



GEORGETOWN LAW  
INSTITUTE FOR PUBLIC REPRESENTATION

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November 25, 2014

**VIA EMAIL** (FOIAAppeals@doc.gov)

Assistant General Counsel for Administration  
Room 5898-C  
U.S. Department of Commerce  
14<sup>th</sup> and Constitution Avenue, NW  
Washington, DC 20230

RE: Freedom of Information Act Appeal, FOIA Log #DOC-NIST-2014-000699

To whom it may concern:

The Center for Digital Democracy (CDD), through its attorneys at the Institute for Public Representation, files this administrative appeal of the above-referenced FOIA request.<sup>1</sup> The Department of Commerce should reverse NIST's decision in this case and require greater if not full disclosure of the requested documents because the agency failed to justify why certain documents were redacted under exemptions 4 and 5 and failed to segregate exempt from non-exempt information.

In March 2014, CDD submitted a FOIA request to NIST for the PRIVO application, and related documents, for a grant pursuant to the 2013 NSTIC Pilots Cooperative Agreement Program. NIST disclosed the application but it was redacted essentially in its entirety. Additionally, NIST's letter appears to have misrepresented the number of documents withheld in

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<sup>1</sup> CDD filed its initial request on March 21, 2014 (Appendix A). NIST's response letter, dated October 27, 2014, indicated that CDD had 30 calendar days to file an administrative appeal (Appendix B).

their entirety by grouping multiple documents. The letter claimed it entirely withheld twelve documents, though it appears more than twelve were fully redacted.

### **NIST failed to explain the reasons supporting its reliance on exemptions 4 and 5**

NIST principally relied on exemptions 4 and 5 to justify withholding entire documents and redacting significant portions of other documents. *See* Appendix B. NIST's response, however, falls far short of the agency's burden to sustain its exemption claims as required by FOIA and the Department of Commerce's FOIA regulations.

Under FOIA, agencies must "specifically identify[] the reasons why a particular exemption is relevant" and must "correlate[e] those claims with the particular part of a withheld document to which they apply." *Mead Data Ctr., Inc. v. U.S. Dep't of the Air Force*, 556 F.2d 242, 251 (D.C. Cir. 1977). Under Department of Commerce FOIA regulations, NIST must provide FOIA requesters with "[a] brief statement of the reason(s) for the denial." 15 CFR §4.7(e)(2).

NIST provided no explanation for why it relied on exemptions 4 and 5, nor did it identify which specific parts of those exemptions apply. Redacted portions simply indicated "(b)(4)" or "(b)(5)" without further explanation, and NIST's letter cited only the exemptions themselves.

Explanations are particularly important in this context because both exemptions 4 and 5 include multiple grounds for withholding information. Exemption 4 covers two types of information: trade secrets, and commercial or financial information obtained from a person and that is privileged or confidential. 5 USC §552(b)(4). Confidential business information, protected under the latter formulation, only applies to voluntarily submitted information. *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). Grant applications, which are required to realize the benefits of a voluntary program, are typically considered involuntarily submitted. *Lykes Bros. Steamship Co., Inc. v. Pena*, No. 92-2780-TFH, 1993 WL 786964 at \*5 n.4 (D.D.C. Sept. 2, 1993) (citing *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 880 (D.C. Cir. 1992)). Without an explanation from NIST, CDD cannot properly assess the propriety of the agency's withholding.

Exemption 5 protects inter- and intra-agency documents that would be undiscoverable in litigation. 5 USC §552(b)(5). This exemption requires that the documents originate from an agency, and it protects at least five types of privilege: deliberative process, attorney work product, attorney-client privilege, confidential commercial information, and reports of expert witnesses. Each privilege consists of definitions and tests that require analysis. *See Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001); *Tigue v. U.S. Dep't of Justice*, 312 F.3d 70, 77 (2d Cir. 2002). NIST claimed it withheld six documents in their entirety under exemption 5. CDD cannot determine the source of these documents to potentially challenge that threshold determination, nor can CDD challenge the specific privilege relied upon.

NIST's failure to provide even rudimentary support for its decision is sufficient to reverse and require greater if not full disclosure of the documents. However, NIST's failure to segregate exempt from non-exempt information further necessitates reversing the decision.

## **NIST failed to segregate exempt from non-exempt information**

NIST's response is also deficient because it withheld at least a dozen documents in their entirety and large portions of many other partially released documents indicating that the agency failed to separate exempt from non-exempt information.

FOIA requires agencies to disclose portions of records that are "reasonably segregable" from exempt information. 5 USC §552(b). Agencies may not issue "sweeping, generalized claims of exemption for documents." *Mead*, 556 F.2d at 260; *see also Schiller v. NLRB*, 964 F.2d 1205, 1209 (D.C. Cir. 1992) (an agency "cannot justify withholding an entire document simply by showing that it contains some exempt materials."). When an agency claims it cannot segregate information within documents, it must "describe what proportion of the information in a [withheld] document is non-exempt and how that material is dispersed throughout the document." *Mead*, 556 F.2d at 261.

The records provided by NIST failed to explain why the information in the documents was not segregable. For example, CDD's primary interest in the FOIA request was PRIVO's proposal it submitted to NIST. In response to that request, NIST disclosed basic information from the application (e.g. names and contact information) but fully redacted PRIVO's proposal. *See Appendix C* at 11. It is simply implausible that in a fifty-two page application there is no disclosable language other than the cover page. It is likely that there is information in the proposal that is segregable, including summaries and factual information that would fall outside of the exemption. Additionally, NIST put applicants on notice that "[o]nce an award is made, most grant-related information submitted to NIST, either in the application or in the post-award phase is considered public information and is subject to possible release under [FOIA]." *Appendix D* at 8. In any event, NIST made no effort to segregate that information or provide a reason why it could not.

