Reviews of these MEP Center General Terms and Conditions*); the non-federal entity's compliance with the NIST MEP General Terms and Conditions; continued relevance of the NIST MEP Center project to the mission and priorities of the NIST MEP program; and the availability of federal award funds and commensurate non-federal cost share.

5. Cost Sharing and Matching

In accordance with 15 U.S.C. Section 278k(e)(2) and 15 C.F.R. §290.4, and unless otherwise determined by law, the minimum non-federal cost share required for a NIST MEP Center Cooperative Agreements is 50 percent of the total approved project budget, which is determined on an annual basis. The NIST MEP statute requires that minimum cost share requirements must be met annually; therefore, there can be no carry forward of non-federal cost share from one year to the next.

A NIST MEP Center may voluntarily establish a cost share ratio exceeding the minimum statutory requirement. NIST MEP Centers that voluntarily commit to providing cost share in an amount greater than the minimum requirement are legally

bound to and must fulfill such non-federal cost share commitment. See the definition of “voluntary committed cost sharing” at 2 C.F.R. § 200.1.

If a NIST MEP Center 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 MEP CRMT and NIST Grants Officer. The budget modification request must include a detailed explanation for the requested reduction to the original amount of non-federal cost share pledged to an award and may result in a corresponding reduction to the project’s federal funding. Prior written approval of the NIST Grants Officer is required for any reduction to the amount of non-federal cost share. See 2 C.F.R. § 200.308(b)(7).

Non-federal cost sharing must be in accordance with the NIST MEP Center’s approved project budget and must adhere to the cost sharing provisions of 15 U.S.C. Section 278k(f)(3), 15 C.F.R. §290.4, 2 C.F.R. §200.306, Section B.03 of the DOC Standard Terms and Conditions, the requirements set forth in these NIST MEP General Terms and Conditions and in any Specific 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 and in Section D. of the DoC Standard Terms and Conditions. The disallowance of any cost share as a result of an audit could result in a NIST MEP Center not meeting its required cost share under the Cooperative Agreement and a refund being due the Federal Government for the excess federal share of funding.

A. Sources of Non-Federal Cost Share. Non-Federal cost share may be contributed by the NIST MEP Center, subrecipients, and third parties. However, contractors and NIST 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 NIST MEP Center clients, without the prior written approval of the NIST Grants Officer based on a detailed written request and justification submitted by an NIST MEP Center.

B. Documenting Cash Contributions of Non-Federal Cost Share. NIST MEP Centers must have documented contemporaneous 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 NIST MEP Center to the contributor acknowledging the contribution, a bank account statement displaying an electronic funds transfer from a cash contributor to the NIST MEP 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. §200.306(b).

C. Documenting Third-Party In-kind Contributions. Per 2 C.F.R. §200.1, Third-party in-kind contributions are defined as the value of non-cash contributions (*i.e.*, property or services) that: (1) Benefit a federally assisted program or project; and (2) Are contributed by non- federal third parties, without charge, to a non- federal entity under a federal award.

Third-party in-kind contributions are credited towards a NIST MEP Center’s non-federal share contribution in accordance with 2 C.F.R. §200.306 to the extent that such third-party contributions are reflected in the approved project budget.

Third-party in-kind contributions must be evidenced by contemporaneous written documentation that is signed by both the contributor and the NIST MEP Center, and the documentation must describe the contribution, its value, and when and for what purpose it was donated. For this purpose, a NIST MEP 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>.

NIST MEP Centers must provide documented evidence of all third-party in-kind contributions to a NIST MEP Center project upon request from NIST/MEP, the MEP Grants Officer or by a duly authorized auditor or investigator. In addition, as set forth below, certain information concerning the valuation of third-party contributions must be submitted to the NIST MEP CRMT and NIST Grants Officer as part of a NIST MEP Center's required plans:

- A comprehensive listing of all third-party in-kind contributions to the NIST MEP Center project;
- The value of each third-party in-kind contribution established in accordance with 2 C.F.R. §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 NIST MEP Center for purposes of allocating third-party in-kind contributions to the MEP award. See 2 C.F.R. §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. §200.306, and in these MEP Center General Terms and Conditions, to the extent that such third-party contributions are reflected in the approved project budget. At a minimum, the following documents should be maintained by the NIST MEP Center and made available upon request to NIST/MEP, the MEP Grants Officer or to a duly authorized auditor or investigator:

- Subaward Agreement with detailed budget;
- Documentation to support valuation of in-kind non-federal cost share being contributed by the subrecipient (if any);
- Subrecipient Financial Reporting to the NIST MEP Center and reconciliation of such reporting by the NIST MEP Center; and
- Documented evidence of all cost share contributions.

