Compliance Agreement
Between
The National Science Foundation
And
The National Science Foundation Office of Inspector General
And
Florida Agricultural and Mechanical University

This Compliance Agreement (the “Compliance Agreement”) is entered into between Florida Agricultural and Mechanical University (“FAMU”), the National Science Foundation (“NSF”), and the NSF Office of Inspector General (“OIG”). FAMU, NSF, and OIG may be referred to herein individually as “Party” and collectively as “the Parties.”

RECITALS

WHEREAS, FAMU and NSF entered into Cooperative Agreement No. HRD-9707076 (Cooperative Agreement), for FAMU to assume primary responsibility for planning, operating and managing a “Center for Research Excellence in Science and Technology” for a period of September 1, 1997 to August 31, 2002; and

WHEREAS, the primary purpose of the Cooperative Agreement was to develop the infrastructure and inter-disciplinary cooperation that would produce new knowledge, publishable papers, provide a more effective education for undergraduate and graduate students, and result in the graduation of more minority PH.D candidates in science, engineering, mathematics, and/or technology; and

WHEREAS, the Agreement committed NSF to provide $5,300,000 in funds and FAMU to provide cost sharing in the amount of $2,500,000; and

WHEREAS, as of December 25, 2004, FAMU had received funds in the amount of $4,800,000 from NSF; and

WHEREAS, from April 2002 until present, the NSF Inspector General has engaged in an investigation to address allegations concerning financial information and supporting
documentation related to the Agreement, and the Parties have entered into a Settlement Agreement to bring that investigation to a conclusion.

NOW THEREFORE, FAMU agrees to undertake the compliance obligations outlined below.

I. Preamble

1. FAMU agrees to implement a Compliance Program (the “Program”) to ensure compliance with the terms and conditions, both General Grant Conditions and any Special Grant Conditions, applicable to any NSF grants and awards; to ensure compliance with all relevant laws and regulations governing NSF awards; and to prevent fraud, false statements, and misspending of funds related to NSF grants, contracts, and cooperative agreements (“Awards”) by FAMU, its officers, faculty, other relevant employees, and relevant independent contractors and sub-recipients. The Program shall be based upon an assessment of the risk of such unlawful activities; shall have adequate financial and human resources provided; and shall be maintained so as to ensure that FAMU and each of its officers, faculty, other relevant employees and relevant independent contractors and sub-recipients maintain the integrity required of a recipient of NSF funds. It is recognized by the Parties that FAMU submitted a Corrective Action Plan (“CAP”) to NSF on March 15, 2004. Nothing in this Compliance Agreement modifies, amends, or affects the terms of the Corrective Action Plan and its implementation.

II. Terms and Conditions

2. The period of future compliance obligations assumed by FAMU under this Compliance Agreement shall be five (5) years from the effective date of this Compliance Agreement. The “effective date” shall be the date on which the final signatory to this Compliance Agreement executes this Compliance Agreement. It is understood that FAMU will not be bound by the terms of this Compliance Agreement until the Board of Trustees of FAMU ratifies the execution of this Compliance Agreement by its Interim President. The scope of this Compliance Agreement shall be limited to NSF funds that are awarded or disbursed during the aforesaid five-year period. All reports and notifications required under this Compliance Agreement shall be sent to the NSF OIG Associate Inspector General for Investigations, via email to oig@nsf.gov and to the NSF Director of the Division of Grants and Agreements via email. Such reports and notifications shall reference the applicable section(s) of this Compliance Agreement.
3. FAMU agrees to implement the following measures within one hundred and twenty (120) days of the effective date of this Compliance Agreement, unless otherwise specified below:

A. Compliance

1. Compliance Officer

4. An individual shall be appointed by the President to serve as the Compliance Officer for FAMU. The Compliance Officer shall be a member of the senior management of FAMU and shall report to the President and to the Board of Trustees of FAMU. The Compliance Officer shall be responsible for the Compliance Program operations including, where appropriate, the review of awards, the development of training programs, and the submission of comprehensive written annual reports to the President, to the Board of Trustees, to OIG, and to NSF on the status of compliance at FAMU.

2. Compliance Committee for Research

5. The Compliance Officer shall chair a Compliance Committee that shall be responsible for ensuring implementation of the Compliance Program throughout FAMU. In addition to the Compliance Officer, the members of the Compliance Committee shall include, at a minimum, the following FAMU officers: FAMU’s Inspector General, the Vice President for Administration and Financial Services, the Vice President of Sponsored Research, the Provost and Vice President of Academic Affairs.