NIST failed to provide any explanation as to why the documents were fully redacted. Therefore, this decision should be reversed and the documents should be disclosed in full.

Respectfully submitted,

/s/

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Eric Null

Angela J. Campbell

Institute for Public Representation

*Counsel for Center for Digital Democracy*

# APPENDIX A



GEORGETOWN LAW  
INSTITUTE FOR PUBLIC REPRESENTATION

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March 21, 2014

Catherine S. Fletcher, FOIA & Privacy Act Officer  
National Institute of Standards and Technology (NIST)  
100 Bureau Drive, STOP 1710  
Gaithersburg, MD 20899-1710

Re: Freedom of Information Act Request

Dear Ms. Fletcher:

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, on behalf of the Center for Digital Democracy (CDD).

In January 2013, NIST announced a federal funding opportunity called the National Strategy for Trusted Identities in Cyberspace (NSTIC) Pilots Cooperative Agreement Program.<sup>1</sup> This request concerns one of the program's grantees: Privacy Vaults Online, Inc. (PRIVO).<sup>2</sup> Specifically, CDD requests a copy of the following records:

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<sup>1</sup> Funding Opportunity Number: 2013-NIST-NSTIC-01. *Announcement of Federal Funding Opportunity: National Strategy for Trusted Identities in Cyberspace (NSTIC) Pilots Cooperative Agreement Program*, Nat'l Inst. of Standards and Tech. (Jan. 29, 2013), <http://www.nist.gov/nstic/2013-NIST-NSTIC-01-FFO-final.pdf>.

<sup>2</sup> See *NIST Awards Grants to Improve Online Security and Privacy*, Nat'l Inst. of Standards and Tech. (Sept. 17, 2013), <http://www.nist.gov/itl/nstic-091713.cfm>.

- Full grant proposal from PRIVO, including technical proposal and budget narrative, submitted in response to the 2013 NSTIC Pilots Cooperative Agreement Program and granted on September 17, 2013;
- Any amendments or supplemental information submitted by PRIVO in support of its proposal;
- Any other correspondence, including email, between PRIVO and NIST regarding PRIVO's proposal; and
- Any and all documents NIST created related to approval of PRIVO's proposal.

### **Request for Fee Waiver**

CDD is entitled to receive the requested records with only reasonable duplication fees assessed. 5 U.S.C. § 552(a)(4)(A). CDD is a leading organization advocating for consumer protections in the digital age. CDD staff very frequently uses its editorial skills to create original reports and blog posts from information it collects from industry, government, and other sources. Visit [www.democraticmedia.org](http://www.democraticmedia.org) and [www.digitalads.org](http://www.digitalads.org) for examples of public reports and analysis created by CDD. Through these reports and blog posts, CDD provides information and expert analysis about vital current events to policymakers, journalists, and the public. The information requested in this FOIA letter will help CDD educate vast segments of the public, including parents and other consumers, about issues regarding the protection of children online and the government funding of a new digital industry.

As the requested records were electronically submitted to NIST, CDD requests that you provide the records in their original electronic format. However, if portions of the record must be provided in paper format and you estimate that fees will exceed \$25, please notify me before completing my request.

### **Duty to Segregate Non-Exempt Information**

Should any of the information requested be exempt from release under FOIA, you are required to release the nonexempt records. 5 U.S.C. § 552(b). Agencies are not allowed to issue "sweeping, generalized claims of exemption for documents," but must instead redact only the information that is truly exempt. *Mead Data Ctr., Inc. v. U.S. Dep't of the Air Force*, 556 F.2d 242, 260 (D.C. Cir. 1977).

Thank you for your consideration of this request. As provided in 15 C.F.R. § 4.6(b), CDD anticipates your response to this request within 20 business days. For

March 21, 2014

Page 3 of 3

questions regarding this request please contact me at (202) 662-9545 or  
egn7@law.georgetown.edu.

Sincerely,

/s/

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Eric G. Null

Angela J. Campbell

Institute for Public Representation

*Counsel for Center for Digital Democracy*

# APPENDIX B





October 27, 2014

Eric Null  
Georgetown Law, Institute for Public Representation  
600 New Jersey Ave., NW  
Suite 312  
Washington, DC 20001

Dear Mr. Null,

This letter serves as the final response to your March 21, 2014 Freedom of Information Act (FOIA) request to the National Institute of Standards and Technology (NIST) for documents related to the National Strategy for Trusted Identities in Cyberspace (NSTIC) Pilots Cooperative Agreement Program grantee Privacy Vaults Online, Inc. (FOIA Log #DOC-NIST-2014-000699).

NIST has completed the actual search for responsive records and:

- Sixteen (16) documents are being released in their entirety;
- Two (2) documents are being released with material that is non-responsive to your request, the non-responsive portions have been redacted and are marked "NR;"
- Thirty-five (35) documents are being released with redactions pursuant to FOIA exemption 5 U.S.C. § 552 (b)(4);
- Three (3) documents are being released with redactions pursuant to FOIA exemption 5 U.S.C. § 552 (b)(5);
- Four (4) documents are being released with redactions pursuant to FOIA exemption 5 U.S.C. § 552 (b)(4) and (b)(5);
- Six (6) documents are being withheld in their entirety pursuant to FOIA exemption 5 U.S.C. § 552 (b)(4); and
- Six (6) documents are being withheld in their entirety pursuant to FOIA exemption 5 U.S.C. § 552 (b)(5).