6. Cybersecurity Requirements

NIST MEP Center activities increasingly rely on the generation, storage, and transmission of data, some of which is proprietary business information. The unauthorized disclosure of information that NIST MEP Centers handle could be expected to have a serious adverse effect on the MEP program, a NIST MEP Center, a NIST MEP Center Subrecipient and/or upon a NIST MEP Center client operations and assets. The importance of data handled within the MEP program

presents increasing risk not only for NIST MEP Centers, NIST MEP Center Subrecipient(s) and the U.S. manufacturing clients served by NIST MEP Centers and its subrecipients, but also for the manufacturing supply chains in which NIST MEP Center client organizations operate, and for U.S. economic and national security.

Sensitive data handled by NIST MEP Centers and NIST MEP Center Subrecipient(s) must be protected from potential security breaches via well-accepted data management and cybersecurity best practices, and in accordance with applicable laws and regulations. NIST MEP Center data management and cybersecurity practices should be integral parts of overall NIST MEP Center risk management activities. NIST MEP Centers should take necessary steps to ensure that their activities not only protect the confidentiality of data, but also the integrity and availability of data, including supporting the continuity of operations of NIST MEP Centers, client organizations of NIST MEP Centers, and the manufacturing supply chains in which the client organizations operate.

In this connection, NIST MEP Centers must comply with 2 C.F.R. §200.303, "Internal controls." Specifically, 2 C.F.R. §200.303(e) provides that "[t]he non-Federal entity must take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality."

These NIST MEP General Terms and Conditions provide guidance to NIST MEP Centers and NIST MEP Center Subrecipients pertaining to the cybersecurity protections that NIST MEP Centers and its subrecipients must have in place in order to effectively safeguard personally identifiable information, as well as business identifiable information and other sensitive business information, in accordance with 2 C.F.R. §200.303(e). NIST MEP requires all NIST MEP Centers to implement this guidance to strengthen the overall internal controls and risk management practices conducted by the MEP program and to ensure NIST MEP Center compliance with 2 C.F.R. §200.303(e). Each NIST MEP Center has a unique operating environment; thus, multiple guidance options are provided below. Each MEP Center's implementation approach must be discussed and planned with the CRMT and confirmed in writing to NIST as part of a MEP Center's annual review.

- Guidance Option 1: Implement basic cyber hygiene by following the guidance contained in NIST Interagency Report (NISTIR) 7621.
- Guidance Option 2: Implement flexible but comprehensive guidance contained in the NIST Cybersecurity Framework.
- Guidance Option 3: Apply rigorous protection to the confidentiality of Center information by implementing NIST Special Publication 800-171.

Resources referenced herein may be accessed at the NIST MEP website at <https://www.nist.gov/mep/cybersecurity-resources-manufacturers>.

The CRMT for each NIST MEP Center will monitoring progress in implementing and maintaining cybersecurity protections as part of annual reviews. If a NIST MEP

Center experiences a cybersecurity intrusion, they are required to notify NIST within 15 calendar days to provide details of the incident and the remediation plan. NIST MEP Centers must provide documented evidence of its cybersecurity protocol upon request by NIST/MEP or by the MEP Grants Officer.

7. Interactions with NIST, Other NIST MEP Center's, and Outside Organizations

It is anticipated that a NIST MEP 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 manufacturers.

To facilitate a more rapid transfer of advanced manufacturing technology on a national scale and to avoid duplication of effort, the NIST MEP Center is expected to cooperate with NIST, other NIST MEP Centers, and the other organizations identified by NIST MEP that provide value to small and medium-sized manufacturers in areas of technology (e.g., Manufacturing USA Institutes) or business practices 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 substantial involvement of NIST MEP staff in connection with a MEP Center Cooperative Agreement include, but are not limited to, direct involvement in helping a NIST MEP Center define, understand, and resolve problems in the organization's operations and promoting best practices and continuous improvement. NIST MEP may recommend that a NIST MEP Center leverage the expertise or experience of outside consultants or MEP National Network™ peers with special expertise or experience.

NIST MEP may take other appropriate steps, or provide other appropriate assistance, to ensure that the NIST MEP Center operates in a manner that most effectively promotes U.S. manufacturing competitiveness, including initiating and facilitating revision of required plans (or other required plans) as soon as revisions are identified by either NIST MEP or the NIST MEP Center.

8. MEP Core Management and Oversight Functions.

The operator of a NIST 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 NIST MEP Cooperative Agreement, accountability to directly manage and execute all functions material and inherent to the successful operation of a NIST MEP 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 NIST MEP Center;
3. **Human resources management**, including the responsibility for selecting individuals for NIST MEP Center employment and for selecting contractors and the direction, control, and performance management of MEP 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. §200.302, to ensure that costs charged against a NIST MEP award are reasonable, allocable, and allowable under applicable federal cost principles; and adherence to the terms and conditions of the NIST MEP award.

9. NIST MEP Center Director

For purposes of a NIST MEP Cooperative Agreement, the Director of a MEP Center must be a full-time employee of the recipient organization.

