

SPECIAL TERMS AND CONDITIONS

_____ (“Recipient”), which is identified in Block 5 of the Cover Page (Assistance Agreement Form), and the Office of Energy Efficiency and Renewable Energy (“EERE”), an office within the United States Department of Energy (“DOE”), enter into this Award, referenced above, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 1 to this Award.

This Award consists of the following documents, including all terms and conditions therein:

Cover Page	Assistance Agreement Form
Body	Special Terms and Conditions
Attachment 1	Statement of Project Objectives and Milestone Summary Table
Attachment 2	Federal Assistance Reporting Checklist and Instructions
Attachment 3	Budget Information SF-424A
Attachment 4	Intellectual Property Provisions
Attachment 5	[Complete Text for additional attachments]

The following are incorporated into this Award by reference:

- a. Applicable program regulations [\[Specify regulation and date, if applicable, otherwise delete\]](#).
- b. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>.
- c. If the Award is for research and the Award is for a university or non-profit, the Research Terms & Conditions and the DOE Agency Specific Requirements at <http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp>
- d. The Recipient’s application/proposal as approved by EERE.
- e. National Policy Assurances in effect on date of award at <http://energy.gov/management/office-management/operational-management/financial-assistance/financial-assistance-forms>.

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SUBPART A. GENERAL PROVISIONS

Term 1. EFFECTIVE DATE

The effective date of this Award is stated in Block 3 of the Cover Page (Assistance Agreement Form).

Term 2. AWARD PROJECT PERIOD AND BUDGET PERIODS

The Project Period and Budget Period(s) for this Award are specified in the Assistance Agreement Form of this Award Agreement.

Term 3. ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by DOE, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of this Award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature. Further, pursuant to 10 C.F.R. § 600.16, should the Recipient request to draw down Federal funds prior to acknowledging the award documents, the request to draw down funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

Term 4. FLOW DOWN REQUIREMENT

The Recipient agrees to apply the terms and conditions of this Award, as applicable, to all subrecipients (and subcontractors, as appropriate) and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 10 C.F.R. § 600.148; 10 C.F.R. § 600.236(i); 10 C.F.R. § 600.331(c), as applicable dependent on the Recipient's entity type, and the Intellectual Property terms of this Award at Attachment 4.

Term 5. COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Award. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

Term 6. INCONSISTENCY WITH FEDERAL LAW

If the Recipient believes that any term or condition of this Award is inconsistent with Federal statutes or regulations, the Recipient is required to send an immediate written notification to the DOE Award Administrator with a detailed description of the apparent

inconsistency.

Term 7. ORDER OF PRECEDENCE

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Award must be referred to the DOE Award Administrator for guidance. Inconsistencies shall be interpreted by giving precedence to the following documents, in the following order:

- The National Policy Assurances applicable to this Award;
- Attachment 4 (Intellectual Property Provisions) to this Award;
- DOE Financial Assistance Regulations, 10 C.F.R. Part 600, as amended;
- The Special Terms and Conditions to this Award; and
- If applicable, the Funding Opportunity Announcement, as amended.

Term 8. NONCOMPLIANCE

Should the Recipient fail to comply with the requirements of this Award, EERE may take appropriate action consistent with 10 CFR §§ 600.24 and 600.25, including but not limited to, redirecting, suspending or terminating the Award. Further, EERE may deny reimbursement for costs incurred that relate to the failure to comply and such costs may not be recognized as allowable cost share.

Term 9. FEDERAL STEWARDSHIP

EERE will exercise normal Federal stewardship in overseeing the project activities performed under this Award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

Term 10. SUBSTANTIAL INVOLVEMENT

The Funding Opportunity Announcement may include a Statement of Substantial Involvement to be included in cooperative agreements awarded under that announcement. In addition, the Contracting Officer and EERE Technology Manager/Program Manager, with advice from Legal Counsel, may tailor the Statement

of Substantial Involvement to meet the technical objectives of a specific project. That tailored language would be included below.

EERE has substantial involvement in work performed under this Award. EERE does not limit its involvement to the administrative requirements of this Award. Instead, EERE has substantial involvement in the direction and redirection of the technical aspects of the project as a whole. Substantial involvement includes the following: *[include all applicable statements listed below]*

- A. EERE shares responsibility with the Recipient for the management, control, direction, and performance of the Project.
- B. EERE may intervene in the conduct or performance of work under this Award for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities.
- C. EERE may redirect or discontinue funding the Project based on the outcome of EERE's evaluation of the Project at that the Go/No Go decision point.
- D. EERE participates in major project decision-making processes.
- E. *[Add additional statements specific to the Project. The statements can be the same or similar for all awards under a particular FOA if EERE's involvement will be same for those awards.]*

Term 11. FEDERAL INVOLVEMENT

a. Review Meetings.

The Recipient, including but not limited to, the principal investigator (or, if applicable, co-principal investigators), is required to participate in periodic review meetings with EERE. Review meetings enable EERE to assess the work performed under this Award and to determine whether the Recipient has timely achieved the technical milestones and deliverables stated in Attachment 1 to this Award.

EERE shall determine the frequency of review meetings and select the day, time, and location of each review meeting and shall do so in a reasonable and good faith manner. EERE will provide the Recipient with reasonable notice of the review meetings.

For each review meeting, the Recipient is required to provide a comprehensive overview of the project, including:

- The Recipient's technical progress compared to the Milestone Summary Table stated in Attachment 1 to this Award;

- The Recipient’s actual expenditures compared to the approved budget in Attachment 3 to this Award; and
- Other subject matter specified by the EERE Technology Office Director.

b. Project Meetings.

The Recipient is required to notify EERE in advance of scheduled project meetings and tests. Upon request by EERE, the Recipient is required to provide EERE with reasonable access (by telephone, webinar, or otherwise) to the project meetings and tests. The Recipient is not expected to delay any work under this Award for the purpose of government insight.

c. Site Visits.

EERE may conduct site visits to review the work performed under this Award, to inspect property and records relating to this Award, to assess the Recipient’s implementation of audit findings, and to review the Recipient’s compliance with the terms and conditions of this Award and applicable Federal laws and regulations. EERE will provide reasonable advance notice of site visits and minimize interference with ongoing work, to the maximum extent practicable.

d. Go/No Go Decisions.

Attachment 1 to this Award establishes “Go/No Go” decision points. For each “Go/No Go” decision point, EERE must determine whether the Recipient has fully and satisfactorily completed the work described in Attachment 1 to this Award. As a result of a Go/No Go review, in its discretion, EERE may take one of the following actions:

- (1) authorize Federal funding for the next budget period for the Project;
- (2) recommend redirection of work under the Project;
- (3) place a hold on the Federal funding for the Project, pending further supporting data; or
- (4) discontinue providing Federal funding for the Project beyond the current budget period as the result of insufficient progress, change in strategic direction, or lack of available funding.

e. Technical Milestones and Deliverables.

Attachment 1 to this Award establishes technical milestones and deliverables. If the Recipient fails to achieve two or more technical milestones and deliverables, EERE may renegotiate the Statement of Project Objectives and/or Milestone Summary Table in Attachment 1 to this Award. In the alternative, EERE may deem the Recipient’s failure to achieve these technical milestones and deliverables to be material noncompliance

with the terms and conditions of this Award and take action to suspend or terminate the Award.

f. EERE Access.

The Recipient must provide any information, documents, site access, or other assistance requested by EERE for the purpose of its Federal stewardship or substantial involvement.

Term 12. NEPA REQUIREMENTS

[Option 1 – Where there has been a COMPLETE CX by DOE: Include the following two paragraphs with a final NEPA determination (e.g. CX that covers the entire project). Any conditions set forth in the NEPA determination must be incorporated into this section. In some cases, a blanket CX may apply to the entire project. If a CX has been issued for all awards under a FOA, the Grants Specialist should receive confirmation and a copy of the blanket NEPA determination from the NEPA Compliance Officer. This is a template and the NEPA Compliance Officer’s language should be accommodated as much as possible]

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on all information provided by the Recipient, EERE has made a NEPA determination by issuing a categorical exclusion (CX) for all activities listed in the Statement of Project Objectives (SOPO) approved by the Contracting Officer. The Recipient is thereby authorized to use Federal funds for the defined project activities. This NEPA determination is specific to the project activities as described in the SOPO approved by the Contracting Officer.

If the Recipient later intends to add to or modify the activities in the approved SOPO, those new activities or modified activities are subject to additional NEPA review and are not authorized for Federal funding until the Contracting Officer provides approval on those additions or modifications. Recipients are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to authorization from the Contracting Officer. Should the Recipient elect to undertake activities prior to authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities, and such costs may not be recognized as allowable cost share.

[Option 2 - PARTIAL NEPA DETERMINATION: Include the following three paragraphs in awards with completed NEPA determinations that cover certain activities and other activities are subject to further NEPA review. Any conditions set forth in the initial NEPA determination must be incorporated into this section. In some cases, a blanket CX may apply to certain activities. If a blanket CX may apply, the Specialist should ensure that the Technology Manager/ Program Manager obtained confirmation from the NEPA Compliance Officer that the blanket CX is applicable.]

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. The Recipient is restricted from taking any action using Federal funds that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding this project.

DOE has made a conditional NEPA determination for this Award, and Federal funding for certain tasks under this Award is contingent upon the final NEPA determination.

Prohibited actions include the following phases and/or tasks as referenced in the SOPO approved by the Contracting Officer: *[Insert activities (as a bulleted list) that cannot be performed before the NEPA determination is completed]*.

This restriction does not preclude the Recipient from the following phases and/or tasks as referenced in the SOPO approved by the Contracting Officer: *[Insert activities (as a bulleted list) that may be performed before the NEPA determination is completed]*.

Should the Recipient elect to undertake activities prior to authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

[Insert the following paragraph if a partial CX determination has been made]. Questions about the permissibility of Federal cost sharing on activities prior to DOE's issuance of a final NEPA determination shall be directed to the Contracting Officer. The Recipient must receive written approval from the Contracting Officer before incurring costs for Federal cost sharing. After receiving approval from the Contracting Officer, if the Recipient chooses to incur costs eligible for Federal cost sharing for the approved activities, the Recipient agrees to abide by the conditions, limitations, mitigation measures, monitoring requirements, and reporting responsibilities specified in writing from the Contracting Officer and to undertake these activities in accordance with necessary landowner approvals, required permits, and any additional approvals and mitigation requirements of other Federal, state and local governmental agencies with jurisdiction by law.

