



NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

Case Number: I09030017

Page 1 of 1

We received an allegation that funds from eleven NSF awards to a university¹ had been misused. We investigated and determined that the allegation was substantiated, and referred the matter to the appropriate United States Attorney's Office.² Ultimately the university agreed to resolve the issue entering into a civil settlement, returning award funds, and entering into a five-year compliance agreement. The settlement and compliance agreement are attached.

This case is closed with no further action taken.

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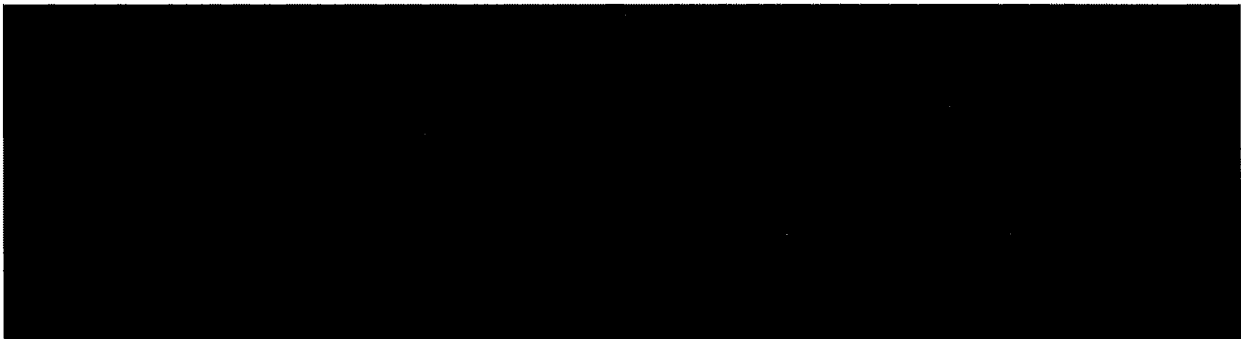
SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the National Science Foundation ("NSF"), and [REDACTED] University [REDACTED] (hereinafter collectively referred to as the "Parties"), through their authorized representatives.

RECITALS

A. [REDACTED] is a private, not-for-profit educational institution located in [REDACTED]
[REDACTED]

B. This Agreement concerns the following NSF awards under which [REDACTED] submitted or caused to be submitted claims for payment to NSF: [REDACTED]



(hereinafter collectively referred to as the "Awards"). NSF granted the Awards to [REDACTED] to support [REDACTED] investigators largely at the [REDACTED]

[REDACTED] represented that many of the Awards would support construction of the [REDACTED] [REDACTED] and would fund related [REDACTED] salaries, work materials, expenses, and equipment. [REDACTED]

Professor of [REDACTED] was the principal investigator for the research to be conducted with funding from the Awards.

C. [REDACTED] acknowledges that the terms of the Awards and applicable federal regulations required that [REDACTED] ensure that funds from the Awards be used only for the purposes and under the conditions for which the Awards were granted, and specifically required, *inter alia*, that [REDACTED]:

- (1) have “[e]ffective control over and accountability for all funds” to “assure that they are used solely for authorized purposes” (2 C.F.R. § 215.21(b)(3));
- (2) have documentation for all claimed expenditures from each of the Awards to ensure both that all expenditures were related to a particular Award and that the expenditures were reasonable (2 C.F.R. §§ 215.21(b)(2), (b)(6), and (b)(7); Part 220, App. A §§ C.2, 4(b), and 4d(1));
- (3) maintain a financial management system that provided “[r]ecords that identify adequately the source and application of funds for federally-sponsored activities” (2 C.F.R. § 215.21(b)(2));
- (4) have records that provided for “[c]omparison of outlays with budgeted amounts for each award” (2 C.F.R. § 215.21(b)(4));
- (5) have procedures to limit the transfer of fund advances to the minimum amounts needed (2 C.F.R. § 215.21(b)(5));
- (6) time advances “to be in accordance with the actual, immediate cash requirements” of the funded research (2 C.F.R. § 215.22(b)(2));
- (7) remit interest earned on fund advances annually to the federal government (2 C.F.R. § 215.22(1));
- (8) have “[a]ccounting records including cost accounting records that are supported by source documentation” (2 C.F.R. § 215.21(b)(7));

- (9) pay salaries to each researcher pursuant to before-the-fact estimated effort and after-the-fact confirmation of time actually spent on the award (2 C.F.R. Part 220, App. A § J.10.c(1));
- (10) have procedures “to determine the reasonableness, allocability, and allowability of costs” charged to the Awards (2 C.F.R. § 215.21(b)(6); and Part 220, App. A § C.4.d(1)); and
- (11) notify NSF of “any significant problems relating to the administrative or financial aspects of the [A]wards” (NSF Grant General Conditions Article 1(a)(2)).