10. Notifications and Prior Approvals

The NIST MEP Center 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. §§200.308 and 200.407, and in the DOC Standard Terms and Conditions. Failure to obtain such prior written approval may result in a MEP Center being in material non-compliance with the terms and conditions of a MEP Center Cooperative Agreement and result in appropriate enforcement action under the award.

For program or budget changes requiring prior approval from the NIST Grants Officer, NIST MEP Center must work with the NIST MEP CRMT to update and amend, as necessary, the MEP Center's required plans. Approvals and modifications 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. NIST MEP Center budget or programmatic changes requiring notification to and prior approval from the MEP Grants Officer include, but are not limited to, the following items:

- A. **Scope of Work Changes.** Changes to the scope of work or objective of the NIST MEP Center project even if there is no associated budget revision requiring prior approval. A change in the scope of work or objective of the program may occur, for example, based on material changes to the activities to be performed, or contributions to be made, by the NIST MEP Center, subrecipients, contractors, or third-party contributors, including but not limited to the development of tools, systems, or other resources not discussed in the NIST MEP Center's required plans and included in the currently approved project budget(s).

- B. Key Personnel Changes.** Additions or changes in Key Personnel or their absence for more than one (1) month or a .08 percent reduction in time devoted to the NIST MEP Center's project. Key Personnel include Center Directors and Chief Financial Officers, as well as MEP Center staff identified as key personnel as part of a NIST MEP Center's required plans or as identified by the MEP Grants Officer in a specific award condition. In this connection, key personnel may also include managers and technical staff whose work on the NIST MEP Center's project directly and materially impacts the NIST MEP Center's performance under an MEP award.
- C. Equipment Purchases.** Acquisitions of equipment requires prior approval by the MEP Grants Officer, unless the purchase of such equipment is specifically identified in the currently approved project budget.
- D. Budget Changes, Revisions, Transfers.** Budget changes, revisions and transfers that require prior approval from the NIST Grants Officer as identified in 2 C.F.R. §200.308(c), or in Section B.04 of the DOC Standard Terms and Conditions.
- E. Encumbrances and Organizational Changes.** A recipient or subrecipient of a NIST MEP Center Cooperative Agreement may not encumber, 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 or the pass-through entity (which, in turn, may need to obtain prior approval from the MEP Grants Officer). See Section A.04. of the DOC Standard Terms and Conditions.
- F. Changes to a NIST MEP Center Recipient or Subrecipient.** A recipient of a NIST MEP Center cooperative agreement must immediately notify the NIST MEP CRMT and GMD in writing concerning any organizational changes, such as, but not limited to, name changes or changes to an EIN or SAM.gov unique entity identifier number (UEI).
- G. Subawards, Contracts, and Third-Party Contributor Agreements.** During the NIST MEP Center's current operating year, subawards, third-party contributor agreements and contracts with budgeted amounts (combined federal and non-federal) that are equal to, or more than the current Simplified Acquisition Threshold (41 U.S.C. Section 134), must be submitted for prior written approval by the NIST Grants Officer in accordance with 2 C.F.R. §200.308(c)(6) to the extent that such agreements are not reflected in the currently approved project budget.

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 or pursuant to these MEP Center Terms and Conditions.

For subawards and contracts to or with the same (or affiliated) entity that are equal to or more than the current Simplified Acquisition Threshold, in lieu of submitting copies of each agreement, NIST MEP 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 threshold for prior approval. Requests to submit a summary list, in lieu of copies of individual agreements, should be submitted to the NIST MEP CRMT. Permission or rejection of these items in the approved budget will be communicated in writing by the NIST Grants Officer.

The review of subawards and contracts is necessary for verifying estimated costs and proposed activities, and for ensuring compliance with the terms and conditions of the award. NIST will not review the agreements for legal sufficiency. NIST MEP Centers may receive a communication from the MEP Grants Officer noting the agreement's incorporation into the award instead of a formal award amendment (CD-451).

- H. Cost Share.** Per 2 C.F.R. §200.308(c)(7), NIST MEP Centers are required to submit, for prior Grants Officer approval, budget revisions concerning any changes in source or amount of annual cost share for a NIST MEP Cooperative Agreement.

The NIST MEP Center is responsible for ensuring that all costs charged against, and that all non-federal contributions credited to, a NIST MEP award adhere to the substantive and documentation requirements set forth in 2 C.F.R. part 200 and with the terms and conditions of a MEP Center Cooperative Agreement, including these MEP General Terms and Conditions and the DOC Standard Terms and Conditions.