[Insert the following paragraph if an Interim Action Determinations determination is anticipated]. Questions about the permissibility of Federal cost sharing on activities prior to DOE's issuance of a finding of no significant impact (FONSI) or record of decision (ROD) shall be directed to the Contracting Officer. At its discretion, DOE may issue an Interim Action Determination to document DOE's decision regarding the permissibility of Federal cost-sharing on the activities that are within the scope of an on-going environmental assessment (EA) or environmental impact statement (EIS) process. Recipient must receive written approval from the Contracting Officer before incurring costs for Federal cost sharing. After receiving Interim Action approval from the Contracting Officer, if the Recipient chooses to incur costs eligible for Federal cost

sharing for the approved activities, the Recipient agrees to abide by the conditions, limitations, mitigation measures, monitoring requirements, and reporting responsibilities specified in the Interim Action Determination and to undertake these activities in accordance with necessary landowner approvals, required permits, and any additional approvals and mitigation requirements of other Federal, state and local governmental agencies with jurisdiction by law.

If the Recipient later intends to add to or modify the activities in the approved SOPO, those new activities or modified activities are subject to additional NEPA review and are not authorized for Federal funding until the Contracting Officer provides approval on those additions or modifications. Recipients are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to authorization from the Contracting Officer. Should the Recipient elect to undertake activities prior to authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities and such costs may not be recognized as allowable cost share.

[Option 3 - NO NEPA DETERMINATION HAS BEEN MADE YET: Include the following paragraphs in awards with that do not have completed NEPA determinations prior to award. This is a template and the NEPA Compliance Officer's language should be accommodated as much as possible.]

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on information available, DOE has not issued a final NEPA determination for this project. The Recipient is restricted from taking any action using Federal funds prior to DOE providing a final NEPA determination without written authorization from the Contracting Officer or any additions or modifications to this project.

Notwithstanding the obligation of funds shown on the Assistance Agreement, the parties hereby agree that the availability of funds to the Recipient for payment of costs incurred by the Recipient is conditioned upon the final NEPA determination. The Recipient is prohibited from spending Federal funds at this time. No funds, therefore, shall be made available to the Recipient for payment, and DOE does not guarantee or assume any obligation to reimburse costs incurred by the Recipient prior to authorization from the Contracting Officer.

Should the Recipient elect to undertake activities prior to authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities and such costs may not be recognized as allowable cost share.

[Option 4 - FONSI or ROD Issued: Include the following paragraphs with a final NEPA determination (e.g. FONSI or ROD). Any conditions set forth in the NEPA determination must be incorporated into this section. This is a template and the NEPA Compliance

Officer's language should be accommodated as much as possible.]

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on all information provided by the Recipient, EERE has made a NEPA determination by issuing a *[select one: Finding of No Significant Impact (FONSI) or Record of Decision (ROD)]* for all activities listed in the Statement of Project Objectives (SOPO) approved by the Contracting Officer. The Recipient is thereby authorized to the use Federal funds for the defined project activities. This NEPA determination is specific to the project activities as described in the *[select one: Environmental Assessment or Environmental Impact Statement]*.

This authorization is subject to all conditions, limitations, mitigation requirements, and monitoring requirements specified in *[insert document name, check with NEPA Specialist]*. The Recipient agrees to:

- a) abide by the conditions, limitations, mitigation requirements, monitoring requirements and reporting responsibilities specified in *[insert document name, check with NEPA Specialist]*;
 - b) undertake the project activities in accordance with necessary landowner approvals, required permits, and any additional approvals and mitigation requirements of other Federal, state and local governmental agencies with jurisdiction by law;
 - c) negotiate changes to the project schedule, costs, and/or scope as necessary to effect the requirements or conditions in *[insert document name, check with NEPA Specialist]*;
 - d) allow DOE's authorized representatives to visit the site and facilities upon notice to verify project status and compliance to include conditions and requirements in *[insert document name, check with NEPA Specialist]*; and
 - e) submit data or otherwise meet specified reporting requirements that may be in *[insert document name, check with NEPA Specialist]*.
- If the Recipient finds the conditions and requirements to be unacceptable, they reserve the right to terminate the Award in accordance with 10 CFR 600.161(a)(3), 244(b), 351(a)(3), as applicable.

If the Recipient later intends to add to or modify the activities as described in the *[select one: Environmental Assessment or Environmental Impact Statement]*, those new activities or modified activities are subject to additional NEPA review and are not authorized for Federal funding until the Contracting Officer provides approval on those additions or modifications. Recipients are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of

reasonable alternatives prior to authorization from the Contracting Officer. Should the Recipient elect to undertake activities prior to authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities and such costs may not be recognized as allowable cost share.

[Option 5 - Interim Action Determination: Include the following paragraphs if the NCO issues an Interim Action Determination. This is a template and the NEPA Compliance Officer's language should be accommodated as much as possible.]

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on the information available, DOE may determine that an EA or an EIS is required. A final NEPA decision (e.g., a Finding of No Significant Impact (FONSI) for projects requiring an EA or a Record of Decision (ROD) for projects requiring an EIS) is required prior to DOE notifying the Recipient of approval to proceed with the expenditure of Federal funds. Prohibited actions include, but are not limited to: detailed design; purchase of long-lead time equipment; demolition or decontamination of existing buildings; and site preparation, clearing, ground breaking, excavation, and construction. However, DOE may provide cost-shared funding for activities necessary to perform site characterization, sampling, and monitoring to support the NEPA process; preparation of conceptual design data, analysis, and documentation (including project planning assistance); and training before a final NEPA decision is issued.

Questions about the permissibility of Federal cost sharing on activities prior to DOE's issuance of a FONSI or ROD shall be directed to the Contracting Officer. At its discretion, DOE may issue an Interim Action Determination to document DOE's decision regarding the permissibility of Federal cost-sharing on the activities that are within the scope of an on-going EA or EIS process. Approval to incur cost eligible for Federal cost sharing requires written approval from the Contracting Officer. After receiving Interim Action approval from the Contracting Officer, if the Recipient chooses to incur costs eligible for Federal cost sharing for the approved activities, the Recipient agrees to abide by the conditions, limitations, mitigation measures, monitoring requirements, and reporting responsibilities specified in the Interim Action Determination and to undertake these activities in accordance with necessary landowner approvals, required permits, and any additional approvals and mitigation requirements of other Federal, state and local governmental agencies with jurisdiction by law.

Prior to issuance of a final NEPA document (Final EA/EIS, FONSI, ROD, Mitigation Action Plan, etc.), DOE agrees to discuss with the Recipient any proposed conditions and requirements that may be imposed if DOE decides to proceed with its proposed action. However, DOE retains sole discretion on whether to issue a final NEPA document and what conditions to include in it if one is issued.

If DOE decides to proceed with its proposed action subject to conditions, limitations,

mitigation requirements, or monitoring requirements specified in a final NEPA document, the Recipient agrees to:

- a) abide by the conditions, limitations, mitigation requirements, and monitoring requirements specified in the final NEPA document;
- b) negotiate changes to the project schedule, costs, and/or scope as necessary to effect the requirements or conditions in the final NEPA document;
- c) allow DOE's authorized representatives to visit the site and facilities upon notice to verify project status and compliance to include conditions and requirements in the final NEPA document; and
- d) submit data or otherwise meet specified reporting requirements that may be in the final NEPA document.

If the Recipient finds the conditions and requirements to be unacceptable, they reserve the right to terminate the Award in accordance with 10 CFR 600.161(a)(3), 244(b), 351(a)(3), as applicable.

Term 13. PERFORMANCE OF WORK IN UNITED STATES

a. Requirement.

All work performed under this Award must be performed in the United States. This requirement does not apply to the purchase of supplies and equipment; however, the Recipient should make every effort to purchase supplies and equipment within the United States. The Recipient must flow down this requirement to its subrecipients.

b. Failure to Comply.

If the Recipient fails to comply with the Performance of Work in the United States requirement, the Contracting Officer may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Recipient cost share. The Recipient is responsible should any work under this Award be performed outside the United States, absent a waiver, regardless of if the work is performed by the Recipient, subrecipients, vendors or other project partners.

c. Waiver.

There may be limited circumstances where it is in the interest of the project to perform a portion of the work outside the United States. To seek a waiver of the Performance of Work in the United States requirement, the Recipient must submit a written waiver request to EERE, which includes the following information:

- The countries in which the work is proposed to be performed;
- A description of the work proposed to be performed outside the U.S.;
- Proposed budget of work to be performed; and
- The rationale for performing the work outside the U.S.

For the rationale, the Recipient must demonstrate to the satisfaction of EERE that a waiver would further the purposes of the FOA that the Award was selected under and is otherwise in the interests of EERE and the United States. EERE may require additional information before considering a waiver request.

d. [If a waiver is approved, insert approved waiver information as appropriate here.]

Term 14. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Award should be American-made.

Term 15. REPORTING REQUIREMENTS

a. Requirements.

The reporting requirements for this Award are identified on the Federal Assistance Reporting Checklist, attached to this Award.

b. Dissemination of scientific/technical reports.

Scientific/technical reports submitted under this Award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data or SBIR/STTR data. Citations for journal articles produced under the Award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

c. Restrictions.

Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

Term 16. LOBBYING

By accepting funds under this Award, the Recipient agrees that none of the funds obligated on the Award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Term 17. PUBLICATIONS

EERE encourages the Recipient to publish or otherwise make publicly available the results of work performed under this Award. The Recipient is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award:

- *Acknowledgment:* “The information, data, or work presented herein was funded in part by the Office of Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy, under Award Number DE-_____.”
- *Disclaimer:* “The information, data, or work presented herein was funded in part by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

Term 18. NO-COST EXTENSION

[If the Recipient is a State/Local Government or for-profit entity, use this paragraph and delete the one below.] As provided in *[10 C.F.R. § 600.230 or 10 CFR § 600.315]*, the Recipient may request the Contracting Officer to authorize a one-time, no-cost extension of this Award. Such requests must be submitted in writing to the DOE Technology Manager/Program Manager at least 60 days before the end of the current budget period. The Contracting Officer may, as his/her discretion, grant or deny such requests.

[If the Recipient is nonprofit/university entity, use this paragraph and delete the one

above.] As provided in 10 C.F.R. § 600.125, the Recipient must provide the Contracting Officer with notice in advance if it intends to utilize a one-time, no-cost extension of this Award. The Recipient must submit this notification in writing to the Contracting Officer and DOE Technology Manager/ Program Manager at least 30 days before the end of the current budget period.

Any no-cost extension will not alter the project scope, milestones, deliverables, or budget of this Award.

Term 19. PROPERTY

a. Definition.

For purposes of this Term, “Property” is defined to include supplies, equipment and real property acquired whole or in part with Federal funds under the Award or accepted by the Contracting Officer as recipient cost share for this Award. “Intellectual Property” is not included in this definition.

b. Applicability.

The regulations as set forth in 10 C.F.R. Part 600 and this agreement shall apply to the Recipient, as well as, Property in the possession of any team member, sub-recipient or other entity where such Property was acquired in whole or in part with funds received under this Award or where DOE accepted such Property as recipient cost share under the Award.

c. Encumbrance.

At no time shall the Recipient encumber the Property without the prior written authorization by the Contracting Officer. The Recipient may request, however, that DOE permit an encumbrance on or subordination of DOE’s property interest hereunder. In response to such request, the Contracting Officer may require the Recipient to submit appropriate supporting documentation.

d. Disposition.