D. The United States contends that it has certain civil claims against [REDACTED] arising from [REDACTED] claims for payment under the Awards during the period from 2001 through 2010. On at least 48 occasions, in its quarterly Financial Cash Transaction Reports and its Federal Financial Reports to NSF, [REDACTED] certified to NSF that all of [REDACTED] disbursements under the Awards had “been made for the purposes and conditions . . . of the [A]wards.” The United States contends that these certifications were false because [REDACTED] failed to comply with the conditions of the Awards when [REDACTED]

- (1) Approved and disbursed NSF funds without first obtaining the required documentation supporting the expenditures claimed or later obtaining the required documentation, and permitted the commingling of funds from different Awards, making it impossible to ensure that expenditures were reasonable and used solely for authorized purposes;

- (2) Approved and disbursed at least 20 [REDACTED] totaling approximately \$8.4 million in NSF funds, to [REDACTED] team accounts without required verification of need and sufficient oversight;
- (3) Did not remit to the federal government at least \$55,000 in interest accrued on advanced funds;
- (4) Approved and disbursed approximately \$531,000 in funds for salaries without the required documentation;
- (5) Disbursed approximately \$96,000 in funds for travel expenses and sundry expenses without the required documentation, or based on fraudulent documentation submitted by Professor [REDACTED];
- (6) Continued to engage in these practices when it knew or should have known in 2006, if not before, that Professor [REDACTED] had violated NSF requirements when he submitted fraudulent claims for personal expenses, and when he claimed NSF Award funds as [REDACTED] and deposited them into [REDACTED] team accounts without documentation of expenditures under the Awards; and
- (7) Failed timely to notify NSF of allegations of significant problems relating to the administrative and financial aspects of the Awards.

The conduct described in this section, Recital D, is referred to below as the Covered Conduct.

In order to settle this matter, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Within seven days of the Effective Date of this Agreement (defined in section 16 below), [REDACTED] shall pay [REDACTED] (the "Settlement Amount") to the United States by electronic funds transfer pursuant to written instructions from the United States. In the event that all or any portion of the Settlement Amount is not paid within seven days of the Effective Date, [REDACTED] also shall pay to the United States interest on any amount not timely paid, which interest shall accrue at the annual rate of 12% beginning seven days after the Effective Date.

2. Subject to the exceptions in Paragraph 3 below (concerning excluded claims), and conditioned upon [REDACTED] payment of the full Settlement Amount, the United States, on behalf of itself, its officers, agents, agencies, and departments, releases [REDACTED] together with its predecessors, successors and assigns, its current and former officers and trustees, and its current and former employees (except Professor [REDACTED]), from any civil or administrative monetary claims that the United States has for the Covered Conduct under the common law theories of negligent misrepresentation, breach of contract, payment by mistake, and unjust enrichment.

3. Notwithstanding the release set forth in paragraph 2 or any other terms of this Agreement, the following claims of the United States are specifically reserved and are not released by this Agreement:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue);
- b. Any criminal liability;
- c. Any nonmonetary administrative liability, including the suspension and debarment rights of any agency of the United States;
- d. Any liability under the False Claims Act, 31 U.S.C. § 3729-33;

- e. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability of individuals named in this Agreement; and
- g. Any liability based on obligations created by this Agreement.

4. [REDACTED] agrees to abide by all terms of the Compliance Agreement that is attached hereto and which is incorporated herein.

5. [REDACTED] waives and shall not assert any defenses [REDACTED] may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. [REDACTED] releases the United States, its agencies, officers, agents, employees, and servants from any claims (including for attorneys' fees, costs, and expenses of every kind and however denominated) that [REDACTED] has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. [REDACTED] agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in OMB Circular A-21 and the OMB Uniform Guidance, and the regulations and official program directives promulgated

thereunder) incurred by or on behalf of [REDACTED] and its present or former trustees, officers, employees and agents, in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigations(s) of the matters covered by this Agreement;
- (3) [REDACTED] investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement and the Compliance Agreement with NSF; and
- (5) the payment [REDACTED] makes to the United States pursuant to this Agreement.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by [REDACTED] and [REDACTED] shall not charge such Unallowable Costs directly or indirectly to any grant, contract, cooperative agreement, or other form of agreement or award by or with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, [REDACTED] shall identify and repay by adjustment to future claims for payment or otherwise, any Unallowable Costs included in payments previously sought by [REDACTED] from the United States. [REDACTED] agrees that the United States shall be entitled to recoup from [REDACTED] any such payments plus applicable interest and penalties as a result of inclusion of such Unallowable Costs on previously-submitted requests for payment.

d. The United States reserves its right to audit, examine, and re-examine [REDACTED] records at any time regarding such Unallowable Costs or the effect of any such Unallowable Costs on the amount of such payments.