You have the right to appeal this (partial denial or denial) of the FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Administration (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov), by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>. The appeal must include a copy of the original request, this response to the request and a statement of the reason why the withheld records should be made available and why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business

hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

The duplication costs are under the chargeable threshold and thus the documents are being provided at no cost.

Sincerely;

A handwritten signature in cursive script, appearing to read "Catherine S. Fletcher".

Catherine S. Fletcher  
Freedom of Information Act Officer

Enclosure

# APPENDIX C

**Application for Federal Assistance SF-424**

Version 02

* 1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	* 2. Type of Application: <input type="checkbox"/> New <input checked="" type="checkbox"/> Continuation <input type="checkbox"/> Revision	* If Revision, select appropriate letter(s): <input type="text"/> * Other (Specify) <input type="text"/>
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* 3. Date Received: <input type="text" value="05/14/2013"/>	4. Applicant Identifier: <input type="text"/>
--	--

5a. Federal Entity Identifier: <input type="text"/>	* 5b. Federal Award Identifier: <input type="text" value="1982"/>
--	--

**State Use Only:**

6. Date Received by State: <input type="text"/>	7. State Application Identifier: <input type="text"/>
---	---

**8. APPLICANT INFORMATION:**

\* a. Legal Name:

* b. Employer/Taxpayer Identification Number (EIN/TIN): <input type="text" value="(b) (4)"/>	* c. Organizational DUNS: <input type="text" value="(b) (4)"/>
---	---

**d. Address:**

* Street1:	<input type="text" value="1651 Old Meadow Road"/>
Street2:	<input type="text" value="Suite 500"/>
* City:	<input type="text" value="McLean"/>
County:	<input type="text" value="Fairfax"/>
* State:	<input type="text" value="VA: Virginia"/>
Province:	<input type="text"/>
* Country:	<input type="text" value="USA: UNITED STATES"/>
* Zip / Postal Code:	<input type="text" value="22102-4321"/>

**e. Organizational Unit:**

Department Name: <input type="text"/>	Division Name: <input type="text"/>
--	--

**f. Name and contact information of person to be contacted on matters involving this application:**

Prefix: <input type="text" value="Ms."/>	* First Name: <input type="text" value="Denise"/>
Middle Name: <input type="text" value="G."/>	
* Last Name: <input type="text" value="Tayloe"/>	
Suffix: <input type="text"/>	

Title:

Organizational Affiliation:

* Telephone Number: <input type="text" value="703-932-4979"/>	Fax Number: <input type="text" value="703-783-8752"/>
---	---

\* Email:

**Application for Federal Assistance SF-424**

Version 02

**9. Type of Applicant 1: Select Applicant Type:**

R: Small Business

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

\* Other (specify):

**\* 10. Name of Federal Agency:**

National Institute of Standards and Technology

**11. Catalog of Federal Domestic Assistance Number:**

CFDA Title:

**\* 12. Funding Opportunity Number:**

APP-2013-NIST-NSTIC-01

\* Title:

Application for 2013-NIST-NSTIC-01 Finalists

**13. Competition Identification Number:**

APP-2013-NIST-NSTIC-01

Title:

**14. Areas Affected by Project (Cities, Counties, States, etc.):**

**\* 15. Descriptive Title of Applicant's Project:**

To Create, Administer and Advance the Minors Trust Framework to Deliver Parental Consent at Internet Scale

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

**Application for Federal Assistance SF-424**

Version 02

**16. Congressional Districts Of:**

\* a. Applicant

\* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

**17. Proposed Project:**

\* a. Start Date:

\* b. End Date:

**18. Estimated Funding (\$):**

* a. Federal	<input type="text"/>	(b) (4)
* b. Applicant	<input type="text"/>	
* c. State	<input type="text"/>	
* d. Local	<input type="text"/>	
* e. Other	<input type="text"/>	
* f. Program Income	<input type="text"/>	
* g. TOTAL	<input type="text"/>	

**\* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- a. This application was made available to the State under the Executive Order 12372 Process for review on .
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372.

**\* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)**

Yes  No

**21. \*By signing this application, I certify (1) to the statements contained in the list of certifications\*\* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances\*\* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

\*\* I AGREE

\*\* The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

**Authorized Representative:**

Prefix:  \* First Name:

Middle Name:

\* Last Name:

Suffix:

\* Title:

\* Telephone Number:  Fax Number:

\* Email:

\* Signature of Authorized Representative:  \* Date Signed:

**Application for Federal Assistance SF-424**

Version 02

**\* Applicant Federal Debt Delinquency Explanation**

The following field should contain an explanation if the Applicant organization is delinquent on any Federal Debt. Maximum number of characters that can be entered is 4,000. Try and avoid extra spaces and carriage returns to maximize the availability of space.

**BUDGET INFORMATION - Non-Construction Programs**

OMB Number: 4040-0006  
Expiration Date: 06/30/2014

**SECTION A - BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Application for 2013-NIST-NSTIC-01 Finalists (APP-2013-NIST-NSTIC-01)	11.609	\$ [ ]	\$ [ ]	\$ (b) (4)	\$ [ ]	\$ (b) (4)
2. Application for 2013-NIST-NSTIC-01 Finalists (APP-2013-NIST-NSTIC-01)	11.609	[ ]	[ ]	(b) (4)	[ ]	(b) (4)
3. [ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
4. [ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
<b>5. Totals</b>		\$ [ ]	\$ [ ]	\$ (b) (4)	\$ [ ]	\$ (b) (4)