At such time as the Property is no longer needed for its authorized purposes, and prior to the Recipient’s intended sale, transfer, conversion or assignment, the Recipient must contact the Contracting Officer for disposition instructions.

e. Sale.

DOE’s interest in the Property survives any sale or transfer of the Recipient and/or the Property subject to the terms of any encumbrance relating to the property that the DOE

has approved. The Recipient shall consult with, and seek the approval of, DOE prior to any such sale or transfer. DOE will not unreasonably withhold approval. It shall be a condition of any sale or transfer of the project or any portion thereof which includes property acquired in whole or in part with Federal funds received under this Award or property accepted as recipient cost share that the transferee or purchaser agrees to be bound by the provisions of the Recipient's Award. For purposes of this provision, "sale or transfer of the Recipient" means a sale of more than 50 percent of the outstanding voting securities of the Recipient, sale of substantially all of the assets of the Recipient, or merger or similar transaction or series of transactions involving the Recipient.

Term 20. SUPPLIES

a. Title.

The Recipient takes title to any supplies acquired in whole or in part with Federal funds under the Award subject to the conditions set forth in this Award and 10 C.F.R. 600.135 (Universities and Noprofits), 10 C.F.R. 600.233 (State and Local Governments), or 600.324 (For-Profit Entities).

b. Value of Unused Supplies is \$5,000 or Less.

If the total aggregate value of unused supplies is \$5,000 or less at the end of the project period, or the termination or discontinuation of the Award, the Recipient may retain, sell, or otherwise dispose of the unused supplies without further obligation to DOE.

c. Value of Unused Supplies Greater than \$5,000.

If the total aggregate value of unused supplies is more than \$5,000 at the termination, discontinuation or completion of the project, the Recipient may continue to use the unused supplies (i) to further the work described in Attachment 1 to this Award, or (ii) for other Federally funded RD&D projects and programs subject to the following:

- DOE retains the right to periodically ask for, and the Recipient agrees to provide, reasonable information concerning the use and condition of the supplies;
- If the Recipient intends to use the supplies for purposes other than those described in (i) or (ii) above, the Recipient is required to dispose of the supplies in accordance with 10 C.F.R. §§ 600.135 (Nonprofits), 600.233 (State and Local Governments) or 600.324 (For-Profit Entities), as applicable by the Recipient's entity type.

If the Recipient disposes of the unused supplies or uses the supplies for purposes other than those uses described in (i) and (ii) above, the Recipient must compensate DOE. The compensation is calculated by applying the percentage of the Federal participation

(Federal cost share) in the cost of the project to the current fair market value of the supplies. Once the total aggregate value of unused supplies is \$5,000 or less, DOE's residual interest in the unused supplies will be extinguished, and the Recipient will have no further obligation to DOE with respect to the unused supplies.

d. Determining Fair Market Value.

When determining the value of supplies for disposition, EERE and the Recipient will act in good faith to reach agreement on the current fair market value of any property acquired under the Award. In the event that EERE and the Recipient cannot agree on the current market value, EERE and the Recipient will mutually agree on the selection of an independent assessor, at the Recipient's expense, to conduct an independent assessment of the current fair market value.

Term 21. EQUIPMENT

a. Title.

The Recipient takes title to any equipment acquired in whole or in part with Federal funds under the Award subject to the conditions set forth in 10 C.F.R. §§ 600.134 (Nonprofits), 600.232 (State and Local Governments) or 600.321 (For-Profit Entities), as applicable by the Recipient's entity type.

b. Value of Equipment is Less than \$5,000.

If the total aggregate value of the equipment is less than \$5,000 at the end of the project period, or the termination or discontinuation of the Award, the Recipient may retain, sell, or otherwise dispose of the equipment with no further obligation to DOE.

c. Value of Equipment is \$5,000 or more.

If the per unit fair market value of equipment is \$5,000 or more at the end of the project period, or the termination or discontinuation of the Award, the Recipient may continue to use the equipment (i) to further the objectives of the project described in Attachment 1 to this Award, or (ii) for other Federally funded RD&D projects and programs subject to the following:

- DOE retains the right to periodically ask for, and the Recipient agrees to provide, the required information concerning the location, use and condition of the equipment as required by 10 C.F.R. §§ 600.134 (Nonprofits), 600.232 (State and Local Governments) or 600.321 (For-Profit Entities), as applicable by the Recipient's entity type;
- If the Recipient intends to use the equipment for purposes other than those described in (i) or (ii) above, the Recipient is required to dispose of

the equipment in accordance with 10 C.F.R. §§ 600.134 (Nonprofits), 600.232 (State and Local Governments) or 600.321 (For-Profit Entities), as applicable by the Recipient's entity type.

If the Recipient disposes of the equipment or uses the equipment for purposes other than those uses described in (i) and (ii) above, the Recipient must compensate DOE. The compensation is calculated by applying the percentage of the Federal participation (Federal cost share) in the cost of the project to the current fair market value of the equipment. Once the total per unit fair market value of a particular piece of equipment is less than \$5,000, DOE's residual interest in that equipment will be extinguished, and the Recipient will have no further obligation to DOE with respect to that equipment.

d. Determining Fair Market Value.

When determining the value of equipment for disposition, EERE and the Recipient will act in good faith to reach agreement on the current fair market value of any property acquired under the Award. In the event that EERE and the Recipient cannot agree on the current market value, EERE and the Recipient will mutually agree on the selection of an independent assessor, at the Recipient's expense, to conduct an independent assessment of the current fair market value.

Term 22. REAL PROPERTY

Real Property shall not be acquired under this Award without express written permission of the Contracting Officer. Title, use, management and disposition of Real Property shall be governed by 10 C.F.R. §§ 600.132 (Nonprofits), 600.231 (State and Local Governments) or 600.321 (For-Profit Entities), as applicable by the Recipient's entity type.

Term 23. FEDERALLY OWNED PROPERTY (GOVERNMENT-FURNISHED)

[Applicable if the government will furnish property to a recipient for a project. If this term is not applicable, (1) replace title with "Reserved" and (2) delete the following paragraph.]

See Attachment [insert] for a listing of Federally-owned property accountable under this Award. Federally-owned property shall be managed in accordance with 10 C.F.R. §§ 600.133(a), 600.232 (f) or 600.322, as applicable by entity type, and reported as prescribed in the Federal Assistance Reporting Checklist and Instructions.

Term 24. RECORD RETENTION

Consistent with 10 C.F.R. Part 600, the Recipient is required to retain records relating to this Award for three years after the end of the project period, unless one of the following exceptions applies:

- (i) If any litigation, claim, or audit is started before the expiration of the three-year period, the Recipient is required to retain the records until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- (ii) The Recipient is required to retain records for any real property or equipment acquired with Federal funds for three years after final disposition of the real property or equipment.

Copies of records may be substituted for originals.

Term 25. AUDITS

a. Government-Initiated Audits.

The Recipient is required to provide any information, documents, site access, or other assistance requested by EERE, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient's records relating to this Award.

Consistent with 10 C.F.R. Part 600, DOE may audit the Recipient's financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable.

DOE will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

b. Annual Compliance Audits.

The Recipient is required to comply with the annual compliance audit requirements in 10 C.F.R. Part 600 – specifically, 10 C.F.R. § 600.126 for institutions of higher education and nonprofit organizations, 10 C.F.R. § 600.226 for state and local governments, and 10 C.F.R. § 600.316 for for-profit entities. The annual compliance audits are independent from Government-initiated audits discussed in paragraph (a) of this Term, and must be paid for by the Recipient. To minimize expense, the Recipient may have a compliance audit in conjunction with its annual audit of financial statements.

Term 26. DISPUTES

The Recipient is required to resolve all disputes in accordance with the procedures set forth in 10 C.F.R. § 600.22.

Term 27. INDEMNITY

[Use at Contracting Officer discretion for large demonstration projects or other projects where there is greater risk of physical injury.]

The Recipient shall indemnify DOE and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of DOE officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

Term 28. AT RISK REQUIREMENTS

[Include this provision for At Risk Recipients. This term may be tailored for other risk determinations. Specific language added to this term must be approved by Legal Counsel]

The Contracting Officer determined the Recipient is at risk for *[insert reason, e.g., financial capability]* based on *[Insert reason]*

Based on this determination, the Contracting Officer has incorporated the following requirements into this Award.

[Insert requirements]

The Recipient may report any change in circumstances that impact the Contracting Officer's determination of its *[insert reason, e.g., financial capability]*. If the Recipient feels that its circumstances have changed to this degree, the Recipient may request a re-evaluation at any time after 6 months from the initial determination. Please provide a written request and support to the DOE Award Administrator.

EERE will remove this provision by modification to the Award if the conditions that prompted it have been corrected, subject to approval by the Contracting Officer.

SUBPART B. FINANCIAL PROVISIONS

Term 29. MAXIMUM OBLIGATION

[Awards that are fully funded]

The maximum obligation of DOE for this Award is the total “Funds Obligated” stated in Block 13 of the Assistance Agreement Form to this Award.

[Awards that are not fully funded]

The maximum obligation of DOE for this Award is the total “Funds Obligated” as stated in Block 13 of the Assistance Agreement Form to this Award. Additional Federal funding is contingent upon (1) Recipient’s demonstrated substantial progress towards meeting the objectives of the Award; (2) availability of Federal funds appropriated by Congress for the purpose of this program; and (3) the availability of future-year budget authority.

Term 30. FUNDING OF BUDGET PERIODS

[For most awards. Awards should be structured with budget periods that correspond with the Go/No-Go decision points and Federal funding beyond the current budget period is dependent on the Go/No-Go decision.]

EERE has obligated \$[Total Amount of Funds Obligated] for completion of the Project; however, only \$[EERE Share of Budget Period Costs] is available for work performed by the Recipient during Budget Period [Number(s)] of the Project. For Budget Period[s] [Number(s)], the remainder or \$[EERE Share of Budget Period Costs] is contingent upon EERE’s Go/No-Go decision, the Recipient’s submission of a continuation application, and written approval of the continuation application by the Contracting Officer.

In the event that the Recipient does not submit a continuation application for subsequent Budget Periods, or EERE disapproves a continuation application for subsequent Budget Periods, the maximum EERE liability to the Recipient is the funds that are available for the current approved Budget Period(s). In such event, EERE reserves the right to deobligate any remaining Federal funds.

Term 31. CONTINUATION APPLICATION AND FUNDING

[For most awards. Include if Award contains additional budget periods.]

a. Continuation Application.