8. [REDACTED] agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released by this Agreement, including producing to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and other records in [REDACTED] custody or control concerning any investigation of the Covered Conduct that it has undertaken or that has been performed by another on its behalf.

9. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

10. The Parties consent to the disclosure to the public of this Agreement.

11. This Agreement constitutes the complete agreement between the United States and [REDACTED] with respect to the matters addressed herein. This Agreement may not be amended except by written consent of the United States and [REDACTED].

12. The United States and [REDACTED] represent that they have freely and voluntarily entered into this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the [REDACTED]. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by both Parties and shall not, therefore, be construed against either Party for that reason in any subsequent dispute.

14. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the Party for whom they are signing below.

15. This Agreement may be executed in counterparts, each of which constitutes an original and each of which constitutes one and the same Agreement.

16. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED:

8/18/2015

[REDACTED]

Assistant United States Attorney
United States Attorney's Office

[REDACTED]

UNIVERSITY

DATED:

BY:

[REDACTED]

Senior Vice President and General Counsel

[REDACTED]

DATED:

8/7/15

[REDACTED]

Counsel for [REDACTED] University

University Compliance Agreement

I. Preamble

1. University agrees, as a term of its attached Settlement Agreement with the United States to which this is incorporated by reference, to implement an NSF Award Compliance Program to adhere to all laws, regulations, terms, and conditions applicable to any National Science Foundation (NSF) award; particularly to ensure compliance with the Office of Management and Budget's (OMB's) "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (2 C.F.R. part 200, "Uniform Guidance"), as now or hereafter amended; and to demonstrate heightened commitment to the prevention of mistakes, fraud, false statements, and misuse of funds related to NSF awards to . The NSF Award Compliance Program shall: be based upon an assessment of the risk of such unlawful activities; commit adequate financial and human resources to monitor and enforce compliance; and be maintained (and updated as necessary) so as to ensure that and each of its officers, faculty and relevant employees maintain the integrity required of a recipient of NSF awards.

2. For purposes of this Agreement, relevant employees are Principal Investigators (PIs), co-PIs, faculty, staff, students, or other employees who are responsible for the design, conduct, administration, or other activity funded or supported by NSF awards.

3. For purposes of this Agreement, relevant subrecipients and contractors are entities with which has a contract or agreement, that are responsible for the design, conduct, administration, or other activity funded or supported by NSF awards.

4. NSF award herein means any cooperative agreement, grant, contract, sub-contract, or other instrument whereby receives NSF funds.

II. Requirements

5. The period of compliance obligations assumed by under this Compliance Agreement (compliance period) will commence on the date the final signatory executes the Settlement Agreement to which this Compliance Agreement is attached and incorporated (the Effective Date), and will be complete after NSF Office of Inspector General (OIG) written approval of the fifth and final annual report.

6. The scope of this Compliance Agreement shall be limited to any NSF-funded activity taking place during the compliance period, and NSF funds awarded or disbursed during the compliance period. NSF OIG shall monitor compliance with the requirements of this Compliance Agreement.

7. All reports and notifications required under this Compliance Agreement shall be sent to the NSF OIG Assistant Inspector General for Investigations, via email to oig@nsf.gov.

A. Compliance

8. [REDACTED] agrees to implement the following measures—or, for those already part of [REDACTED] existing compliance program, to maintain the following measures—within one hundred twenty (120) calendar days of the Effective Date, unless otherwise specified below:

i. Policies

9. The NSF Award Compliance Program shall include identification of relevant employees performing work under any NSF award. Each of those roles and responsibilities shall be described so that their relationship to [REDACTED] responsibilities under NSF awards is clear. The lines of responsibility shall be clearly established from each individual position up to and including [REDACTED] responsible signatory officials. All individuals in such positions shall be provided with (or have electronic access to) written policies and/or procedures applicable to their positions for:

- (a) a code of conduct holding [REDACTED] personnel to high ethical standards of professional conduct and integrity, including addressing conflicts of interests;
- (b) accurate time and effort reporting under NSF awards to meet the standards of the cost principles specified in the Uniform Guidance;
- (c) accurate charging of costs under NSF awards;
- (d) accurate monitoring, managing and reporting of cost sharing;
- (e) accurate monitoring of sub-recipients and consultants, and sub-recipient and consultant charges;
- (f) accurate reconciliation of accounting records; and
- (g) document management and retention.