**SECTION B - BUDGET CATEGORIES**

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
	Application for 2013-NIST-NSTIC-01 Finalists (APP-2013- NIST-NSTIC-01)	Application for 2013-NIST-NSTIC-01 Finalists (APP-2013- NIST-NSTIC-01)			
a. Personnel	\$ <input type="checkbox"/>	(b) (4)			
b. Fringe Benefits	<input type="checkbox"/>				
c. Travel	<input type="checkbox"/>				
d. Equipment	<input type="checkbox"/>				
e. Supplies	<input type="checkbox"/>				
f. Contractual	<input type="checkbox"/>				
g. Construction	<input type="checkbox"/>				
h. Other	<input type="checkbox"/>				
i. Total Direct Charges (sum of 6a-6h)	<input type="checkbox"/>				
j. Indirect Charges	<input type="checkbox"/>				
k. TOTALS (sum of 6i and 6j)	\$ <input type="checkbox"/>				
7. Program Income	\$ <input type="checkbox"/>				

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Prescribed by OMB (Circular A -102) Page 1A

**SECTION C - NON-FEDERAL RESOURCES**

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e)TOTALS
8. <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
9. <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
10. <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
11. <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>12. TOTAL (sum of lines 8-11)</b>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

**SECTION D - FORECASTED CASH NEEDS**

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$ <input type="text"/>	\$ <input type="text" value="(b) (4)"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
14. Non-Federal	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>15. TOTAL (sum of lines 13 and 14)</b>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

**SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT**

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b)First	(c) Second	(d) Third	(e) Fourth
16. Application for 2013-NIST-NSTIC-01 Finalists(APP-2013-NIST-NSTIC-01)	\$ <input type="text" value="(b) (4)"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
17. <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
18. <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
19. <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>20. TOTAL (sum of lines 16 - 19)</b>	\$ <input type="text" value="(b) (4)"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

**SECTION F - OTHER BUDGET INFORMATION**

21. Direct Charges: <input type="text" value="(b) (4)"/>	22. Indirect Charges: <input type="text" value="0"/>
23. Remarks: <input type="text"/>	

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

<p>* SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</p> <p>Denise Tayloe</p>	<p>* TITLE</p> <p>President &amp; CEO</p>
<p>* APPLICANT ORGANIZATION</p> <p>Privacy Vaults Online, Inc.</p>	<p>* DATE SUBMITTED</p> <p>05/14/2013</p>

Standard Form 424B (Rev. 7-97) Back

Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, 'New Restrictions on Lobbying.' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant, or cooperative agreement.

**LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

**As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.**

**\* NAME OF APPLICANT**

Privacy Vaults Online, Inc.

**\* AWARD NUMBER**

1982

**\* PROJECT NAME**

The Minors Trust Framework; Parent Consent at Internet Scale

<b>Prefix:</b>	<b>* First Name:</b>	<b>Middle Name:</b>
Ms.	Denise	G.

<b>* Last Name:</b>	<b>Suffix:</b>
Taylor	

**\* Title:** President & CEO

**\* SIGNATURE:**

Denise Taylor

**\* DATE:**

05/14/2013



**National Institute of Standards and Technology (NIST)  
National Strategy for Trusted Identities in Cyberspace (NSTIC)  
Pilot Grant Program  
*Funding Opportunity: 2013-NIST-NSTIC-01***

**The Minors Trust Framework &  
The PRIVO Parent's Hub:  
Parental Consent at Internet Scale**

**Submission of  
Privacy Vaults Online, Inc. d/b/a PRIVO**

**May 14, 2013**

**Contact:**

Denise Tayloe, President & CEO  
PRIVO  
1651 Old Meadow Road, Suite 500  
McLean, Virginia 22102-4321  
P: (571) 297-1798  
E: [DTayloe@PRIVO.com](mailto:DTayloe@PRIVO.com)

PRIVO's proposal, which follows, contains information and data which are privileged, confidential, and/or proprietary to PRIVO. This information and data is commercially sensitive in nature, is not made available for public review, and is submitted on a confidential basis only in response to this Federal Funding Opportunity. No other use of the information and data contained herein is permitted without the express written permission of PRIVO. Under no condition should the information contained herein be provided in any manner whatsoever to any third party without first receiving the express written permission of PRIVO.























































































































# APPENDIX D

FORM CD-450  
(REV 10/98)

U.S. DEPARTMENT OF COMMERCE

GRANT      X COOPERATIVE AGREEMENT

### FINANCIAL ASSISTANCE AWARD

ACCOUNTING CODE

\*\* See Attached\*\*

**RECIPIENT NAME**

Privacy Vaults Online, Inc.

**AWARD NUMBER**

70NANB13H191

**STREET ADDRESS**

1651 Old Meadow Road Suite 500

**FEDERAL SHARE OF COST**

(b) (4)

**CITY, STATE ZIP**

McLean, VA 22102-4321

**RECIPIENT SHARE OF COST**

\$0.00

**AWARD PERIOD**

10/01/2013 - 09/30/2015 \*

**TOTAL ESTIMATED COST**

(b) (4)

**AUTHORITY**

Sec 272b(4) and c(12)

**CFDA NO. AND PROJECT TITLE:**

11.609 To Create, Administer and Advance the Minors Trust Framework to Deliver Parental Consent at Internet Scale

**This Award approved by the Grants Officer is issued in triplicate and constitutes an obligation of Federal funding. By signing the three documents, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, two signed Award documents shall be returned to the Grants Officer and the third document shall be retained by the Recipient. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally terminate this Award.**

- Department of Commerce Financial Assistance Standard Terms and Conditions (January 2013)
- Special Award Conditions
- Line Item Budget
- 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations
- 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments
- OMB Circular A-21, Cost Principles for Educational Institutions
- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- OMB Circular A-122, Cost Principles for Nonprofit Organizations
- 48 CFR Part 31, Contract Cost Principles and Procedures
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations
- Other(s) *Excluded*