A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least ninety (90) [revised # of days as appropriate] days before the end of each budget period, the Recipient must submit to the EERE Technology Manager/ Program Manager and the DOE Award Administrator its continuation application, which includes the following information:

1. A report on the Recipient's progress towards meeting the objectives of the project, including any significant findings, conclusions, or developments, and an estimate of any unobligated balances remaining at the end of the budget period. If the remaining unobligated balance is estimated to exceed 20 percent of the funds available for the budget period, explain why the excess funds have not been obligated and how they will be used in the next budget period.
2. A detailed budget and supporting justification if there are changes to the negotiated budget, or a budget for the upcoming budget period was not approved at the time of award.
3. A description of any planned changes from the negotiated Statement of Project Objectives and/or Milestone Summary Table.

b. Continuation Funding.

Continuation funding is contingent on (1) the availability of funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority; (2) Recipient's technical progress compared to the Milestone Summary Table stated in Attachment 1 to this Award; (3) EERE's Go/No-Go decision; (4) Recipient's submittal of required reports; and (5) Recipient's compliance with the terms and conditions of the Award.

Term 32. COST SHARING

[ALTERNATE 1 – Applicable if cost share is required and FFRDCs are not involved. The Recipient's cost share must always reflect the overall cost share ratio negotiated by the parties (i.e. The total amount of cost sharing on each invoice when considered cumulatively with previous invoices must reflect, at a minimum, the negotiated cost sharing percentage). The recipient may contribute cost share more than the negotiated percentage at first, and less later on, as long as the net total cost share meets the negotiated percentage on each invoice. The negotiated Recipient cost share must, at a minimum, meet the statutory minimum—or the minimum required cost share set by an applicable cost share reduction/waiver.]

a. Cost Sharing Obligations.

The Recipient must provide the "Cost Share" amount stated in Block 12 of the Assistance Agreement Form to this Award. EERE and the Recipient's cost share for the total estimated project costs are listed below.

EERE Cost Share \$ / %	Recipient Cost Share \$ / %	Total Estimated Project Costs
\$	\$	\$

The Recipient must provide its required “Cost Share” amount as a percentage of the total project costs in each invoice period for the duration of the project period. Specifically, the cumulative cost share percentage provided to date on each invoice received must reflect, at a minimum, the cost sharing percentage specified in the Award, unless the Contracting Officer has approved applicable in-kind cost share.

b. Cost Share Obligation If Award Terminated or Discontinued.

If the Award is terminated or is otherwise not funded to completion, the Recipient is not required to provide the entire “Cost Share” amount stated in Block 12 of the Assistance Agreement Form to this Award; however, the Recipient must provide its share (i.e., percentage) of the total project cost reimbursed as of the date of the termination or discontinuation.

c. Source of Cost Share.

The Recipient may not use Federal funds to meet its cost sharing obligations, unless otherwise allowed by Federal law.

d. Inability to Comply with Cost Sharing Obligations.

If the Recipient determines that it might be unable to meet its cost sharing obligations, the Recipient must notify the DOE Award Administrator in writing immediately. The notification must include the following information: (i) whether the Recipient intends to continue or phase out the project, and (ii) if the Recipient intends to continue the project, how the Recipient will pay (or secure replacement funding for) the Recipient’s share of the total project cost.

If the Recipient fails to meet its cost sharing obligations, EERE may recover some or all of the financial assistance provided under this Award. The amount EERE would seek to recover under this Term would be dependent on the extent of the Recipient’s failure to meet its cost sharing obligation.

[ALTERNATE 2 – If the Recipient has requested a waiver to the requirement that cost share be met on an invoice basis, and the request has been approved by the Contracting Officer and the Director and DAS (through the FRD), use this option.]

a. Cost Sharing Obligations.

The Recipient must provide the “Cost Share” amount stated in Block 12 of the

Assistance Agreement Form to this Award. EERE and the Recipient’s cost share for the total estimated project costs are listed below.

EERE Cost Share \$ / %	Recipient Cost Share \$ / %	Total Estimated Project Costs
\$	\$	\$

The Recipient must provide its required “Cost Share” amount as a percentage of the total project costs. EERE authorized the Recipient to provide cost share [\[insert applicable text here; e.g., on a monthly/ quarterly basis for the duration of the project period, or in accordance with the cost share schedule set out below\]](#).

b. Cost Share Obligation If Award Terminated or Discontinued.

If the Award is terminated or is otherwise not funded to completion, the Recipient is not required to provide the entire “Cost Share” amount stated in Block 12 of the Assistance Agreement Form to this Award; however, the Recipient must provide its overall share (i.e., percentage) of the total project cost reimbursed as of the date of the termination or discontinuation.

c. Source of Cost Share.

The Recipient may not use Federal funds to meet its cost sharing obligations, unless otherwise allowed by Federal law.

d. Inability to Comply with Cost Sharing Obligations.

If the Recipient determines that it might be unable to meet its cost sharing obligations, the Recipient must notify the DOE Award Administrator in writing immediately. The notification must include the following information: (i) whether the Recipient intends to continue or phase out the project, and (ii) if the Recipient intends to continue the project, how the Recipient will pay (or secure replacement funding for) the Recipient’s share of the total project cost.

If the Recipient fails to meet its cost sharing obligations, EERE may recover some or all of the financial assistance provided under this Award. The amount EERE would seek to recover under this Term would be dependent on the extent of the Recipient’s failure to meet its cost sharing obligation.

[***\[ALTERNATE 3 – Under rare circumstances, EERE may allow the Recipient to provide reduced cost share in early budget periods such that the Recipient cost share percentage is less than the minimum set by statute or applicable cost share reduction/waiver \(or below the negotiated Recipient cost share percentage\) in the early stages of the project, with the expectation that the Recipient will catch-up in later stages of the project. Use of***](#)

this alternative requires an approved deviation in the FRD (see Section C.6 Cost Share), a waiver request submitted by the recipient, CO approval and concurrence by the Technology Office Director to ensure the Technology Office is aware of the risks. Per the FRD, deviations to this requirement should be limited to every 3 months or every 6 months.]

a. Cost Sharing Obligations.

The Recipient must provide the “Cost Share” amount stated in Block 12 of the Assistance Agreement Form to this Award. EERE and the Recipient’s cost share for the total estimated project costs are listed below.

EERE Cost Share \$ / %	Recipient Cost Share \$ / %	Total Estimated Project Costs
\$	\$	\$

The Recipient must provide its required “Cost Share” amount as a percentage of the total project costs. EERE authorized the Recipient to provide a lower percentage of the Recipient’s share (i.e., percentage) during the early stages of the Project [list the Budget Period or Phases this is allowed]. The Recipient must provide a larger share in the later stages of the Project to achieve an overall Recipient cost share of [insert cost share percent and \$].

Insert the negotiated cost share schedule here as a table

b. Cost Share Obligation If Award Terminated or Discontinued.

If the Award is terminated or is otherwise not funded to completion, the Recipient is not required to provide the entire “Cost Share” amount stated in Block 12 of the Assistance Agreement Form to this Award; however, the Recipient must provide its overall share (i.e., percentage) of the total project cost reimbursed as of the date of the termination or discontinuation.

c. Source of Cost Share.

The Recipient may not use Federal funds to meet its cost sharing obligations, unless otherwise allowed by Federal law.

d. Inability to Comply with Cost Sharing Obligations.

If the Recipient determines that it might be unable to meet its cost sharing obligations, the Recipient must notify the DOE Award Administrator in writing immediately. The notification must include the following information: (i) whether the Recipient intends to

continue or phase out the project, and (ii) if the Recipient intends to continue the project, how the Recipient will pay (or secure replacement funding for) the Recipient’s share of the total project cost.

If the Recipient fails to meet its cost sharing obligations, EERE may recover some or all of the financial assistance provided under this Award. The amount EERE would seek to recover under this Term would be dependent on the extent of the Recipient’s failure to meet its cost sharing obligation.

[ALTERNATE 4 – Applies if there is cost share and a DOE FFRDC participates in the project and DOE pays the FFRDC costs directly.]

a. Cost Sharing Obligations.

Total Estimated Project Cost is the sum of the Federal Government share, including Federally Funded Research and Development Center (FFRDC) costs, and Recipient share of the estimated project costs. The DOE FFRDC cost is not included in the total approved budget for this Award, because EERE will pay the DOE FFRDC portion of the effort under an existing DOE contract. The Recipient is not responsible for reporting on that portion of the total estimated cost that is paid directly to the DOE FFRDC.

The Recipient must provide the “Cost Share” amount stated in Block 12 of the Assistance Agreement Form to this Award. EERE and the Recipient’s cost share for the total estimated project costs are listed below.

Budget Period	EERE Cost Share, including FFRDC Costs		Recipient Cost Share \$ / %	Total Estimated Costs
	EERE \$ / %	FFRDC \$ / %		
1				
2				
3				
Total Project	\$	\$	\$	\$

The Recipient must provide its required “Cost Share” amount as a percentage of the total project costs in each invoice period for the duration of the project period. Specifically, the cumulative cost share percentage provided to date on each invoice received must reflect, at a minimum, the cost sharing percentage specified in the Award, unless the Contracting Officer has approved applicable in-kind cost share.

b. Cost Share Obligation If Award Terminated or Discontinued.

If the Award is terminated or is otherwise not funded to completion, the Recipient is not

required to provide the entire “Cost Share” amount stated in Block 12 of the Assistance Agreement Form to this Award; however, the Recipient must provide its share (i.e., percentage) of the total project cost reimbursed as of the date of the termination or discontinuation.

c. Source of Cost Share.

The Recipient may not use Federal funds to meet its cost sharing obligations, unless otherwise allowed by Federal law.

d. Inability to Comply with Cost Sharing Obligations.

If the Recipient determines that it might be unable to meet its cost sharing obligations, the Recipient must notify the DOE Award Administrator in writing immediately. The notification must include the following information: (i) whether the Recipient intends to continue or phase out the project, and (ii) if the Recipient intends to continue the project, how the Recipient will pay (or secure replacement funding for) the Recipient’s share of the total project cost.

If the Recipient fails to meet its cost sharing obligations, EERE may recover some or all of the financial assistance provided under this Award. The amount EERE would seek to recover under this Term would be dependent on the extent of the Recipient’s failure to meet its cost sharing obligation.

Term 33. DIRECT PAYMENT BY DOE OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER (FFRDC) COST

[Applies if there is no cost share and a DOE FFRDC participates in the project and DOE pays the FFRDC costs directly.]

For the purposes of this term, Total Estimated Cost of Project includes DOE FFRDC costs. The DOE FFRDC cost is not included in the total approved budget for this Award, because DOE will pay the DOE FFRDC portion of the effort under an existing DOE contract. The Recipient is not responsible for reporting on that portion of the total estimated cost that is paid directly to the DOE FFRDC.

Term 34. REFUND OBLIGATION

The Recipient must refund any excess payments received from EERE, including any costs determined unallowable by the Contracting Officer. Upon the end of the project period (or the termination of the Award, if applicable), the Recipient must refund to EERE the difference between (i) the total payments received from EERE, and (ii) the Federal share of the costs incurred.