Changes to such written policies and/or procedures will be disseminated to affected relevant employees within thirty (30) calendar days. Individuals in such positions are responsible for the effective implementation of the aforementioned policies and procedures.

ii. Compliance Officer

10. [REDACTED] President shall appoint a senior level administrator who has significant experience with federal and NSF award administration requirements, reporting to a Senior Vice-President, as Compliance Officer. The Compliance Officer shall be responsible for NSF Award Compliance Program operations, including review of awards, development of training programs, and submission of comprehensive written annual reports to NSF OIG on the status of compliance under the NSF Award Compliance Program. The Compliance Officer shall monitor [REDACTED] internal controls to ensure compliance with all applicable laws and regulations regarding the use and expenditure of NSF award funds.

iii. Compliance Committee

11. The Compliance Officer shall chair a Compliance Committee that shall be responsible for overseeing implementation of the NSF Award Compliance Program throughout [REDACTED]. In addition to the Compliance Officer, the members of the Compliance Committee shall include senior-level officials with interest in and experience with federal and NSF award administration requirements.

iv. Written Policies and Procedures

12. Within one hundred twenty (120) calendar days of the Effective Date, [REDACTED] shall adopt and implement written policies and procedures regarding its commitment to ensure compliance with all laws and regulations related to the receipt of NSF awards. These policies and procedures shall be published to all relevant employees, as well as relevant subrecipients and contractors. Copies of [REDACTED] written policies will be provided to NSF OIG, within thirty (30) calendar days of implementation. They shall be included as part of the annual training, and any policies and procedures modified during the term of this Compliance Program shall be included as part of the annual report sent to NSF OIG. Such policies shall be updated to reflect any changes in [REDACTED] policies or practices. [REDACTED] NSF award compliance policies and procedures shall include disciplinary procedures for dealing with employees who fail to meet the terms and conditions of NSF awards.

v. Posting and Displaying NSF OIG's Fraud Hotline Poster

13. During the period of the Compliance Plan, [REDACTED] must:
- (a) prominently display NSF OIG's fraud hotline poster¹ in common work areas where NSF-funded work is carried out;

¹ Available at go.usa.gov/35MVF.

- (b) post on its website an electronic version of the NSF OIG's fraud hotline poster in a manner easily accessible to [REDACTED] relevant employees; and
- (c) request that all relevant subrecipients and contractors working on NSF awards post the NSF OIG's fraud hotline poster in its common areas.

B. Audit Requirements

14. In order to meet its obligations under this Compliance Agreement, [REDACTED] shall engage a qualified independent external accounting firm to annually perform agreed-upon procedures, as specified below, in accordance with Statements on Standards for Attestation Engagements issued by the American Institute of Certified Public Accountants, and Generally Accepted Government Auditing Standards. Such engagement shall include review of a statistically-valid sample of NSF awards for compliance with the award terms and conditions as well as OMB Circular A-110 (2 C.F.R. Part 215), and OMB Circular A-21 (2 C.F.R. Part 220), and/or the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200), as applicable, with a particular focus on obtaining and reviewing supporting documentation for award expenditures including required employee effort reporting. The engagement and agreed procedures shall also include the requirements set forth in subparagraph (a) through (g) below, as well as risk assessment and internal controls designed to ensure compliance with NSF requirements, including the certifications made on applications, progress reports, financial reports, and other reports related to NSF awards. The agreed-upon procedures shall address whether [REDACTED] has:

- (a) established compliance standards and procedures to prevent and detect violations of laws, regulations, and award conditions;
- (b) trained appropriate leadership about such standards and procedures and has assigned or retained a senior level administrator to take overall responsibility to ensure the implementation and effectiveness of the standards and procedures;
- (c) made reasonable efforts to exclude from substantial authority any individual whom [REDACTED] knew, or should have known through exercise of due diligence, has a history of engaging in violations of law or other conduct inconsistent with an effective program to prevent and detect violations of law;
- (d) made reasonable steps to communicate its compliance standards and procedures to relevant employees through effective training programs and/or otherwise disseminating information appropriate to such individuals' respective roles and responsibilities;