- I. Unexpended Program Income (UPI).** Carry forward of unexpended program income, as required by these NIST MEP General Terms and Conditions. (*See Section B.20 – Unexpended Program Income (UPI) of these MEP Center General Terms and Conditions*).
- J. Unexpended Federal Funds (UFF).** Carry forward of unexpended federal funds from prior funding period(s), as required by these NIST MEP General Terms and Conditions. (*See Section B.19 – Unexpended Federal Funds (UFF) of these MEP Center General Terms and Conditions*).
- K. Foreign Travel.** The NIST MEP Center must comply with the provisions of the Fly America Act (49 U.S.C. Section 40118). The Fly America Act generally requires that federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission. The implementing regulations of the Fly America Act are found at 41 C.F.R. §301-10.131 through 301-10.143. *See also* the Department of Commerce Financial Assistance Standard Terms and Condition at Section G.05.d., Foreign Travel.

If a foreign air carrier is anticipated to be used for any portion of travel under a NIST MEP Center award, the non-federal entity must receive prior written approval from the MEP Grants Officer. When requesting such approval, the non-

federal entity must provide a justification in accordance with 41 C.F.R. §301-10.142, which requires the non-federal entity to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-federal entity meets one of the exceptions to the regulations. See *also* Section G.05.d. of the current Department of Commerce Financial Assistance Standard Terms and Conditions.

11. Oversight Boards

In accordance with the NIST MEP authorizing statute, 15 U.S.C. Section 278k(k), each NIST 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 NIST MEP Oversight Board Standards (Standards), which are incorporated by reference into these Standard Terms and Conditions and available via NIST MEP's Enterprise Information System (MEIS) (<https://meis.nist.gov>). As required by the NIST MEP authorizing statute, the Standards address:

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

Importantly, an Oversight Board must establish by-laws to govern the operation of the Oversight Board, which must include policies to minimize conflicts of interest, including such policies relating to disclosure of relationships and recusal as may be necessary to minimize conflicts of interest. The by-laws adopted by the Oversight Board must be submitted to the MEP Director. See 15 U.S.C. Section 278k(k)(4).

As noted in the Standards, the requirements for an individual Oversight Board differ depending on the type of non-federal entity that receives an NIST MEP Center Cooperative Agreement. The Standards address the requirements that must be adhered to by the NIST MEP Center operator, as well as the mandatory information that must be included in the by-laws submitted to the NIST MEP Director. It is the responsibility of the Board to implement and recommend best practices depending on the type of Oversight Board. In addition, the non-federal entity receiving the NIST 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 NIST MEP Center's Oversight Board does not satisfy the requirements of this section or the Standards at any time during the term of an NIST MEP Center Cooperative Agreement, the NIST MEP Center must promptly disclose the deficiencies to the NIST MEP CRMT, 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 NIST MEP Center.

12. Program Income

“Program income” is defined in 2 C.F.R. § 200.1 and “means gross income earned by the non-federal entity that is directly generated by a supported activity or earned as a result of the federal award during the period of performance, except as provided in §200.307(f). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with federal award funds. Interest earned on advances of federal funds is not program income. Except as otherwise provided in federal statutes, regulations, or the terms and conditions of the federal award, program income does not include rebates, credits, discounts, and interest earned on any of them.” **To the extent available, a MEP Center and its subrecipients must disburse funds available from program income before requesting additional federal cash payments. See 2 C.F.R. § 200.305(b)(5).**

NIST MEP Centers that generate program income must satisfy the following requirements:

- A. Treatment of Program Income.** In accordance with 2 C.F.R. §200.307, all program income generated pursuant to a NIST 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 NIST MEP Center or MEP Center subrecipient (as the case may be) in accordance with the requirements of this term. NIST MEP Centers and its subrecipients must follow the financial management requirements in 2 C.F.R. § 200.302, especially as they relate to identifying and tracking the collection and expenditure of program income generated as a result of the NIST MEP award (*see also Section A.8. – Internal Controls of these MEP Center General Terms and Conditions*). Consistent with the governing requirements for financial management and access to records for this award, NIST reserves the right to request additional information and documentation regarding a NIST MEP Center’s and/or a MEP Center’s subrecipient accounting, safeguarding and expenditure of program income.

NIST MEP Centers are required to receive prior written approval from the MEP Grants Officer before expending program income that exceeds any previously approved amount. Requests are to be submitted to the MEP Grants Officer for review and approval.