Term 35. ALLOWABLE COSTS

a. Allowable Costs for For-Profit Entities and Certain Non-Profit Organizations.

For for-profit entities and nonprofit organizations listed in Attachment C to OMB Circular A-122 (codified at 2 C.F.R. Part 230), EERE determines the allowability of costs through reference to the for-profit cost principles in the Federal Acquisition Regulations (48 C.F.R. Part 31).

b. Allowable Costs for Nonprofits.

For nonprofit organizations *not listed* in Attachment C to OMB Circular A-122 (codified at 2 C.F.R. Part 230), EERE determines the allowability of costs through reference to the cost principles for nonprofit organizations in OMB Circular A-122 (Codified at 2 C.F.R. Part 230).

c. Allowable Costs for Institutions of Higher Education.

For institutions of higher education, EERE determines the allowability of costs through reference to OMB Circular A-21, "Cost Principles of Educational Institutions" (codified at 2 C.F.R. Part 220).

d. Allowable Costs for States and Local Governments.

For States, local governments, and tribes, EERE determines the allowability of costs through reference to OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" (codified at 2 C.F.R. Part 225).

e. Unallowable Direct Costs in Addition to Those in OMB Circulars A-21 & A-122.

Interest penalties for late payments to the Recipient and subrecipients are not allowable costs under this Award.

f. Project Costs.

All project costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subrecipients and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the applicable cost principles. Upon request, the Recipient is required to provide such records to EERE. Such records are subject to audit. Failure to provide EERE adequate supporting documentation may result in a determination by the Contracting Officer that those costs

are unallowable.

Term 36. INDIRECT COSTS

[Choose the appropriate alternative, revising as necessary for the specific award, or create a similarly formatted provision to address a situation that differs from the situations described in the alternatives, e.g., relative to a specific sub-recipient]

***Alternate 1** – [choose when indirect charges and fringe benefits are reimbursable]*

a. Lower-than-Expected Indirect Costs.

If the Recipient's actual allowable indirect costs are less than those budgeted in Attachment 3 to this Award, the Recipient may use the difference to pay additional allowable direct costs during the project period.

b. Higher-than-Expected Indirect Costs.

The Recipient understands that it is solely and exclusively responsible for managing its indirect costs. The Recipient further understands that EERE will not amend this Award solely to provide additional funds to cover increases in the Recipient's indirect cost rate.

EERE recognizes that the Recipient may not be fully reimbursed for increases in its indirect cost rate, which may result in under-recovery. In the event that the Recipient is not fully reimbursed for increases in its indirect cost rate, the Recipient may use any under-recovery to meet its cost sharing obligations under this Award.

c. Subrecipient Indirect Costs.

The Recipient must ensure its subrecipient's indirect costs are appropriately managed, allowable and otherwise comply with the requirements of this Award and 10 CFR Part 600.

***Alternate 2 – REIMBURSABLE INDIRECT COSTS AND UNSEGREGATED FRINGE BENEFITS** [choose when indirect charges and fringe benefits are reimbursable but fringe benefits are **not a separate budget item** (e.g. loaded personnel rates, overhead, etc.)]*

a. Lower-than-Expected Indirect Costs.

If actual allowable indirect charges are less than those budgeted in Attachment 3 to this Award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the Award the Government's share of total allowable costs (*i.e.*, direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

b. Higher-than-Expected Indirect Costs.

The Recipient understands that it is solely and exclusively responsible for managing its indirect costs. The Recipient further understands that EERE will not amend this Award solely to provide additional funds to cover increases in the Recipient's indirect cost rate.

EERE recognizes that the inability to obtain full reimbursement for indirect costs means the Recipient must absorb the under-recovery. Such under-recovery may be allocated as part of the organization's required cost sharing.

c. Fringe Benefit Costs.

The budget for this Award includes indirect charges, but does not include segregated fringe benefit costs. Fringe benefit costs have been found reasonable as incorporated in the Recipient's labor rate or indirect cost rate. Therefore, fringe benefit costs shall not be charged as a separate rate allocation to this Award. EERE will not reimburse fringe benefit costs as a separate budget item. Further, the fringe benefit costs for this Award cannot be allocated as a separate rate allocation to any other Federally sponsored project.

d. Subrecipient Indirect Costs.

The Recipient must ensure its subrecipient's indirect costs are appropriately managed, allowable and otherwise comply with the requirements of this Award and 10 CFR Part 600.

Alternate 3 – REIMBURSABLE INDIRECT COSTS [choose when indirect charges are reimbursable but fringe benefits are not]

a. Lower-than-Expected Indirect Costs.

If actual allowable indirect charges are less than those budgeted and funded under the Award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the Award the Government's share of total allowable costs (*i.e.*, direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

b. Higher-than-Expected Indirect Costs.

Recipients are expected to manage their indirect costs. EERE will not amend an award solely to provide additional funds for changes in indirect cost rates. EERE recognizes that the inability to obtain full reimbursement for indirect costs means the Recipient must absorb the under-recovery. Such under-recovery may be allocated as part of the organization's required cost sharing.

c. Fringe Benefit Costs.

The budget for this Award includes indirect charges, but does not include fringe benefits. Therefore, fringe benefit costs shall not be charged to nor shall reimbursement be requested for this project nor shall the fringe benefit costs for this project be allocated to any other Federally sponsored project. In addition, fringe benefit costs shall not be counted as cost share unless approved by the Contracting Officer. This restriction does not apply to subrecipients' fringe benefits costs.

d. Subrecipient Indirect Costs.

Recipient must ensure its subrecipient's indirect costs are appropriately managed, allowable and otherwise comply with the requirements of this Award and 10 C.F.R. Part 600.

Alternate 4 – [choose when fringe benefits are reimbursable but indirect charges are not]

a. Lower-than-Expected Indirect Costs.

If actual allowable fringe benefits are less than those budgeted and funded under the Award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the Award the Government's share of total allowable costs (*i.e.*, direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

b. Fringe Benefit Costs.

Recipients are expected to manage their fringe benefit costs. The budget for this Award includes fringe benefits, but does not indirect charges. Therefore, indirect charges shall not be charged to nor shall reimbursement be requested for this project nor shall any indirect charges for this project be allocated to any other Federally sponsored project. In addition, indirect charges shall not be counted as cost share unless approved by the Contracting Officer. This restriction does not apply to subrecipients' indirect costs.

c. Subrecipient Indirect Costs.

Recipient must ensure its subrecipient's indirect costs are appropriately managed, allowable and otherwise comply with the requirements of this Award and 10 CFR Part 600.

Alternate 5 – [choose when both indirect charges and fringe benefits are not reimbursable]

The budget for this Award does not include indirect costs or fringe benefits. Therefore, the Recipient cannot: (a) charge indirect costs or fringe benefits to this Award; (b) request reimbursement for these expenses under this Award; or allocate the indirect and fringe benefit costs from this project to any other Federally sponsored project. In addition, indirect costs or fringe benefits shall not be counted as cost share unless approved by the Contracting Officer. This restriction does not apply to subrecipients' indirect or fringe benefit costs. Recipient must ensure its subrecipient's indirect costs are appropriately managed, allowable and otherwise comply with the requirements of this Award and 10 C.F.R. Part 600.

Alternate 6 – [choose when placing ceilings on indirect charges and/or fringe benefits rates applicable to the project. Tailor language appropriately.]

a. Lower-than-Expected Indirect Costs.

If actual allowable indirect costs are less than those budgeted and funded under the Award, the Recipient may use the difference to pay additional allowable direct costs during the project period.

b. Higher-than-Expected Indirect Costs.

Recipients are expected to manage their indirect costs. EERE will not amend an award solely to provide additional funds for changes in indirect cost rates. EERE recognizes that the inability to obtain full reimbursement for indirect costs means the Recipient must absorb the under-recovery.

EERE will not reimburse the Recipient for any final indirect costs that are in excess of the following designated indirect rate ceilings or specific amounts: *[Insert ceilings or specific amounts]*. In addition, the Recipient shall neither count costs in excess of the rate ceilings as cost share, nor allocate such costs to other Federally sponsored projects, unless approved by the Contracting Officer. This restriction does not apply to subrecipients' indirect costs.

c. Subrecipient Indirect Costs.

Recipient must ensure its subrecipient's indirect costs are appropriately managed, allowable and otherwise comply with the requirements of this Award and 10 C.F.R. Part 600.

Term 37. LIMITATIONS ON COMPENSATION COSTS

The annual compensation costs for an individual allowable under this Award are limited to \$250,000 (i.e., \$250,000 is the maximum amount that EERE will reimburse a Recipient for any one individual's annual compensation and EERE will not recognize such costs

above \$250,000 as Recipient cost share).

This limitation does not restrict the Recipient or its subrecipients from providing annual compensation to an individual that exceeds \$250,000. However, any amount above \$250,000 cannot be included in the total project costs (i.e., Federal share or Recipient cost share).

For purposes of this Award term only, the term “annual compensation costs” is defined to include the total amount of wages and salary paid to the employee, which have been approved by the Contracting Officer.

Term 38. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

[Include if the objective of the Award is to construct, rehabilitate, alter, convert, extend, or repair buildings, highways, or make other improvements to real property and if there is a possibility that the Recipient's facilities will need to be restored or rehabilitated to approximately the same condition existing immediately prior to commencement of the Award.]

Notwithstanding any other provisions of this Award, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient’s facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Award, whether said work was performed prior to or subsequent to the effective date of the Award.

Term 39. PRE-AWARD COSTS

As stated in the Contracting Officer’s Pre-Award Costs Letter dated _____, the Recipient is authorized to request reimbursement for costs incurred on or after _____, if: (1) such costs are allowable in accordance with the applicable Federal cost principles referenced in Term titled, “[insert title]” above and as referenced in 10 C.F.R. Part 600, and (2) such costs are not otherwise restricted by Term [XX – insert the # for the NEPA Term] entitled “National Environmental Policy Act (NEPA) Requirements.” If the Recipient elects to undertake activities that are not authorized for Federal funding by the Contracting Officer in advance of DOE completing the NEPA review, the Recipient is doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share. Nothing contained in the pre-award cost reimbursement regulations or any pre-award costs approval letter from the Contracting Officer override these NEPA requirements to obtain the written authorization from the Contracting Officer prior to taking any action that may have an adverse effect on the environment or limit the choice of reasonable alternatives.

Term 40. USE OF PROGRAM INCOME

ALTERNATE 1

ADDITION

If the Recipient earns program income during the project period as a result of this Award, the Recipient may add the program income to the funds committed to the Award and used to further eligible project objectives.

ALTERNATE 2

COST SHARING

If the Recipient earns program income during the project period as a result of this Award, the Recipient may use the program income to meet its cost sharing requirement.

ALTERNATE 3

DEDUCTION

If the Recipient earns program income during the project period as a result of this Award, the Recipient must deduct the program income from the total allowable project costs to determine the net allowable costs on which the Federal share is based.