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

Scott McNichol

TITLE

GRANT OFFICER

DATE

09/17/2013

TYPED NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

TITLE

PRESIDENT

DATE

09/23/2013

Award Number: 70NANB13H191, Amendment Number 0  
Federal Program Officer: Katerina Megas  
Requisition Number: 7753444  
Employer Identification Number: 54-2022136  
Dun and Bradstreet Number: 021163239  
Recipient ID: 5132765  
Requestor ID: 5132765

**Award ACCS Information**

Bureau	FCFY	Project-Task	Organization	Object Class	Obligation Amount
57	2013	7700261-000	30-77-0770-01-00-00-00	41-19-00-00	(b) (4)

**Award Contact Information**

Contact Type	Contact Name	Email	Phone
Administrative	Ms. Denise G Tayloe	dtayloe@privo.com	703-932-4979

**NIST Grants Officer:**

Scott McNichol  
100 Bureau Drive, MS 1650  
Gaithersburg, MD 20899-1650  
(301) 975-5603

**NIST Grants Specialist:**

Debbie Chen  
100 Bureau Drive, MS 1650  
Gaithersburg, MD 20899-1650  
(301) 975-6646

**NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY  
NATIONAL STRATEGY FOR TRUSTED IDENTITIES IN CYBERSPACE (NSTIC) PILOT  
GRANT PROGRAM  
FINANCIAL ASSISTANCE SPECIAL AWARD CONDITIONS  
Privacy Vaults Online, Inc.  
70NANB13H191**

**A. OVERVIEW**

**1. Introduction**

The National Institute of Standards and Technology hereby enters into this cooperative agreement number 70NANB13H191 with Privacy Vaults Online, Inc. to support the scope of work and budget described in the Recipient's proposal entitled "To Create, Administer and Advance the Minors Trust Framework to Deliver Parental Consent at Internet Scale" dated May 14, 2013, and amended on July 1, July 10, July 11, July 14, 2013 which is hereby incorporated into this award by reference. Where the terms of this award and the proposal differ, the terms of this award shall prevail.

**2. Description of Work**

The Recipient is expected to establish the Minors Trust Framework and create a Children's Identity and Parental Consent Management Platform.

**3. The Recipient's Contact Information**

Ms. Denise G. Tayloe  
President and CEO  
Privacy Vaults Online, Inc.  
1651 Old Meadow Road, Suite 500  
McLean, VA 22102  
Telephone: 703-932-4979; Fax: 703-783-8752  
Email: dtayloe@privo.com

**4. The NIST Award Contact Information**

**Grants Officer:**

Scott McNichol  
National Institute of Standards and Technology  
100 Bureau Drive, Mail Stop 1650  
Gaithersburg, MD 20899-1650  
Telephone: (301) 975-5603; Fax: (301) 840-5976  
E-mail: [scott.mcnichol@nist.gov](mailto:scott.mcnichol@nist.gov)

**Grants Specialist**

Debbie Chen  
National Institute of Standards and Technology  
100 Bureau Drive, Mail Stop 1650  
Gaithersburg, MD 20899-1650  
Telephone: (301) 975-6646;  
Fax: (301) 840-5976  
E-mail: [debbie.chen@nist.gov](mailto:debbie.chen@nist.gov)

**Federal Program Officer**

Katerina Megas  
National Institute of Standards and Technology  
100 Bureau Drive, Mail Stop 2000  
Gaithersburg, MD 20899- 2000  
Telephone: (202) 441-1147  
Fax: 202-482-5107  
E-mail: [katerina.megas@nist.gov](mailto:katerina.megas@nist.gov)

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**B. PROJECT MANAGEMENT AND BUDGET IMPLEMENTATION TERMS**

**1. Cooperative Agreement/NIST Participation**

This award is issued as a Cooperative Agreement, a financial assistance mechanism in which substantial NIST programmatic involvement is anticipated in the performance of the activity. NIST will collaborate with the Recipient as described in the scope of work.

In cooperative agreements, NIST has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. NIST reserves the right to be substantially involved in directing the work performed under the resulting award to ensure the project is the most beneficial to achieving the goals of the NSTIC as determined necessary and appropriate by NIST.

Substantial involvement is appropriate to protect the Government's interest in ensuring the success of the Project, the flow of critical information to NIST, and that the technology and processes developed pursuant to the Project will be applicable to the project objectives.

Substantial involvement consists of NIST providing technical assistance to the Recipient in the form of ad-hoc working teams in addition to incremental program reviews regarding Privacy, Security, Interoperability, User Experience and other aspects of importance to NIST and the furtherance of the identity ecosystem. NIST reserves the right to conduct independent validation and testing of the product if necessary.

In addition, consistent with the Final Office of Management and Budget Guidance Implementing the Federal Grant and Cooperative Agreement Act, 43 Fed. Reg. 36860-65 (Aug. 18, 1978), NIST involvement in this cooperative agreement may also include the following actions. Specific

implementation of some of these actions is further described in the Program and Financial Management Special Award Conditions for this award.