- B. Program Income Earned by NIST MEP Centers and by MEP Center Subrecipients.** In accordance with 2 C.F.R. §200.307(e) and Section B.05. of the DOC Standard Terms and Conditions, program income earned by a NIST MEP Center or by a NIST MEP Center subrecipient during a Budget period (as defined in 2 C.F.R. 200.1) must be used as follows:
- 1. First,** program income earned by a NIST MEP Center or by a NIST MEP Center subrecipient during a Budget period must be used to finance the required non-federal share of the project (*see 2 C.F.R. § 200.307(e)(3)*). Program income to be used by an MEP Center as non-federal share must be explained in sufficient detail in the NIST MEP Center’s required plans or in a separate

- written communication to the NIST MEP CRMT and to the NIST Grants Officer and is subject to the prior written approval of the NIST Grants Officer. MEP Centers are responsible for approving its subrecipients use of program income as non-federal share. See 2 C.F.R. § 200.332(a), (d).
2. **Second**, program income earned during a Budget period in excess of that needed to meet the non-federal share requirement must be added to the funds committed to the project by the NIST MEP Center or by the NIST MEP Center subrecipient (as the case may be), and must be used for the purposes and under the conditions of the NIST MEP award or subaward. This is commonly referred to as the “additive approach” (see 2 C.F.R. § 200.307(e)(2)). Program income to be expended by an MEP Center under the additive approach must be explained in sufficient detail in the NIST MEP Center’s required plans or in a separate written communication to the NIST MEP CRMT and to the NIST Grants Officer and is subject to the prior written approval of the NIST Grants Officer. MEP Centers are responsible for approving its subrecipients use of program income pursuant to the additive method. See 2 C.F.R. § 200.332(a), (d).
 3. **Third**, program income earned during a Budget period in excess of that needed to meet the required non-federal share, and after applying the additive method, must be deducted from total allowable costs for the subject Budget period to determine the net allowable costs for the subject Budget period. This is commonly referred to as the “deductive approach.” See 2 C.F.R. § 200.307(e)(1). In lieu of the deductive approach or in combination with the deductive approach, NIST MEP Centers that have remaining program income at the end of a Budget period may request a carry forward of excess program income in accord with the requirements set forth in *Section B.20. – Unexpended Program Income (UPI) of these MEP General Terms and Conditions*. Program Income earned by a subrecipient in excess of that needed to meet the subrecipient’s required non-federal share, and after applying the additive method, must be remitted to the Center by the subrecipient, and shall be treated by the MEP Center consistent with the requirements of this subsection.

13. Program Performance Reviews

Renewal of funding for NIST MEP Centers is contingent, in part, upon successful annual reviews, as well as panel reviews in Years 3 and 8 and Secretarial evaluations in Year 5 in accordance with 15 U.S.C. Section 278k(g) and 15 C.F.R. §290.8. NIST MEP also measures a NIST MEP Center’s performance through client project follow-up conducted by NIST MEP pursuant to *Section B.14. – Post Project Client Follow-Up of these MEP General Terms and Conditions*.

A. Annual Reviews and Renewal of Funding. During each year of operation , NIST MEP will conduct an annual review of the NIST MEP Center. This review will focus on:

- the NIST MEP Center’s strategic alignment to NIST MEP’s overall program objectives and strategic plan;
- NIST MEP Center’s activities;
- progress and performance in implementing the NIST MEP award;
- lessons learned and best practices;
- monitoring of subrecipients;

- resource expenditures, including review of executive compensation;
- utilization of federal funds and non-federal cost share;
- unexpended program income and expenditure plans;
- activities planned for the next year;
- conflicts of interest of NIST MEP Center employees, board members and/or subrecipients;
- proposed changes to the project plan and budget for the new award period; and
- such other programmatic and/or financial management areas of concern that are germane to the successful operation of a MEP Center, as determined by NIST.

The NIST MEP Center will be provided guidelines on the format for the Annual Review approximately 30 calendar days prior to the review. The results of the Annual Review will be communicated to the NIST MEP Center in draft form, which will then have an opportunity to provide comments on the draft report. Following receipt and consideration of these comments, NIST will provide a copy of the final Annual Review to the NIST MEP Center and will notify the NIST MEP Center in writing of the final recommendations and/or action items for the MEP Center.

- B. Panel Evaluations.** NIST MEP will conduct a panel evaluation during the third and eighth years of each NIST MEP Center's operation, in accordance with 15 U.S.C. Section 278k(g)(1)(A). The evaluation will be conducted by a panel of private experts, none of whom being connected to the NIST MEP Center being evaluated by the panel, and federal officials. An official of NIST shall be appointed as the panel's chairperson. The NIST MEP Center will be evaluated in accordance with the performance measures described in 15 U.S.C. Section 278k(g)(3). Within 30 calendar days following each panel evaluation, a final Panel Summary Report will be provided to the NIST MEP Center noting the panel's determination of whether the MEP Center's performance is positive, observations, deficiencies (if any), opportunities for performance improvements and commendations on the NIST MEP Center's performance.

Upon receipt of the final recommendations from NIST, NIST MEP Centers must, as appropriate, incorporate such recommendations into the required plans and submit revised documents to NIST for approval.