3. Compliance Program

6. The Compliance Program shall include identification of the positions throughout FAMU that have roles and responsibilities in the application for, receipt of, and administration of NSF Awards. Each of those roles and responsibilities shall be described so that their relationship to FAMU’s responsibilities under NSF awards is clear. The lines of responsibility shall be clearly established from each individual position up to and including FAMU’s responsible signatory officials. All individuals in such positions will be provided with (or have electronic access to) written policies and/or procedures applicable to their positions for (1) a code of conduct holding FAMU personnel to high ethical standards of professional conduct and integrity, including addressing conflicts of interest; (2) accurate time and effort reporting under NSF Awards to meet the standards of the cost principles specified in the Office of Management and Budget (OMB) Circular A-21 and the Federal administrative requirements contained in OMB Circular A-110; (3) accurate charging of costs under NSF Awards; (4) accurate monitoring, managing and reporting of cost sharing; (5) accurate monitoring of sub-recipients and consultants and sub-recipient and consultant charges; (6) accurate reconciliation of accounting records; and (7) document management.
and retention. The individuals referenced above are responsible for the effective implementation of the aforementioned policies and procedures.

7. The Compliance Officer shall monitor FAMU’s internal controls to ensure compliance with all applicable Federal laws and regulations regarding the use and expenditure of NSF Award funds.

B. Audit Requirements

8. In addition to the single audit requirements contained in OMB Circular A-133 and any State of Florida audit requirements, FAMU shall conduct, on an annual basis, a comprehensive, statistically valid, compliance audit addressing FAMU’s compliance with all applicable Federal laws and regulations regarding the use and expenditure of NSF Award funds, including the applicable NSF Award conditions and OMB Circulars. This audit shall include each component of FAMU that receives or has oversight responsibility with respect to NSF Awards and shall be conducted in accordance with Generally Accepted Auditing Standards with a statistically valid sample. Special attention shall be devoted to 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 Awards. FAMU will provide NSF and OIG with a copy of the written compliance audit report and findings of the annual internal audit.

9. Any and all reviews conducted at FAMU, which reveal situations that might constitute or indicate noncompliance with NSF requirements, are to be timely disclosed both to the individual conducting the annual internal audit and the Compliance Officer.

C. Reports

10. FAMU will annually provide NSF and OIG with a written report identifying deficiencies discovered by internal audits or any other audit or review and will identify the corrective actions that FAMU has undertaken to address such deficiencies. Such reports shall be due one (1) year after execution of this Compliance Agreement and for each of the four (4) years thereafter. This report on FAMU’s corrective actions shall include a certification by FAMU’s Compliance Officer that all deficiencies have been addressed to ensure FAMU’s compliance with all requirements of Federal law, regulations, and this Compliance Agreement.

11. All audit workpapers or other supporting documents for audits or reviews of compliance with this Compliance Agreement shall be retained by FAMU for three (3) years following the termination of this Compliance Agreement and shall be made available to NSF-OIG upon request.
12. Every material violation discovered during any audit or review shall be reported immediately to NSF and OIG and remedied within sixty (60) days of FAMU's knowledge of such material violation. A "material violation" is one that has a significant adverse impact on the administrative, financial, or programmatic aspects supported by NSF Awards. If FAMU cannot cure any such material violation within sixty (60) days, FAMU will inform NSF and OIG of such within the sixty (60) days following FAMU's knowledge of such violation and, with approval of NSF and OIG, provide an agreed upon timeframe to cure the violation. The final report shall include notice of action taken to prevent recurrence of the violation.

D. FAMU's Compliance Policies

13. Within one hundred and twenty (120) days of the effective date of this Compliance Agreement, FAMU shall implement written policies regarding its commitment to ensure compliance with all laws and regulations related to the application for, receipt of, or administration of NSF Awards. These policies shall be adopted by the Board of Trustees of FAMU, and distributed to all officers and relevant employees. Relevant employees are those individuals with a role or responsibility in the application for, receipt of, and administration of NSF Awards and those individuals who conduct projects supported by NSF Awards. Copies of FAMU's written policies will be provided to NSF and OIG. They shall be included as part of the annual training and any policies modified during the term of this Compliance Agreement shall be included as part of the annual report sent to NSF and OIG. Such policies shall be updated to reflect any changes in FAMU's policies or practices. FAMU's compliance policies shall include disciplinary procedures for dealing with employees who fail to meet the terms and conditions of NSF Awards.

E. Training

14. FAMU shall institute and maintain a comprehensive training program designed to ensure that each officer or other relevant employee, independent contractor, or sub-recipient, is aware of all applicable laws, regulations, and standards of conduct that such individual is expected to follow in reporting to NSF on Awards, and the consequences both to the individual and FAMU that will ensue from any violation of such requirements. Relevant employees, independent contractors and sub-recipients are defined as those individuals with a role or responsibility in the application for, receipt of, or administration of NSF Awards and those individuals who conduct projects supported by NSF Awards. Each officer, and other relevant employee or independent contractor or sub-recipient under a NSF award, shall receive at least two (2) hours of initial training that shall include a discussion of the contents of this Compliance Agreement as well as the relevant Award requirements, and shall receive additional compliance training of at least two (2) hours on an annual basis. A schedule and topic outline of the training shall be included in the annual report submitted to NSF and OIG.
F. Confidential Disclosure Program

15. To the extent permitted by the laws of the State of Florida, FAMU shall establish a confidential disclosure mechanism enabling FAMU, sub-recipient and contractor employees to disclose anonymously to FAMU’s Compliance Officer any practices, procedures, or acts deemed by the employee to be inappropriate. FAMU shall make the confidential disclosure mechanism known to each relevant employee as part of the training described above. FAMU shall require the internal review of all such credible disclosures and ensure that proper follow-up is conducted. FAMU shall include in its annual report to NSF and OIG a summary of communications received under the confidential disclosure program, and the results of the internal review and follow-up of such disclosures.