- a. Authority to halt immediately an activity if detailed performance specifications (e.g., milestones) are not met. Refer to the Special Award Condition on Project Reporting, Financial and Performance Project Report Schedule, Non-Proprietary Project Updates for information about development of milestones.
- b. Requiring that the Recipient meet or adhere to specific procedural requirements before subsequent stages of a NIST-funded project may continue.
- c. Approving substantive provisions of proposed subawards, participating in the selection of subawards, approving "Requests for Proposals" or "Invitations for Bids" to be issued by the Recipient or subrecipients, and approving a subrecipient before a subaward may be awarded.
- d. Participating in selection of key personnel. The Recipient has final authority over its own personnel.
- e. Specifying direction or redirection of the scope of work due to inter-relationships with other projects, including but not limited to requiring the Recipient to achieve a specific level of cooperation with other projects that may or may not be funded by NIST. The Recipient is expected to participate in the NSTIC Identity Ecosystem Steering Group and cooperate with NSTIC activities. See <http://www.nist.gov/nstic/>.
- f. Limiting Recipient discretion with respect to scope of work, organizational structure, staffing, mode of operations and other management processes, coupled with close monitoring or operational involvement during performance.

## 2. Policies Incorporated by Reference:

The following documents include policies, terms and conditions incorporated by reference into this award. The Recipient is responsible for compliance with applicable requirements.

**a. The Department of Commerce Financial Assistance Pre-Award Notice:**

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements as published in the *Federal Register* on December 17, 2012 (77 FR 74634) is incorporated by reference into this award. It is accessible at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-17/pdf/2012-30228.pdf>

**b. Federal Funding Opportunity Notice – FY 2013 National Strategy for Trusted Identities in Cyberspace (NSTIC) Pilots Cooperative Agreement Program**

The Department of Commerce, National Institute of Standards and Technology Federal Funding Opportunity Notice No. 2013-NIST-NSTIC-01, dated January 29, 2013, is incorporated by reference into this award. It is accessible at:

<http://www.nist.gov/nstic/2013-NIST-NSTIC-01-FFO-final.pdf>



**c. Department of Commerce Financial Assistance Standard Terms and Conditions:**

As indicated on the CD-450 cover sheet to this award and any applicable amendments, the Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated by reference into this award. These Terms and Conditions are accessible at:

[http://www.osec.doc.gov/oam/grants\\_management/policy/documents/DOC\\_Standard\\_Terms\\_and\\_Conditions\\_01\\_10\\_2013.pdf](http://www.osec.doc.gov/oam/grants_management/policy/documents/DOC_Standard_Terms_and_Conditions_01_10_2013.pdf)

**3. Funding Limitations**

The scope of work and budget incorporated into this award cover the period from October 1, 2013 to September 30, 2015, for a total of \$(b) (4) in Federal funds. However, Federal funding available at this time is limited to \$(b) (4) for the period from October 1, 2013 through September 30, 2014 (referred to as the "budget period" or "funding period").

Of the \$(b) (4) current obligated for the first budget year, a quarter of the funds (\$(b) (4)) is available to be drawn down at this time, as described in the C.1. Financial Management Terms below. Due to exploratory nature of the projects, the remaining (b) (4) is subject to withdrawal limits pending a written request for the release of funds. The request should generally include a discussion on changes in the scope of the project, an estimate of the amount of funds to be released for the next period, and a plan for the use of the funds. While it is anticipated that funds will be released on a quarterly basis, the Recipient may request at longer or shorter intervals, commensurate with need and technical progress. It is generally recommended that Recipients submit requests six weeks prior to the anticipated need for additional funding to allow time for NIST to review and process the request.

Receipt of any funding beyond the funding period specified at this time up to the level projected under this award is contingent upon the availability of funds, satisfactory performance, and continued relevance to program objectives, and will be at the sole discretion of NIST. In order to receive a continuation of funding, the Recipient will be required to submit a detailed budget and budget justification for the next round of funding, along with a projection of any remaining funds. Determination of continued funding may also be contingent on the results of project reviews.

The Recipient may not obligate, incur any expenditure, nor engage in any activity that involves a commitment of Federal funds under this Agreement in excess of the Federal amount presently available.

No legal liability exists or will result on the part of the Federal Government for payment of any portion of the remaining funds, which have not been made available under this award.

If additional funds are not made available, any expenses incurred related to termination or closeout activities must be funded from the amount already made available under this award.

The notice of availability or non-availability of additional funding for subsequent funding or budget periods will be made in writing by the Grants Officer. Only the Grants Officer is authorized to obligate funds. No other verbal or written notice should be relied upon by the Recipient. In the absence of a written notice of additional funding by the Grants Officer on Form CD-451, "Amendment to Financial Assistance Award" no assumption should be made by the Recipient that the funds will be forthcoming.

Future estimated budget/funding amount and funding period:

(b) (4) for the period October 1, 2014 to September 30, 2015

**4. Carryover**

In accordance with 15 CFR part 14.25, NIST waives the requirement for prior approval to carryover the unobligated balance. This award may automatically carry over funds without prior approval. Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the project in addition to the current year's funding. Since the carryover of unobligated balances is automatic, no separate or specific prior approval from NIST shall be required to authorize use of the funds.

**5. Pre-award Costs**

In accordance with 15 CFR part 14.25, NIST waives the requirement for prior approval to incur pre-award costs up to 90 days prior to the start of the project period. Pre-award costs are allowable to the extent that they are necessary to the performance of the project, and the costs would have been allowable under the award.

**6. Indirect Costs (IDC)**

No indirect costs have been requested or awarded for this grant. The Recipient has waived the recovery of indirect costs in a September 4, 2013 email and is therefore not required to submit an Indirect Cost Rate (ICR) proposal to the National Institute of Standards and Technology.

**7. Key Personnel**

Success of the project is contingent on the specialized expertise of the members on the project. In addition to Denise Tayloe, the principal investigator, the following individuals are named as key personnel:

(b) (4)



In accordance with 15 C.F.R. 14.25, written prior approval of the Grants Officer is required if any of the individuals named above withdraws from the project entirely, is absent from the project during any continuous period of 3 months or more, or reduces time devoted to the project by 25 percent or more from the level that was approved at the time of award.