- C. Secretarial Evaluations.** In the fifth year of a NIST MEP Center's operation, the MEP Director and MEP Deputy Director, under authority delegated by the Secretary of Commerce and by the NIST Director, will conduct a review of the NIST MEP Center. The NIST MEP Center will be evaluated in accordance with the performance measures described in 15 U.S.C. Section 278k(g)(3). Following each evaluation, a written report will be provided to the NIST MEP Center, discussing whether the MEP Center's performance is positive, as well as noting observations, deficiencies (if any), recommendations for improvement and commendations on the NIST MEP Center's performance. NIST will notify the NIST MEP Center in writing of the final recommendation stemming from the Secretarial Evaluation. Upon receipt of the final recommendations from NIST, NIST MEP Centers must, as appropriate, incorporate such recommendations

into the required plans and submit revised documents to NIST for approval.

- D. POSITIVE EVALUATIONS.** If a Panel or Secretarial Evaluation of a NIST MEP Center is positive, the NIST MEP Director, under authority delegated by the Secretary of Commerce and the NIST Director, may continue to provide financial assistance for the NIST MEP Center:
1. In the case of an evaluation occurring in the third year of a NIST MEP Center, through the fifth year of the NIST MEP Center;
 2. In the case of an evaluation occurring in the fifth year of a NIST MEP Center, through the eighth year of the NIST MEP Center; and
 3. In the case of an evaluation occurring in the eighth year of a NIST MEP Center, through the tenth year of the NIST MEP Center.
- E. OTHER THAN POSITIVE EVALUATIONS PROBATION.** If an evaluation of a NIST MEP Center is other than positive, the NIST MEP Director, under authority delegated by the Secretary of Commerce and by the NIST Director, must place the NIST MEP Center on probation. The period of probation begins on the date that the NIST MEP Center receives notice under 15 U.S.C. Section 278k(g)(5)(B)(i) and ends on the date that the reevaluation is complete under 15 U.S.C. Section 278k(g)(5) (B)(iii). Upon receipt of a Panel Summary Report in connection with an “other than positive” evaluation, the NIST MEP Center must submit a Performance Improvement Plan (PIP) no later than 30 calendar days from receipt, unless such deadline is otherwise extended by NIST. The PIP must outline each deficiency and the NIST MEP Center’s plan for remedying such deficiency within the 12-month probation period, and is subject to the approval of the MEP Director.
1. **NOTICE AND REEVALUATION.** If a NIST MEP Center receives an evaluation that is other than positive, the evaluation panel or NIST MEP Director, as applicable, will:
 1. Notify the NIST MEP Center of the reason, including any deficiencies in the performance of the NIST MEP Center identified during the evaluation;
 2. Assist the NIST MEP Center in remedying the deficiencies by providing the NIST MEP Center, not less frequently than once every 3 months, an analysis of the NIST MEP Center, if considered appropriate by the panel or NIST MEP Director, as applicable; and
 3. Reevaluate the NIST MEP Center not later than 1 year after the date of the notice under 15 U.S.C. Section 278k(g)(5)(B)(i).
 2. **CONTINUED SUPPORT DURING PERIOD OF PROBATION**
In General – The NIST MEP Director may continue to provide financial assistance under 15 U.S.C. Section 278k(g)(5)(C)(i) to a NIST MEP Center during the probation period.
 3. **POST PROBATION.** After the period of probation, the NIST MEP Director shall not provide any financial assistance unless the NIST MEP Center has received a positive evaluation under 15 U.S.C. Section 278k(g)(5)(C)(ii).
 4. **FAILURE TO REMEDY.** If a NIST MEP Center fails to remedy a deficiency or to show significant improvement in performance before the end of the probation period under 15 U.S.C. Section 278k(g)(5), the NIST MEP Director will conduct a competition to

select an operator for the NIST MEP Center under 15 U.S.C. Section 278k(g)(6).

14. Post Project Client Follow-Up

On a quarterly basis, NIST MEP Centers are required to provide client and project data in a specified format (OMB Control Number 0693-0021) to NIST MEP. After client and project data is collected by NIST MEP, the data will then be securely transferred to the organization identified by NIST MEP for post-project follow-up data to be obtained. Once post-project follow-up data is obtained, it is securely transferred back to NIST MEP and stored in the MEP Enterprise Information System (MEIS). All NIST MEP Centers are provided access to MEIS. Once post-project follow-up data is in MEIS, NIST MEP Centers will be required to verify any outliers identified by NIST MEP. For detailed information and requirements regarding the NIST Reporting, Survey, or Outlier Verification Process, NIST MEP Centers may download a copy of the "Reporting Guidelines" document from the MEIS Dashboard under the MEP Documents widget, the requirements of which are incorporated by reference into these MEP General Terms and Conditions.