Term 41. PAYMENT PROCEDURES

ALTERNATE 1 – Choose this option for all For-Profit Recipients. This provision could also be used for other entity types if determined to be at-risk.

a. Method of Payment.

Payment will be made by reimbursement through ACH.

b. Requesting Reimbursement.

Requests for reimbursements must be made electronically through Department of Energy’s Oak Ridge Financial Service Center (ORFSC) VIPERS. To access and use VIPERS, the Recipient must enroll at <https://vipers.oro.doe.gov>. Detailed instructions on how to enroll are provided on the web site.

For non-construction awards, the Recipient must submit a Standard Form (SF) 270, “Request for Advance or Reimbursement,” at <https://vipers.oro.doe.gov> and attach a file containing appropriate supporting documentation. The file attachment must show the total Federal share claimed on the SF 270, the non-Federal share claimed for the billing period if cost sharing is required, and cumulative expenditures to date (both Federal and non-Federal) for each of the following categories: personnel; fringe benefits; equipment; travel; supplies; contractual; other direct costs; and indirect costs.

For construction awards, the Recipient must submit a SF 271, "Outlay Report and Request for Reimbursement for Construction Programs," through VIPERS.

c. Timing of Submittals.

Submittal of the SF 270 or SF 271 should *[if milestone payments are used, replace the remainder of this sentence with the following: comply with the instructions in paragraph e, "Milestone Payments," below.]* coincide with the Recipient's normal billing pattern, but not more frequently than every two weeks. Requests for reimbursement must be limited to the amount of disbursements made during the billing period for the Federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.

d. Adjusting Payment Requests for Available Cash.

The Recipient must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from EERE.

e. Milestone Payments. *[if applicable. The EERE default is to provide payment on an invoice basis. Use (e) only if milestone payments were specified in the published FOA- Requires an approved deviation. Use the optional language in paragraph c above if you insert this paragraph.]*

1. Payments will be tied to meeting deliverables. EERE will use deliverable-based payments as the method of reimbursement under this Award. Payment to the Recipient will be dependent on the submission of deliverables and EERE's verification and acceptance thereof. Upon EERE's acceptance of the deliverable, the Recipient will be reimbursed for reasonable, allowable and allocable costs incurred in meeting the deliverable requirement. The Statement of Project Objectives includes the negotiated deliverable table with mandatory submission due dates and estimated costs per deliverable.
2. Failure to meet a Deliverable. Failure of the Recipient to comply with this provision may be considered a material noncompliance of this Award by the Contracting Officer.
3. Cost overruns. If it becomes apparent that the cost associated with a deliverable will exceed the estimated cost identified in Attachment 1 by more than 10%, the Recipient must notify EERE as soon as possible to request approval from the Contracting Officer.

f. Payments.

The EERE approving official will approve the invoice as soon as practical, but not later than 30 days after the Recipient's request is received, unless the billing is improper. Upon receipt of an invoice payment authorization from the EERE approving official, the ORFSC will disburse payment to the Recipient. The Recipient may check the status of payments at the VIPERS web site. All payments are made by electronic funds transfer to the bank account specified in the information entered in the System for Award Management (SAM) website (<https://www.sam.gov>).

g. Supporting Documents for Agency Approval of Payments.

The EERE payment authorizing official may request additional information from the Recipient to support the payment requests prior to release of funds, as deemed necessary. Recipient is required to comply with these requests. Supporting documents include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.

h. Unauthorized Drawdown of Federal Funds.

For each budget period, the Recipient may not spend more than the Federal share authorized to that particular budget period, absent approval from the Contracting Officer. The Recipient must immediately refund EERE any amounts spent or drawn down in excess of the authorized amount for a budget period. The Recipient and subrecipients shall promptly, but at least quarterly, remit to DOE interest earned on advances drawn in excess of disbursement needs, and shall comply with the procedure for remitting interest earned to the Federal government per 10 C.F.R. § 600.122, 10 C.F.R. § 600.221, or 10 C.F.R. § 600.312, as applicable.

[ALTERNATE 2- Choose this option for all entity types except for For-Profit entities unless Reimbursement was requested by the Recipient on the Pre-Award information sheet. EERE must comply with the notice requirements set forth in the ASAP Guide for Payment Requestors, Appendix 4](http://fms.treas.gov/asap/paymentrequestors/prall.pdf)
<http://fms.treas.gov/asap/paymentrequestors/prall.pdf>

a. Method of Payment.

Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances.

Requests for advances must be made through the ASAP system. The Recipient may submit requests as frequently as required to meet its needs to disburse funds for the Federal share of project costs. Each request for an advance must be approved by the

Contracting Officer, in consultation with the EERE Technology Manager/ Program Manager, before money will be disbursed. If feasible, the Recipient should time each request so that the Recipient receives payment on the same day that the Recipient disburses funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.

The Recipient must submit a file containing appropriate supporting documentation. The file attachment must show the total estimated Federal share anticipated for the billing period, the estimated non-Federal share estimated for the billing period if cost share is required. The initial advance request will only include estimated totals. Subsequent advance requests must include 1) the actual costs incurred during the previous billing period, 2) the estimated amount of disbursements needed for the current billing period, and 3) actual cumulative expenditures to date (both Federal and non-Federal) for each of the following cost categories: personnel; fringe benefits; equipment; travel; supplies; contractual; other direct costs; and indirect costs.

c. Timing of Submittals.

Submittal should *[if milestone payments are used, replace the remainder of this sentence with the following: comply with the instructions in paragraph e, "Milestone Payments," below.]* coincide with the Recipient's normal billing pattern, but not more frequently than every two weeks. Requests for advances must be limited to the estimated amount of disbursements needed for the current billing period, including the Federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.

d. Adjusting Payment Requests for Available Cash.

The Recipient must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from EERE.

e. Payments.

All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that the Recipient filed with the U.S. Department of Treasury.

f. Supporting Documents for Agency Approval of Payments.

EERE requires Agency pre-approval of payments. As Agency approval requirement is in effect for the Recipient's Award, the ASAP system will indicate that Agency approval is

required when the Recipient submits a request for payment. The Recipient must notify the EERE Technology Manager/ Program Manager identified on the Assistance Agreement that a payment request has been submitted. The EERE payment authorizing official may request additional information from the Recipient to support the payment requests prior to release of funds, as deemed necessary. Recipient is required to comply with these requests. Supporting documents include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the payment requests.

g. Unauthorized Drawdown of Federal Funds.

For each budget period, the Recipient may not spend more than the Federal share authorized to that particular budget period, absent approval from the Contracting Officer. The Recipient must immediately refund EERE any amounts spent or drawn down in excess of the authorized amount for a budget period. The Recipient and subrecipients shall promptly, but at least quarterly, remit to DOE interest earned on advances drawn in excess of disbursement needs, and shall comply with the procedure for remitting interest earned to the Federal government per 10 C.F.R. § 600.122, 10 C.F.R. § 600.221, or 10 C.F.R. § 600.312, as applicable.

ALTERNATE 3 – Choose this option for all entity types except for For-Profit entities if requested by the Recipient on the Pre-Award information sheet. Note, if the Recipient was determined to be at-risk, this alternative may be used.

a. Method of Payment.

Payment will be made by reimbursement through the Department of Treasury's ASAP system.

b. Requesting Reimbursement.

Requests for reimbursements must be made through the ASAP system. The Recipient's requests for reimbursement should *[if milestone payments are used, replace the remainder of this sentence with the following: comply with the instructions in paragraph e, "Milestone Payments," below.]* coincide with its normal billing pattern, but not more frequently than every two weeks. Each request must be limited to the amount of disbursements made for the Federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.

The Recipient must submit a file containing appropriate supporting documentation. The file must show the total Federal share for the billing period, the non-Federal share claimed for the billing period if cost sharing is required, and cumulative expenditures to date (both Federal and non-Federal) for each of the following categories: personnel;

fringe benefits; equipment; travel; supplies; contractual; other direct costs; and indirect costs.

c. Timing of Submittals.

Request for reimbursement should *[if milestone payments are used, replace the remainder of this sentence with the following: comply with the instructions in paragraph e, "Milestone Payments," below.]* coincide with the Recipient's normal billing pattern, but not more frequently than every two weeks. Requests for reimbursement must be limited to the amount of disbursements made during the billing period for the Federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.

d. Adjusting Payment Requests for Available Cash.

The Recipient must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from EERE.

e. Milestone Payments. *[if applicable. The EERE default is to provide payment on an invoice basis. Use (e) only if milestone payments were specified in the published FOA- Requires an approved deviation. Use the optional language in paragraph c above if you insert this paragraph.]*

1. Payments will be tied to meeting deliverables. EERE will use deliverable-based payments as the method of reimbursement under this Award. Payment to the Recipient will be dependent on the submission of deliverables and EERE's verification and acceptance thereof. Upon EERE's acceptance of the deliverable, the Recipient will be reimbursed for reasonable, allowable and allocable costs incurred in meeting the deliverable requirement. The Statement of Project Objectives includes the negotiated deliverable table with mandatory submission due dates and estimated costs per deliverable.
2. Failure to meet a Deliverable. Failure of the Recipient to comply with this provision may be considered a material noncompliance of this Award by the Contracting Officer.
3. Cost overruns. If it becomes apparent that the cost associated with a deliverable will exceed the estimated cost identified in Attachment 1 by more than 10%, the Recipient must notify EERE as soon as possible for approval from the Contracting Officer.

f. Payments.

All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that the Recipient filed with the U.S. Department of Treasury.

g. Supporting Documents for Agency Approval of Payments.

EERE will require Agency pre-approval of payments. As Agency approval requirement is in effect for the Recipient's Award, the ASAP system will indicate that Agency approval is required when the Recipient submits a request for payment. The Recipient must notify the EERE Technology Manager/ Program Manager identified on the Assistance Agreement that a payment request has been submitted. The EERE payment authorizing official may request additional information from the Recipient to support the payment requests prior to release of funds, as deemed necessary. Recipient is required to comply with these requests. Supporting documents include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.

h. Unauthorized Drawdown of Federal Funds.

For each budget period, the Recipient may not spend more than the Federal share authorized to that particular budget period, absent approval from the Contracting Officer. The Recipient must immediately refund EERE any amounts spent or drawn down in excess of the authorized amount for a budget period. The Recipient and subrecipients shall promptly, but at least quarterly, remit to DOE interest earned on advances drawn in excess of disbursement needs, and shall comply with the procedure for remitting interest earned to the Federal government per 10 C.F.R. § 600.122, 10 C.F.R. § 600.221, or 10 C.F.R. § 600.312, as applicable.

Term 42. BUDGET CHANGES

a. Budget Changes Generally.

The Contracting Officer has reviewed and approved the SF-424A in Attachment 3 to this Award.

Any increase in the total project cost, which is stated as "Total" in Block 12 to the Assistance Agreement Form of this Award, must be approved in advance and in writing by the Contracting Officer.