- (e) taken reasonable steps to ensure that its program to prevent and detect violations of law has been followed, to evaluate the effectiveness of the compliance standards and procedures, and to provide a system whereby [REDACTED] employees and agents may report or seek guidance regarding potential or actual violations of law without fear of retaliation, including mechanisms that allow for anonymous reporting;
- (f) enforced its program to prevent and detect violations of laws, regulation, and award conditions consistently through appropriate disciplinary measures for employees engaging in violations of law and for failing to take reasonable steps to prevent or detect violations of laws, regulations, and award conditions; and
- (g) taken reasonable steps, if substantiated evidence of a violation of law, regulation, or award condition was detected, to respond appropriately—including notification of NSF OIG within thirty (30) calendar days—and to prevent future violations of law, including making any necessary changes to the program for preventing and detecting violations of law.

15. [REDACTED] will provide a working copy of the agreed-upon procedures to NSF OIG thirty (30) calendar days prior to the initiation of the attestation engagement. The agreed-upon procedures will be designed to (1) ensure compliance with the terms and conditions applicable to any NSF awards, and (2) assess, according to agreed-upon procedures [REDACTED] NSF Award Compliance Program, as outlined above. NSF OIG will have the right to require additional procedures if it determines, within ten (10) working days after receiving the advance working copy of the audit plan, that it lacks sufficient detail to ensure accomplishment of (1) and (2) above. [REDACTED] will submit to NSF OIG a copy of the independent auditor's written report and findings as a supplement to the annual written reports required elsewhere in this Compliance Agreement. The audit referred to in this section may be conducted in whole or in part by [REDACTED] internal auditors, provided that [REDACTED] provides NSF OIG with adequate assurance in writing, certified by the Compliance Officer, that the internal auditors have the requisite independence in connection with the audit plan. [REDACTED] waives the right to claim that any final reports or work papers resulting from the independent annual audits as described above constitute attorney work product or any other recognized privilege.

16. All reviews conducted at [REDACTED] that reveal circumstances that might constitute or indicate noncompliance with NSF requirements are to be timely disclosed to the individual conducting the annual internal audit and the Compliance Officer.

C. Annual Written Reports

17. [REDACTED] will annually provide NSF OIG with a written report identifying deficiencies discovered by the annual audits (described above) or any other audit or review and the corrective actions [REDACTED] has undertaken to address such deficiencies. Such reports shall be due fifteen (15) months after the implementation of the written procedures referred to in paragraph 12 above, and for each of the four (4) years thereafter. These reports shall include a certification by [REDACTED] s Compliance Officer that all deficiencies have been addressed to ensure [REDACTED] compliance with all requirements of this Compliance Agreement.

18. All audit workpapers and other supporting documents for audits or reviews of compliance with this Compliance Program shall be retained by [REDACTED] for eight (8) years after the Effective Date and shall be made available to NSF and NSF OIG upon request.

19. A "material violation" is one that has a significant adverse impact on the administrative, financial, or programmatic aspects of NSF awards, or constitutes a possible violation of a civil or criminal law of any level of severity. [REDACTED] has a duty to:

- (a) Immediately report every material violation or material weakness discovered during any audit or review to NSF OIG, remedy the material violation or weakness within thirty (30) calendar days of learning of it, and notify NSF OIG what actions were taken to correct it; or
- (b) If [REDACTED] is unable to remedy the material violation or weakness within thirty (30) calendar days, [REDACTED] will so inform NSF OIG immediately, provide regular status reports thereafter until the material violation or weakness is cured, and notify NSF OIG what actions were taken to correct it.

20. NSF will review the annual reports, and within thirty (30) calendar days of receipt will notify [REDACTED] in writing either that the report is approved or that [REDACTED] has breached specified obligations of this Compliance Agreement, per paragraph 25 below.

D. Training

21. [REDACTED] shall institute and maintain a comprehensive compliance training program designed to ensure that each relevant employee is aware of all applicable laws, regulations, and standards of conduct that such individual is expected to follow with regard to NSF awards, and the consequences both to the individual and [REDACTED] that will ensue from any violation of such requirements. Each such relevant employee shall receive at least two (2) hours of initial training that shall include a discussion of the

contents of this NSF Award Compliance Program as well as the relevant award requirements, and shall receive additional compliance training of at least two (2) hours on an annual basis. [REDACTED] will track the training for all attendees. A schedule and topic outline of the training shall be included in the annual report submitted to NSF OIG.