## 8. Intellectual Property (IPR)

The intellectual property terms set forth in *Department of Commerce Standard Terms and Condition M.04* and *15 C.F.R. 14.36*, apply to this award.

## 9. NIST Publication Guidelines

The following NIST publication guidelines supplement the Department of Commerce Standard Terms and Conditions, L.10., Publications, Videos and Acknowledgement of Sponsorship:

- a. Recipients are encouraged to publish the research results of a NIST research grant/cooperative in open scientific literature in such a way as to be generally available to American Scientific Libraries;
  - b. The Recipient should contact the Federal Program Officer for assistance in coordinating appropriate publication/dissemination of information resulting from a NIST research grant/cooperative agreement. For this purpose, *The Journal of Research of NIST* may be used as publication venue, but the Recipient may choose other publication/dissemination methods;
  - c. In any such publications, acknowledgement shall be made of sponsorship by NIST. by a footnote or other appropriate notation reading, "This work was performed under the following financial assistance award [insert NIST grant or cooperative agreement number] from U.S. Department of Commerce, National Institute of Standards and Technology," or words to that effect.
- 
- d. The Recipient shall submit a copy of any published work to the Federal Program Officer.

## 10. Internet Materials

Internet and electronic materials (e.g. websites, blogs, etc.) funded by Federal assistance or reporting on work funded by Federal Assistance must include language, such as the following:

"This site is maintained by [Recipient] with the support of the National Strategy for Trusted Identities in Cyberspace (NSTIC) National Institute of Standards and Technology (NIST). The views expressed do not necessarily reflect the official policies of the NIST or NSTIC; nor does mention by trade names, commercial practices, or organizations imply endorsement by the U.S. Government."

## 11. Restriction on Human Subjects Research Work and Costs Incurred

**In accordance with Department of Commerce Standard Term and Condition L.06.d., no work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer.** Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for work clearly severable from human subjects research activities.

## 12. Project Reporting, Monitoring, Collaboration Schedule

The Recipient is required to submit financial (SF-425) and performance (technical) reports as described in the Department of Commerce Financial Assistance Standard Terms and Conditions A.01 and B.01, 15 C.F.R. 14.51-52, on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31 each year, in addition to a final technical progress report at the expiration date of the award. Reports are due 30 days after each reporting period with the exception of the final close-out documents. Reports should be submitted to the Federal Program Officer named on the award, with a copy to the Grants Management Specialist.

### a) Minimum Contents of Performance Reports

As prescribed by 15 CFR 14.51, the progress report should at a minimum include the following:

- i. Comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of the programs or projects can be readily identified, such quantitative data should be related to cost data for computation of unit costs;
- ii. Reasons why established goals were not met, if appropriate;
- iii. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

### b) Quarterly Financial Statements

(b) (4)



### c) Nonproprietary Project Updates

At intervals, the Federal Program Officer (FPO) may require non-proprietary project updates describing the current status of the project and its results for the general public for dissemination in NIST publications or on the internet.

### d) Monitoring and Collaboration Schedule

Consistent with Special Award Condition B.1., the Recipient is also required to consult and collaborate with the Federal Program Office regarding the project as follows:

- i. **Bi-weekly.** Participate in progress calls, which are ordinarily scheduled bi-weekly. Adjustments and ad hoc calls are scheduled as needed.
- ii. **Within 21 days.** Within 21 days of the award date, submit to NIST a detailed pilot project plan to lay out milestones for execution and to account for project-specific needs, activities or challenges.

- iii. ***Within 30 days.*** Within 30 days of the award date, participate in an in-person Pilot Kickoff meeting to review the project approach, milestones, architecture, and risks.
- iv. ***Within 60 days.*** Within 60 days of the award date review, agree upon the project plan and quarterly milestones.
- v. ***Within 60 days.*** Within 60 days of the award date, participate in a virtual or in-person project design review with NIST, which includes a presentation of the:
  - a. Solution design,
  - b. Solution Crosswalk to NSTIC Guiding Principles, and
  - c. Data flows for the technical components of the solution.
- vi. ***Annual Review.*** Participate in an Annual Review Meeting, which is anticipated at the project site at the end of the first year.
- vii. ***NSTIC Identity Ecosystem.*** When cooperating on NSTIC activities and participating in the NSTIC Identity Ecosystem Steering Group in accordance with Special Award Condition B.1.a, the Recipient will ordinarily be expected to report progress and results on its NSTIC pilot activities. The Recipient shall coordinate with the Federal Program Officer regarding these reports and activities.
- viii. ***NCCoE.*** Participate in the National Cybersecurity Center of Excellence (NCCoE) regarding NSTIC activities as determined necessary by NIST/ This includes a feasibility analysis applying any applicable best practices from NCCoE activities in the execution of the pilot. Information on the NCCoE may be found at <http://csrc.nist.gov/nccoe/>.

#### **e) Proprietary Information**

Once an award is made, most grant-related information submitted to NIST, either in the application or in the post-award phase is considered public information and is subject to possible release under the Freedom of Information Act (FOIA), as referenced in the Department of Commerce Financial Assistance Pre-Award Notice, Special Award Condition 2.A., and 15 C.F.R. Sec. 4.9. Recipients should clearly mark any portions of applications, reports, presentations, etc. that the organization considers to be trade secrets, privileged or confidential.

In addition, the Recipient is notified that contractor personnel may assist NIST in NSTIC programmatic and technical management, grants administration, and auditing. Accordingly, Recipient agrees, and hereby consents, that non-Federal personnel assisting NIST may have access to information the Recipient submits to NIST, including information the Recipient considers trade secrets, privileged, or confidential. NIST may ask programmatic or technical contractors that may have access to Recipient information to sign non-disclosure agreements. Current program contractors have signed such agreements.