EERE may deny reimbursement for any failure to comply with the requirements in this clause.

b. Transfers of Funds Among Direct Cost Categories.

The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total project cost, which is stated as "Total" in Block 12 to the Assistance Agreement Form of this Award.

The Recipient is required to notify the EERE Technology Manager/Program Manager of any transfer of funds among direct cost categories where the cumulative amount of such transfers is equal to or below 10 percent of the total project cost, which is stated as "Total" in Block 12 to the Assistance Agreement Form of this Award.

c. Transfer of Funds Between Direct and Indirect Cost Categories.

The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds between direct and indirect cost categories.

Term 43. FINANCIAL COMMITMENT/FUNDING PLAN

Not later than [] days after the effective date of the Award:

- a. The Recipient must provide the Contracting Officer with an updated total project cost estimate along with evidence of firm commitments to establish the Recipient can pay its share (i.e., percentage) of the total project cost. Such evidence may include executed loans, bond financing agreements, state or local grants, and third party contribution agreements. For each non-governmental source of cost-sharing, the Recipient shall provide audited financial statements for the most recent two years.
- b. If the Recipient has not secured firm financial commitments to establish that the Recipient can pay its share of the total project cost, the Recipient must provide the Contracting Officer with evidence of firm commitments made to date, as set forth in paragraph a, and a detailed Funding Plan that meets the following requirements:
 1. The Funding Plan must demonstrate a reasonable plan to obtain the balance of funding for the Recipient's share of the total project cost. The Funding Plan must identify all anticipated sources of funding such as bank loans, bond offerings, state or local grants, and equity contributions.
 2. The Recipient must fully describe any limitations, conditions or other factors that could affect the availability of funding. If the Recipient intends to use

third party financing to cover all or a portion of the Recipient's share of the total project costs, the Recipient must discuss the timing, conditionality and terms and conditions of the financing.

3. The Recipient must provide audited financial statements for the most recent two fiscal years for each non-governmental source of funds. If a source does not have audited financial statements, that source should provide equivalent financial statements prepared by the party, in accordance with Generally Accepted Accounting Principles, and certified as to accuracy and completeness by the Chief Financial Officer of the party providing the statements.
 4. The Recipient must obtain and provide a commitment letter from each source, signed by an officer of the corporation or other entity that is authorized to commit the funding to the proposed project. The amount of funds to be provided, the timing of the funding, and any contingencies, should be specified. Commitment letters should identify the type of proposed cost sharing (e.g., cash, services, and/or property) to be contributed.
 5. If in-kind contributions of property or services are proposed, the Recipient must provide support for their valuation and explain how the valuation was determined.
 6. If the project will be financed on a non-recourse basis, the Recipient must provide a working financial model (in MS Excel 2003 or 2007) that provides projections of the project including an income statement, balance sheet, cash flow statement, and sources and uses of funds statement, all on an annual basis with appropriate supporting schedules. The financial projections should be developed in this financial model, commencing with the initial project development phase and extending through the period of operations needed to obtain funding. The model should be provided in electronic form including cell formulas so that review of the model assumptions and sensitivity calculations may be facilitated. The Recipient must provide a description and explanation for each of the financial, economic, and operating assumptions for the project. The assumptions should be consistent with and supported by the information provided in the project cost estimate.
- c. In the event EERE determines that the information provided by the Recipient is inadequate to establish the Recipient can pay its share (i.e., percentage) of the total project cost, EERE may:

1. Restrict the release of Federal funds while providing the Recipient with a reasonable time period to provide adequate information;
2. Renegotiate the project scope and/or payment schedule; or
3. Take action to suspend or terminate the Award by providing the Recipient with 30 days advance written notice and opportunity to cure. If the Recipient is unable to cure by providing adequate information to assure establish the Recipient can pay its share (i.e., percentage) of the total project cost, EERE and the Recipient agree the Award will thereby be terminated by mutual agreement. If the Award is terminated for the reason stated above, the Recipient is entitled to payment of EERE's share of the allowable project cost incurred prior to the date of termination plus the reasonable cost of terminating contracts. EERE's maximum liability for project cost in the event of termination is *[enter amount of max liability]*.

SUBPART C. MISCELLANEOUS PROVISIONS

Term 44. ENVIRONMENTAL, SAFETY AND HEALTH (ES&H) PERFORMANCE OF WORK AT DOE FACILITIES

[Applies to all financial assistance actions that may involve work to be performed at a DOE-owned or controlled site.]

With respect to the performance of any portion of the work under this Award which is performed at a DOE -owned or controlled site, the Recipient agrees to comply with all State and Federal ES&H regulations and with all other ES&H requirements of the operator of such site.

Prior to the performance on any work at a DOE-owned or controlled site, the Recipient shall contact the site facility manager for information on DOE and site specific ES&H requirements.

The Recipient is required apply this provision to its subrecipients and contractors.

Term 45. CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES

This term applies to Recipients that are organized as corporations. A corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States, but not foreign corporations. It includes both for-profit and non-profit organizations.

By entering into this Award, the Recipient attests that its corporation **has not been convicted** of a felony criminal violation under Federal law in the 24 months preceding

the date of signature.

By entering into this agreement, the Recipient attests that no **agent or officer of [insert corporation name]** has been convicted of a felony offense, arising out of actions for or on behalf of the corporation, under Federal law in the 24 months preceding the date the Recipient accepted the Award.

The undersigned further attests that **[insert corporation name] does not have any unpaid Federal tax liability** that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

Term 46. INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

- a. The Recipient shall immediately notify EERE of the occurrence of any of the following events: (i) the Recipient or the Recipient's parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) the Recipient's consent to the institution of an involuntary case under the Bankruptcy Act against the Recipient or the Recipient's parent; (iii) the filing of any similar proceeding for or against the Recipient or the Recipient's parent, or the Recipient's consent to the dissolution, winding-up or readjustment of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the Recipient, under any other applicable state or Federal law; or (iv) the Recipient's insolvency due to its inability to pay debts generally as they become due.
- b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph (a); (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this Award.
- c. Upon the occurrence of any of the four events described in paragraph a. of this term, EERE reserves the right to conduct a review of the Recipient's Award to determine the Recipient's compliance with the required elements of the Award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the EERE review determines that there are significant deficiencies or concerns with the Recipient's performance under the Award, EERE reserves the right to impose additional requirements, as needed, including (i) change of payment method; or (ii) institute payment controls.
- d. Failure of the Recipient to comply with this term may be considered a material noncompliance of this Award by the Contracting Officer.

TERM 47. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards.

1. Applicability. Unless the Recipient is exempt as provided in paragraph d. of this award term, the Recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. The Recipient must report each obligating action described in paragraph a.1. of this award term to <https://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. The Recipient must report the information about each obligating action that the submission instructions posted at <https://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. The Recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if

i. The total Federal funding authorized to date under this Award is \$25,000 or more;

ii. In the preceding fiscal year, the Recipient received;

(A) 80 percent or more of the Recipient's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320

(and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>)

2. Where and when to report. The Recipient must report executive total compensation described in paragraph b.1. of this award term:

i. As part of the Recipient's registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless the Recipient is exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, the Recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if;

i. In the subrecipient's preceding fiscal year, the subrecipient received;

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>)

2. Where and when to report. The Recipient must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which the Recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), the Recipient must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, the Recipient had gross income, from all sources, under \$300,000, it is exempt from the requirements to report:

- i. Subawards and;
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this Award term:

1. Entity means all of the following, as defined in 2 CFR Part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the

performance of any portion of the substantive project or program for which the Recipient received this award and that the recipient awards to an eligible subrecipient.

ii. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).

iii. A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from the Recipient under this award; and

ii. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (*e.g.* severance, termination payments, value of life

insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TERM 48. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

a. Requirement for Registration in the System for Award Management (SAM)

Unless the Recipient is exempted from this requirement under 2 CFR 25.110, the Recipient must maintain the currency of its information in SAM until the Recipient submits the final financial report required under this Award or receive the final payment, whichever is later. This requires that the Recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

If the Recipient had an active registration in the CCR, it has an active registration in SAM.

b. Requirement for Data Universal Numbering System (DUNS) Numbers

If the Recipient is authorized to make subawards under this Award, the Recipient:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its DUNS number to the Recipient.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to the Recipient.

c. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov>).
2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at

<http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:

- i. A Governmental organization, which is a State, local government, or Indian Tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization; and
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
- ii. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).
- iii. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.

5. Subrecipient means an entity that:

- i. Receives a subaward from the Recipient under this Award; and
- ii. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

Term 49. NATIONAL SECURITY: CLASSIFIABLE RESULTS ORIGINATING UNDER AN AWARD

[Applicable only if this is a research and development award.]

- a. This Award is intended for unclassified, publicly releasable research. The

Recipient will not be granted access to classified information. EERE does not expect that the results of the research project will involve classified information. Under certain circumstances, however, a classification review of information originated under the award may be required. DOE may review research work generated under this Award at any time to determine if it requires classification.

- b. Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to the national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If the Recipient originates information during the course of this Award that the Recipient believes requires classification, the Recipient must promptly:
 1. Notify the EERE Technology Manager/ Program Manager and the DOE Award Administrator;
 2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P.O. Box A; Germantown, MD 20875-0963, for classification review.
 3. Restrict access to the information to the maximum extent possible until the Recipient is informed that the information is not classified, but no longer than 30 days after receipt by the Director, Office of Classification and Information Control
- c. If the Recipient originates information concerning the production or utilization of special nuclear material (*i.e.*, plutonium, uranium enriched in the isotope 233 or 235, and any other material so determined under section 51 of the Atomic Energy Act) or nuclear energy, the Recipient must:
 1. Notify the EERE Technology Manager/ Program Manager and the DOE Award Administrator;
 2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P. O. Box A; Germantown, MD 20875-0963 for classification review within 180 days of the date the Recipient first discovers or first has reason to believe that the information is useful in such production or utilization; and
 3. Restrict access to the information to the maximum extent possible until the Recipient is informed that the information is not classified, but no longer than 90 days after receipt by the Director, Office of Classification and Information Control.

- d. If EERE determines any of the information requires classification, the Recipient agrees that the Government may terminate the Award by mutual agreement in accordance with 10 C.F.R. 600.25(d). All material deemed to be classified must be forwarded to EERE, in a manner specified by EERE.
- e. If EERE does not respond within the specified time periods, the Recipient is under no further obligation to restrict access to the information.