15. Reporting Requirements

Unless otherwise required by a specific award condition, the following reporting requirements apply to MEP Cooperative Agreements:

- A. Financial Reports.** The NIST MEP Center must submit an SF-425, Federal Financial Report, into the designated reporting system (e.g., MEIS, Electronic Research Administration (eRA) System, etc.) on a semi-annual basis after the sixth and twelfth month of each Budget period (operating year). Reports will be due within 30 calendar days after the end of each semi-annual reporting period. Per C.F.R. §200.344(a), a subrecipient must submit all final financial reports to the pass-through entity (NIST MEP Center), no later than 90 calendar days after the end date of the Period of Performance. The NIST MEP Center should submit, via the designated system, a final SF-425 within 120 calendar days after the end of the award's Period of Performance.
- B. Technical/Performance Reports.** The NIST MEP Center must submit a Technical/Performance Report (completing all required fields in the designated system) on a semi-annual basis after the sixth and twelfth month of each Budget period (operating year). Reports are due in the designated reporting system no later than 30 calendar days following the end of each reporting period. Per C.F.R. §200.344(a), a subrecipient must submit all final technical/performance reports to the pass-through entity (NIST MEP Center), no later than 90 calendar days after the end date of the Period of Performance. The NIST MEP Center must submit final Technical/Performance reports within 120 days after the end of the award's Period of Performance.
- C. Operating Outcome Plan.** NIST MEP Centers must maintain updated operating outcomes on file at NIST. The Operating Outcome Plan describes in detail the NIST MEP Center's specific goals and objectives over a multi-year timeframe. Operating Outcomes from the plan are reviewed during the NIST MEP Center's Annual Review and, if necessary, revised as part of the NIST MEP Center's Annual Review and renewal process. All changes to the Operating Outcome Plan should be submitted via MEIS for review and approval by NIST.

D. Other MEP Reporting. The following MEP reporting requirements are due on a quarterly basis: NIST MEP Center information (information, locations, contacts, staff, board members, partners, state funding partners, and progress data), success stories, and client and project information. These submissions are due in MEIS within the first month of each reporting quarter.

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 current Department of Commerce Financial Assistance Standard Terms and Conditions. Any reporting deadline extension requests must be submitted to and approved in writing by the NIST Grants Officer.

16. Required Plans

The tasks and deliverables to be performed by the NIST MEP Center pursuant to a MEP Cooperative Agreement and the associated costs are detailed in the approved: MEP Center Cooperative Agreement documentation, including the funding proposal documents, revised MEP Center scope of work, intellectual property plan, and multi-year and single year budget(s). The required plans must be consistent in form and substance with NIST MEP guidelines, which may be amended from time to time. Guidance for the development and submission of required plans can be found in the MEP Center Cooperative Agreement and in the NIST MEP Multi-Year Renewal and Reference Guidance, the requirements of which are incorporated by reference into these MEP General Terms and Conditions.

If any modifications are necessary to the required plans or to other plans during the operating period, these modifications must be submitted to the NIST MEP CRMT in writing. In accordance with 2 C.F.R. §200.407, actions requiring prior approval are not effective unless, and until, approved in writing by the NIST Grants Officer. These modifications will be incorporated as an amendment or Administrative Change Letter (ACL) to the Cooperative Agreement. NIST MEP Center should contact the NIST MEP CRMT if the NIST MEP Center is unsure of which required plans apply to the NIST MEP Center.

17. Signatory Authority for Award Documents

The signatory authority for the recipient of a MEP Center Cooperative Agreement must be a duly authorized representative of the recipient and must possess the legal authority to bind the recipient to terms and conditions of an NIST MEP Center Cooperative Agreement.

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-425, Federal Financial Report; and
- All other required forms, agreements, certifications, and other documents related to an NIST MEP Center Cooperative Agreement that are required to be executed by an authorized representative of the recipient.

18. Succession Planning

Succession planning is a strategic approach to ensure the necessary talent and skills are available, and essential knowledge and abilities are maintained for when employees in key positions leave. Succession planning strategies can involve both internal staff development and hiring from outside. Effective succession planning is critical to reduce the likelihood of operational disruptions due to extended vacancies in key positions and to ensure long-term success of an institution. The succession planning process involves the board, executive management, and all other employees who manage staff. The process can vary depending on an institution's needs and structure; however, the main objectives are to:

- Identify critical workforce positions, proactively develop a diverse pool of potential successors, and encourage a culture that supports knowledge transfer and employee development;
- Build human resource programs that attract and retain qualified individuals to the institution; and
- Implement a framework that identifies the competency requirements of critical positions, evaluates potential candidates, and develops required competencies, skills, and qualifications through planned development initiatives.

NIST MEP Centers will be required during the annual renewal process to provide a succession plan to be reviewed and approved by the MEP CRMT. Once approved, the succession plan will be posted in MEP's Enterprise Information System (MEIS) and provided to the NIST Grants Officer to be placed in the Official Award File. NIST MEP will provide guidance on the elements NIST MEP Centers should focus on when developing a succession plan for review.