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### **C. FINANCIAL MANAGEMENT TERMS**

1. **Amendment to Department of Commerce Financial Assistance Standard Terms and Conditions, dated January 2013, Section A.02, Award Payments**

a. The advance method of payment shall be authorized unless otherwise specified in a special award condition.

b. Payments will be made through electronic funds transfers, using the Department of Treasury's Automated Standard Application for Payment (ASAP) system, and in accordance with the requirements of the Debt Collection Improvement Act of 1996. The following information is required when making withdraws for this award: (1) ASAP account identification (id) = award number found on the cover sheet of this award; (2) Agency Location Code (ALC) = 13060001; and (3) Region Code = 01. Recipients do not need to submit a "Request for Advance or Reimbursement" (SF-270) for payments relating to this award. All non-ASAP Recipient Organizations must enroll electronically. The ASAP system no longer accepts paper forms for enrollment.

c. If you are not currently enrolled in the ASAP system, you must provide the Federal Awarding Agency with a Point of Contact name, e-mail address, mailing address, telephone number, and EIN/TIN and DUNS numbers of your organization that are consistent with the information on the System for Award Management (www.SAM.gov) in order for the Federal Awarding Agency Enrollment Initiator (EI) to begin the on-line enrollment. For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS numbers MUST be the numbers for the applying organization from the SF-424 application form. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds. Please confirm that the EIN/TIN and DUNS numbers are consistent with the information on the SAM.gov. If you have questions concerning this requirement, please contact the Grants Specialist responsible for this award. If you have questions on the electronic process' step-by-step instructions, you may contact your responsible Regional Finance Center.

d. Advances taken through the ASAP shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned, via an ASAP credit, to the account from which the advanced funding was withdrawn. Advances shall be for periods not to exceed 30 days.

e. This award has the following control or withdraw limits set in ASAP:

- \_\_\_\_\_ None
- \_\_\_\_\_ Agency Review required for all withdrawals (see **Explanation** below)
- \_\_\_\_\_ Agency Review required for all withdrawal requests over \$ \_\_\_\_\_  
(see explanation below)

(b) (4)



**Explanation:** (b) (4) \_\_\_\_\_ to withdrawal limits described in **B.3. Funding Limitations** above.

## **2. Return Payments for Funds Withdrawn through ASAP**

Funds that have been withdrawn through ASAP may be returned to ASAP via the Automated Clearing House (ACH) or via FEDWIRE. The ACH or FEDWIRE transaction can only be done by the Recipient's financial institution. Full or partial amounts of payments received by a Payment Requestor/Recipient Organization may be returned to ASAP. All funds returned to the ASAP system will be credited to the ASAP Suspense Account. The Suspense Account allows the Regional Financial Center to monitor returned items and ensure that funds are properly credited to the correct ASAP account. Returned funds that cannot be identified and classified to an ASAP account will be dishonored and returned to the originating depository financial institution (ODFI).

It is essential that the Payment Requestor/Recipient Organization provide its financial institution with ASAP account information (ALC, Recipient ID and Account ID) to which the return is to be credited. Additional detailed information can be found at <http://www.fms.treas.gov/asap/pay-return2.pdf>.

## **3. Interest**

If the recipient is a state or local government, 15 CFR 24.21 applies. Otherwise, this award is subject to 15 CFR 14.22, requiring recipients of Federal financial assistance to maintain advances of Federal funds in interest bearing accounts.

When submitting interest payments as required under 15 CFR 14.22(l), the complete address for remitting checks for interest earned on Federal advances is Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Recipients that do not have electronic remittance capability should send a check to this address.

In keeping with Electronic Funds Transfer rules, interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIR Deposit System. Electronic remittances should be in the format and should include any data that are specified by the HHS as being necessary to facilitate direct deposit in HHS' account at the Department of Treasury.

## **4. Audit**

In accordance with Department of Commerce Financial Assistance Standard Term and Condition D.01.b, this Special Award Condition specifies the audit requirements for for-profit (commercial) organizations issued under the National Strategy for Trusted Identities in Cyberspace (NSTIC) Pilot Grant Program. A non-Federal audit that meets the requirements contained in OMB Circular No. A-133 is required for any for-profit organization that expends \$500,000 or more in NIST and/or DOC funds during its fiscal year.

Audits shall be completed and submitted to the following office within the earlier of 30 days after receipt of the auditor's report or nine months after the end of the organization's fiscal year:

The Recipient shall submit two (2) copies of each audit report, one copy to the NIST Grants Officer and another to the DOC Office of Inspector General.

A copy of the audit shall be submitted to the NIST Grants Officer at the following address:

Scott McNichol  
Grants & Agreements Management Division

National Institute of Standards and Technology  
100 Bureau Drive, Stop 1650  
Gaithersburg, MD 20899-1650

and to the DOC OIG at the following address:

Office of Inspector General  
U.S. Department of Commerce  
Atlanta Regional Office of Audits  
401 West Peachtree Street, N.W., Suite 2742  
Atlanta, GA 30308

For-profit organizations expending less than \$500,000 a year are not required to have an annual audit for that year but must make their grant-related records available to NIST/DOC or other designated officials for review or audit. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future NIST/DOC Awards.

#### **5. Closeout**

Timely and complete compliance with 15 CFR 14.71, Closeout, will be considered as part of the overall programmatic and financial performance of the Recipient. In accordance with Section 14.71, the Recipient shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award, including any real and personal property acquired under the award. The Grants Officer may approve extensions when requested by the Recipient.

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