Term 50. SUBRECIPIENT AND VENDOR APPROVALS

- a. At Risk Notice: The Recipient must obtain written approval by the Contracting Officer for reimbursement of costs associated with subrecipients/activities/vendors listed in paragraph b. below. *[Add language as necessary to request information from recipient] [i.e. If the subaward is under \$250,000, the Recipient must submit a Statement of Project Objectives, and basis of cost estimate. If the subaward is for \$250,000 or more, the Recipient must submit a Statement of Project Objectives, and EERE 159 Budget Justification. If the vendor cost is for \$250,000 or more, the Recipient must submit quote and purpose/need].* Recipient is restricted from expending project funds (i.e., Federal share and Recipient share) on the subrecipients' and/or vendors' supporting the tasks identified in paragraph b. below unless and until the Contracting Officer provides written approval. At its discretion, EERE may not reimburse costs incurred prior to the date of any such written approval by the Contracting Officer.
- b. Contracting Officer approval as set out above is required for the following:

<u>Task #</u>	<u>Activity and Subrecipients /Vendor [If Known]</u>	<u>Total Amount (\$)</u>
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The Contracting Officer may require additional information concerning these tasks prior to providing written approval.

- c. Upon written approval by the Contracting Officer, the Recipient may then receive payment for the tasks identified in paragraph b. above for allowable costs incurred, or EERE will recognize costs incurred toward cost share requirements, if any, in accordance with the payment provisions contained in the Special Terms and Conditions of this agreement.

Term 51. SUBAWARD/SUBCONTRACT CHANGE NOTIFICATION

Except for subawards and/or subcontracts specifically proposed as part of the

Recipient's Application for award, the Recipient must notify the Contracting Officer and Project Manager in writing 30 days prior to the execution of new or modified subawards/subcontracts. This notification does not constitute a waiver of the prior approval requirements outlined in 10 CFR Part 600, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, the Recipient documentation must, as a minimum, include the following:

1. A description of the research to be performed, the service to be provided, or the equipment to be purchased;
2. Cost share commitment letter if the subawardee is providing cost share to the Award;
3. An assurance that the process undertaken by the Recipient to solicit the subaward/subcontract complies with their written procurement procedures as outlined in 10 CFR § 600.144, 10 CFR § 600.236, and 10 CFR § 600.331.
4. An assurance that no planned, actual or apparent conflict of interest exists between the Recipient and the selected subawardee/subcontractor and that the Recipient's written standards of conduct were followed;¹
5. A completed Environmental Questionnaire, if applicable;
6. An assurance that the subawardee/subcontractor is not a debarred or suspended entity; and
7. An assurance that all required award provisions will be flowed down in the resulting subaward/subcontract.

The Recipient is responsible for making a final determination to award or modify subawards/subcontracts under this agreement, but the Recipient may not proceed with the subaward/subcontract until the Contracting Officer determines, and provides the Recipient written notification, that the information provided is adequate.

Should the Recipient not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the subaward/subcontract documentation stipulated above, Recipient may proceed to award or modify the proposed subaward/subcontract.

¹ It is DOE's position that the existence of a "covered relationship" as defined in 5 C.F.R. § 2635.502(a)&(b) between a member of the Recipient's owners or senior management and a member of a subawardee's/subcontractor's owners or senior management creates at a minimum an apparent conflict of interest that would require the Recipient to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the subaward or subcontract does not create an actual conflict of interest. The Recipient must also notify the Contracting Officer of any new subcontract or subaward to: (1) an entity that is owned

or otherwise controlled by the Recipient; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient, as it is DOE’s position that these situations also create at a minimum an apparent conflict of interest.

Term 52. RECIPIENT LIGHTING EFFICIENCY CERTIFICATION

*[Include the following provision in new or renewal **grant** awards in excess of \$1,000,000 that are funded with FY 2012 dollars. Does not apply to cooperative agreements.]*

By entering into this agreement, the Recipient certifies that it will, by the end of the Federal Government’s fiscal year, upgrade the efficiency of its facilities by replacing any incandescent lighting of the type for which section 325 of the Energy Policy and Conservation Act (42 USC 6295) establishes a standard that does not meet or exceed the energy efficiency standard for incandescent light bulbs set forth in that section with a lamp that meets or exceeds the standards for lamps established in or pursuant to that section.

Incandescent reflector lamps shall meet or exceed the lamp efficacy standards shown in the table:

Rated lamp wattage	Lamp spectrum	Lamp diameter (inches)	Rated voltage	Minimum average lamp efficacy (lm/W)
40–205	Standard Spectrum	>2.5	≥125V	$6.8 * P^{0.27}$
			<125V	$5.9 * P^{0.27}$
		≤2.5	≥125V	$5.7 * P^{0.27}$
			<125V	$5.0 * P^{0.27}$
40–205	Modified Spectrum	>2.5	≤125V	$5.8 * P^{0.27}$
			<125V	$5.0 * P^{0.27}$
		≤2.5	≥125V	$4.9 * P^{0.27}$
			<125V	$4.2 * P^{0.27}$

Note 1: P is equal to the rated lamp wattage, in watts.

Note 2: Standard Spectrum means any incandescent reflector lamp that does not meet the definition of modified spectrum in 10 CFR 430.2.

Subject to the exemption below, the standards specified in this section shall apply to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes.

Subject to the exemption below, the standards specified in this section shall apply to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches.

Exemption: The standards specified in this section shall not apply to the following types of incandescent reflector lamps:

- (A) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps;
- (B) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps; or
- (C) R20 incandescent reflector lamps rated 45 watts or less.

For purposes of this Certification, the following definitions apply:

(A) Facilities mean the room(s), area(s), or building(s) that are used to complete a majority of the work under the project.

(B) In excess of \$1,000,000 means the total value of the grant including all budget periods funded with Federal funds and recipient cost share is greater than \$1,000,000.

(C) Federal Government's fiscal year begins October 1st and ends September 30th.

(D) Except as provided in subparagraph (4) below, the term "incandescent lamp" means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(1) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.

(2) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, ER, BR, BPAR, or similar bulb shapes with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.25 inches, and has a rated wattage that is 40 watts or higher.

(3) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

(4) The term “incandescent lamp” does not include any lamp excluded by the Secretary, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

(E) The term “base” means the portion of the lamp which connects with the socket as described in ANSI C81.61–1990.

(F) The term “bulb shape” means the shape of lamp, especially the glass bulb with designations for bulb shapes found in ANSI C79.1–1980 (R1984).

(G) The term “lamp efficacy” means the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(H) The term “lamp wattage” means the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode.

Term 53. FOREIGN NATIONAL INVOLVEMENT

[Include in ALL new Grants and Cooperative Agreements]

Upon request by DOE, the Recipient must provide information to the DOE in order to facilitate DOE’s responsibilities associated with foreign national access to DOE sites, information, technologies, and equipment. Foreign national is defined as any person who was born outside the jurisdiction of the United States, is a citizen of a foreign government, and has not been naturalized under U.S. law. If the Recipient or subrecipients, contractors or vendors, anticipate utilizing a foreign national person in the performance of an award, the Recipient is responsible for providing to the Contracting Officer specific information of the foreign national(s) to satisfy compliance with all of the requirements for access approval.

Term 54. RESERVED

APPENDIX A:

DEFINITIONS

The terms defined in 10 C.F.R. § 600.3 apply to this Award, unless otherwise defined in Appendix A. If a term is not defined in Appendix A or 10 C.F.R. § 600.3, DOE reserves the right to add a definition to Appendix A.

EERE is the Office of Energy Efficiency and Renewable Energy, an office within the U.S. Department of Energy.

Award is defined on the first page of Attachment 1 to this Award.

Cash contributions are cash expenditures made by a Recipient as contributions toward cost sharing, including expenditures of money that third parties contributed to the Recipient.

Contracting Officer means the DOE official who is authorized to execute awards and amendments on behalf of EERE and is responsible for the business management and non-program aspects of the financial assistance process.

Cooperative agreement is a legal instrument which, consistent with 31 U.S.C. § 6305, is used to enter into the same kind of relationship as a grant (see definition of “grant” below), except that substantial involvement is expected between EERE and the Recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include “cooperative research and development agreements” as defined in 15 U.S.C. § 3710a.

Cost sharing is the portion of project costs from non-Federal sources that are borne by the Recipient (or non-Federal third parties on behalf of the Recipient), rather than by the Federal Government.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing or management information.

Direct Costs are those that can be identified specifically with a particular final cost objective (i.e., a particular award, project, service, or other direct activity of an organization).

DOE is the U.S. Department of Energy.

EERE is the Office of Energy Efficiency and Renewable Energy, an office within DOE that invests in energy efficiency and renewable energy technologies.

Equipment is tangible property, other than real property, that has a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

Expenditures are charges made to the project or program on a cash basis. Expenditures are the sum of (i) cash disbursements for direct charges for goods and services; (ii) the amount of indirect expense charged; (iii) the value of third party in-kind contributions

applied; and (iv) the amount of cash advances and payments made to any other organizations for the performance of a part of the RD&D effort.

Financial assistance means the transfer of money or property from EERE to a Recipient to carry out a public purpose of support or stimulation authorized by law.

Indirect Costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective (e.g., equipment and capital improvements, accounting or personnel expenses, or operations expenses).

In-kind contributions are the value of non-cash contributions made by a Recipient or non-Federal third parties toward cost sharing. Such in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to EERE.

Institution of higher education is an educational institution that (i) meets the criteria in section 101 of the Higher Education Act of 1965 (20 U.S.C. § 1001); and (ii) is subject to the provisions of OMB Circular A-110, “Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations” (codified at 2 C.F.R. Part 215), as implemented by the Department of Energy at 10 C.F.R. § 600, Subpart B.

Intellectual property are patents, trademarks, copyrights, mask works, protected data, and other forms of comparable property protected by Federal law and foreign counterparts.

Limited Rights Data means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Nonprofit organization means any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of “nonprofit organization” at 48 C.F.R. § 27.301 shall apply for patent matters set forth at 10 C.F.R. §§ 600.136 and 600.325).

Program Director is the EERE official who is responsible for managing the technical program carried out under this Award.

Project means the set of activities described in the Award that is approved by EERE for financial assistance (whether such financial assistance represents all or only a portion of the support necessary to carry out those activities).

Project period is defined in Clause 2 of Attachment 1 to this Award.

Property is real property and personal property (e.g., equipment, supplies, and intellectual property), unless stated otherwise.

Real property is land, including land improvements and structures. The term “real property” does not include movable machinery and equipment.

Recipient means the individual or entity identified in Block 5 of the Cover Page (Assistance Agreement Form) to this Award.

Subaward means financial assistance in the form of money, or property in lieu of money, provided under an award by a Recipient to an eligible subrecipient or by a subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract. The term does not include the procurement of goods and services.

Subrecipient is the legal entity to which a subaward is made and which is accountable to the Recipient for the use of the funds or property provided.

Supplies are tangible property other than real property and equipment. Supplies have a useful life of less than one year.

Termination means the cancellation of DOE sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Total project cost means the sum of the Federal Government share and the Recipient share of total allowable costs. The Federal Government share generally includes costs incurred by Federally Funded Research and Development Centers and Government-Owned Government-Operated laboratories.

VIPERS means DOE’s Oak Ridge Financial Service Center Vender Inquiry Payment Electronic Reporting System.