19. Unexpended Federal Funds (UFF)

If a NIST MEP Center has UFF at the end of a Budget period (operating year), the UFF will be deobligated from the subject MEP Center Cooperative Agreement. However, a NIST MEP Center may submit a written request to the NIST Grants Officer requesting approval to carry forward some or all of those funds into the next Budget period. Requests will be approved or denied in writing by the NIST Grants Officer.

There are two options available for UFF, as outlined below:

Option 1 – Offset: If a NIST MEP Center has UFF at the end of its current Budget period (operating year), and the NIST MEP Center requests to carry forward UFF to be included in its annual award amount in the next operating year, the NIST MEP Center's new federal funding will be reduced/offset 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 NIST MEP Center's multi-year budget and approved in writing by the NIST Grants Officer.

Option 2 – Carry Forward: If a NIST MEP Center has UFF at the end of its current Budget period (operating year), and the NIST MEP Center wishes to carry forward UFF above its annual award amount into the next operating year, then the NIST MEP Center must include in its required plans a request explaining why the funds were not expended in the current operating year and how the UFF will be applied in the next operating year to expand the NIST MEP Center's operations. A NIST MEP

Center wishing to carry forward UFF above its base award amount must also provide the requisite amount of non-federal cost share during the operating year in which the UFF will be expended by the NIST MEP Center. Cost share may not be carried forward from a prior Budget period.

If the NIST Grants Officer, in consultation with NIST MEP, approves the NIST MEP Center's request, then the UFF from the current operating year will be applied towards the NIST funding for the next operating year as specifically directed in writing by the NIST Grants Officer.

20. Unexpended Program Income (UPI)

UPI is program income (*see Section B.12. – Program Income of these MEP Center General Terms and Conditions*) in excess of what is required annually to meet the non-federal portion of the annual operating budget, and that has not been disposed of during the current Budget period using either the additive and/or deductive methods as described in 2 C.F.R. § 200.307. NIST MEP and the NIST Grants Office will verify the amount of UPI the NIST MEP Center has remaining after the annual SF-425 is received and reconciled. NIST MEP Centers should plan to dispose of all program income before the end date of the current Budget period to the maximum extent possible and, in accord with the requirements of 2 C.F.R. § 200.305(b)(5), MEP Centers must disburse funds available from program income before requesting additional federal cash payments.

However, with prior approval from the MEP Grants Officer, UPI may be carried forward by the NIST MEP Center to the subsequent Budget period in accordance with the below requirements:

- A.** The NIST MEP Center is required to reinvest all UPI carried forward as well as all future program income strategically into the projects that are being carried out under the base award. NIST MEP Centers requesting UPI carry forward will be required to provide an expenditure plan at the end of the operating period and budget revisions that describes how the NIST MEP Centers UPI will be strategically reinvested into the projects that are being carried out under the award. The expenditure plan will be reviewed by the NIST MEP CRMT, NIST MEP Management and the NIST Grants Officer. The MEP Grants Officer will provide the NIST MEP Center with written approval or denial of an expenditure plan request to carry forward UPI. If the expenditure plan is denied, NIST MEP will reduce the amount of MEP Center federal funding in the Budget period immediately following the Budget period in which the UPI was generated in accordance with the deductive approach described in 2 C.F.R. 200.307(e)(1).
- B.** The NIST Grants Officer will generally only approve the carry forward of UPI in an amount that is 50 percent or less of the annual federal funding amount for the subject MEP Center. However, based on the explanation provided by a NIST MEP Center, the NIST Grants Officer may approve the carry forward of UPI in an amount greater than 50 percent of a NIST MEP Center's annual federal funding amount. Such approvals will generally be limited to instances where large amounts of UPI resulted from extraordinary circumstances faced by a NIST MEP Center. The NIST Grants Officer will provide the NIST MEP Center with written approval or denial of a request to carry forward UPI.

NIST MEP funding may be withheld any time during a MEP Center Cooperative Agreement unless and until a NIST MEP Center's UPI level is 50 percent or less of the annual federal funding amount.

- C. Final Budget period of the award's Period of Performance** - NIST MEP Centers that have a UPI balance at the start of the last Budget period of the award's Period of Performance will have the NIST MEP funding level offset equal to the balance of UPI derived from the NIST MEP funding (which will be verified against the SF-425 and required multi-year budget documents), See 2 C.F.R. § 200.307(e)(1). NIST MEP Centers will be required to use the UPI in place of the offset NIST MEP funding and the MEP Center's cost share contributions (as applicable) during the final Budget period of a MEP Cooperative Agreement, and to maintain the same (or higher) level of effort in operating the MEP Center as provided by the required plans.
- D. End of the award period of performance** - If the NIST MEP Center has a UPI balance at the end of the MEP Center Cooperative Agreement's Period of Performance, NIST will apply the deductive approach described in 2 C.F.R. § 200.307(e)(1) to such UPI and will notify the NIST MEP Center, during the award closeout, with the protocol for returning any excess federal funds to NIST.