22. [REDACTED] shall require relevant subrecipients and contractors to deliver compliance training designed to ensure that each officer and employee who is responsible for the design, conduct, administration, or other activity funded or supported by NSF awards is aware of all applicable laws, regulations, and standards of conduct that such individual is expected to follow with regard to NSF awards, and the consequences both to the individual and the contractor / subrecipient that will ensue from any violation of such requirements.

E. Confidential Disclosure Compliance Program

23. To the extent permitted by the laws of the [REDACTED], [REDACTED] shall maintain a confidential disclosure mechanism enabling relevant employees to disclose anonymously any practices, procedures, or acts considered by the relevant employee to be inappropriate. [REDACTED] shall make the confidential disclosure mechanism known to each relevant employee as part of the training described above. [REDACTED] shall require the internal review of all such credible disclosures and ensure that appropriate follow-up is conducted. [REDACTED] shall include in its annual report to NSF OIG a summary of communications related to the NSF awards received under the confidential disclosure mechanism, and the results of the internal review and follow-up of such disclosures.

III. NSF OIG Inspection, Audit, and Review Rights

24. In addition to any other right that NSF OIG has pursuant to NSF award conditions or other authority, NSF OIG may examine and copy [REDACTED] NSF awards records for the purpose of verifying and evaluating: (a) [REDACTED] compliance with the terms of this Compliance Agreement; and (b) [REDACTED] compliance with any NSF requirements. [REDACTED] shall make the records available at any reasonable time for inspection, audit, and/or reproduction. Furthermore, for purposes of this provision, NSF OIG may arrange through counsel to interview any relevant employee at [REDACTED] during normal business hours or at such other place and time as may be mutually agreed upon.

25. In the event that NSF OIG believes [REDACTED] has breached any of its obligations under this Compliance Agreement, NSF OIG shall notify [REDACTED] of the alleged breach by email or by other appropriate means to [REDACTED] Compliance Officer, specifying the nature and extent of the alleged breach. [REDACTED] will have thirty (30) calendar days from receipt of the notice to: (a) cure said breach; or (b) otherwise satisfy NSF OIG that (1) it is in full compliance with this Compliance Program or (2) the

breach cannot be reasonably cured within thirty (30) calendar days, but that [REDACTED] has taken effective action to cure the breach and is pursuing such action with diligence.

26. If, at the end of the thirty (30) calendar day period described above, NSF OIG determines that [REDACTED] continues to be in breach of any of its obligations under this Compliance Agreement, NSF OIG will inform [REDACTED] Compliance Officer of its conclusion that [REDACTED] is in default. NSF OIG may also take one or both of the following actions: (1) refer the matter to NSF to initiate proceedings to undertake appropriate administrative action, including but not limited to the suspension or termination of any or all NSF awards and/or suspension or debarment of [REDACTED]; and/or (2) refer the matter to the United States Attorney's Office for civil enforcement, pursuant to the terms of the Settlement Agreement.

27. Should any action to enforce or interpret this Compliance Agreement or to resolve any dispute hereunder be required, the Parties acknowledge the jurisdiction of the federal courts. The parties agree that, absent a breach of this Compliance Agreement and the Settlement Agreement to which it is incorporated by reference, the execution of the Settlement Agreement shall be final as to all matters alleged in the Settlement Agreement.

IV. Costs

28. [REDACTED] shall bear its own costs, expenses, and fees in relation to implementation of this Compliance Program.

29. All direct costs incurred by or on behalf of [REDACTED] in connection with the following are unallowable costs under the cost principles set out in 2 C.F.R. §§ 200.435 & -441 (hereafter, "unallowable costs"): (1) the implementation and administration of this Compliance Agreement; (2) the negotiation of this Compliance Agreement and the Settlement Agreement (including attorney's fees); and (3) payments made pursuant to the Settlement Agreement.

30. These unallowable costs will be separately accounted for by [REDACTED], and [REDACTED] will not charge such unallowable costs directly to any federal awards.

V. Modification

31. Any modification to this Compliance Agreement shall not be effective until a written amendment is signed by representatives duly authorized to execute such amendment.

VI. Integration Clause

32. This Compliance Agreement and the Settlement Agreement to which it is incorporated by reference embody the entire understanding of the Parties with respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings with respect to this subject matter other than those

expressly set forth or referred to in this Compliance Agreement and the Settlement Agreement.