III. Dealing with Debarred or Suspended Persons

16. FAMU shall implement, and make appropriately known as part of its training program, a written internal operating policy providing that FAMU shall comply with 45 C.F.R. part 620.

17. As to persons or contractors who become excluded while they are employed by or under contract with FAMU, FAMU shall comply with 45 C.F.R. Sections 620.315 & 310, respectively. In addition, FAMU shall notify NSF and OIG of each such person or contractor who is excluded while they are employed by or under contract with FAMU under an NSF Award, and the decision made by FAMU (and the reasons therefore) about whether to discontinue the person’s employment or to terminate the contract, within fifteen (15) days of such decision.

IV. OIG Inspection, Audit, and Review Rights

18. In addition to any other right that OIG has pursuant to NSF Award conditions or other authority, OIG may examine and copy FAMU’s records, including audits and audit workpapers, for the purpose of verifying and evaluating: (a) FAMU’s compliance with the terms of this Compliance Agreement; and (b) FAMU’s compliance with any NSF requirements. FAMU shall make the records available at any reasonable time for inspection, audit, and/or reproduction. Furthermore, for purposes of this provision, OIG may interview any relevant FAMU employee at the employee’s place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and OIG. Relevant employees are those individuals with a role or responsibility in the application for, receipt of, or administration of NSF Awards and those individuals who conduct projects supported by NSF Awards.

19. In the event that OIG believes FAMU has breached any of its obligations under this Compliance Agreement, OIG shall notify NSF of the alleged breach. OIG shall
subsequently notify FAMU of the alleged breach by email and certified mail (return receipt requested) to FAMU’s Authorized Organizational Representative (“AOR”), specifying the nature and extent of the alleged breach. FAMU will have thirty (30) days from receipt of the notice to: (a) cure said breach; or (b) otherwise satisfy OIG that (1) it is in full compliance with this Compliance Agreement or (2) the breach cannot be reasonably cured within thirty (30) days, but that FAMU has taken action to cure the breach and is pursuing such action with diligence.

20. If, at the end of the thirty (30) day period described above, OIG determines that FAMU continues to be in breach of any of its obligations under this Compliance Agreement, OIG will notify NSF. Subsequently, OIG may, by email sent to FAMU’s AOR, state its conclusion that FAMU is in default and refer the matter for 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 FAMU. If FAMU is suspended or debarred based upon breach of the Compliance Agreement, and in the event FAMU fully cures the material breach or otherwise satisfies NSF, it will be promptly reinstated.

21. 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/or the Settlement Agreement, the execution of the said Agreements shall be final as to all matters alleged in the said Agreements.

V. Costs

22. Each Party to this Compliance Agreement shall bear its own costs, expenses, and fees incurred in implementing the terms of the Agreement.

23. FAMU agrees that all costs, whether direct or indirect, incurred by or on behalf of FAMU in connection with the following are unallowable costs under the cost principles applicable to government Awards (hereafter, “unallowable costs”): (1) the matters covered by this Compliance Agreement, (2) OIG’s investigation of FAMU’s performance under NSF award HRD 9707076, (3) FAMU’s investigation, defense, and corrective actions undertaken in response to OIG’s investigation in connection with FAMU’s performance under NSF award HRD 9707076 and the matters covered by this Compliance Agreement and the Settlement Agreement (including attorney’s fees), (4) the negotiation of this Compliance Agreement and the Settlement Agreement, and (5) any payment made pursuant to the Settlement Agreement.
24. These unallowable costs will be separately estimated and accounted for by FAMU and FAMU will not charge such unallowable costs directly or indirectly to any Federal Awards.

VI. Modification

25. FAMU, OIG and NSF agree that any modification to this Compliance Agreement shall not be effective until a written amendment is signed by representatives duly authorized to execute such amendment.

VII. Integration Clause

26. This Compliance Agreement and the Settlement Agreement entered into by FAMU, OIG, and NSF embody the entire and exclusive agreement and understanding of the Parties with respect to the covered conduct addressed herein. As to the covered conduct, there are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in this Compliance Agreement and the Settlement Agreement.

27. This Agreement will be deemed effective upon the occurrence of the events as provided in Section II.2 herein.
28. Each person who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so. IN WITNESS WHEREOF, the Parties hereto affix their signatures.

FOR THE NATIONAL SCIENCE FOUNDATION

Thomas N. Cooley
Chief Financial Officer & Director, Office of Budget, Finance, and Award Management

29 June 2005

FOR THE NSF OFFICE OF INSPECTOR GENERAL

Theresa C. Crowe

Christine C. Boes, Dr.P.H.
Inspector General

6/29/05

FOR FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY

Castell Vaughn Bryant
Interim President

6/27/05