

CUSTOMER CONTRACT REQUIREMENTS
Design, Fabrication and Testing of Subcells
CUSTOMER CONTRACT 67N-1093930

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

1, Special Terms and Conditions

(a) Performance of Work in the United States

All work under this Contract must be performed In the United States, unless Seller receives advanced written authorization to perform certain work overseas.

(b) Equipment Purchases

To the greatest extent practicable, all equipment and products purchased with funds made available under this contract should be made in the United States. Any new equipment acquired under this Contract must be made or manufactured in the United States, to the maximum extent practicable. This requirement does not apply to used or leased equipment.

(c) Export Controls

Seller is required to comply with U.S. export control laws and regulations in the performance of work under this Contract. Buyer may deny reimbursement for any failure to comply with the requirements in this clause. In the alternative, Buyer may deem any failure to comply with the requirements in this clause to be material noncompliance with the terms and conditions of this Contract and suspend or terminate the Contract.

(d) Record Retention

Consistent with 10 C.F.R. Part 600, the Seller is required to retain records relating to this Contract 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 Seller 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 Seller 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.

(iii) The Seller is not required to retain records after the end of the project period if Buyer agrees to maintain the records. Copies of records may be substituted for originals.

ARTICLE 4 INTELLECTUAL PROPERTY

Intellectual Property is pursuant to standard terms of collaboration.

- (a) Inventions made by Seller are owned by Seller.
- (b) Inventions made by Buyer are owned by Buyer.
- (c) Inventions made jointly are jointly-owned.

Intellectual Property Provisions

(Large Businesses) - Waiver (Patent Rights) of the ARPA-E Model Cooperative Agreement (published at <http://arpa-e.energy.gov/>) is hereby incorporated by reference. Compliance by Seller is expressly required.

4. Confidential Information and Data

The Seller is required to "mark confidential information and data in accordance with this guidance. Failure to properly mark confidential information and data may result in its public disclosure under the Freedom of Information Act (FOIA, 5 U.S.C. § 552) or otherwise.

Note: This guidance does not apply to information submitted to ARPA-E's Energy Program Information Center (EPIC), which has its own mechanisms to allow the Recipient to mark confidential information.

A. Protected Data

The Seller must properly mark any documents containing Protected Data.

"Protected Data" is defined as information and data produced under the award that, if

"developed at private expense, would qualify as trade secret, privileged, or confidential information or data. Protected Data is protected from public disclosure for five (5) years from the time it is first produced.

- The cover page must be marked with the following wording and identify the specific pages containing Protected Data:

PROTECTED RIGHTS NOTICE

Pages ___ of this document contain protected data that was produced under Agreement No. ___ with the U.S. Department of Energy. This data may not be published, disseminated, or disclosed to others outside the Government until 5 years after development of information under this Contract, unless express written authorization is obtained from the recipient. Upon expiration of the period of protection set forth in this Notice, "the Government shall have unlimited rights in this data.

- Title header and footer of each page containing protected information must be marked with the following wording:

"May contain protected information that is privileged or confidential and exempt from public disclosure."

- Ensure that all e-mails containing protected information are categorized as

"confidential" (Learn how to mark a message confidential in Outlook:

<http://office.microsoft.com/en-us/outlook-help/mark-a-message-as-privatepersonalor-ooconfidential-HP005242880.aspx>).

B. Other

Confidential Information and Data

The Seller must properly mark any documents containing trade secrets or commercial financial information that is privileged or confidential.

- The cover page must be marked with the following wording and identify the specific pages containing such information:

NOTICE OF RESTRICTION ON DISCLOSURE AND USE OF DATA

Pages ___ of this document may contain trade secrets or commercial or financial information that is privileged or confidential and exempt from

public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

• The header and footer of each page containing such information must be marked with the following wording:

"May contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure."

• Each line and paragraph containing such information must be marked with double brackets or other clear identification, such as highlighting.

• Ensure that all e-mails containing protected information are categorized as "confidential." (Learn how to mark a message confidential in Outlook:

[http://office.mlcrosoft.com/en-us/outlook\(-help/mark-a-message-as-private personal-or - confidential-HP005242880.aspx\)](http://office.mlcrosoft.com/en-us/outlook(-help/mark-a-message-as-private%20personal-or%20confidential-HP005242880.aspx)

Reporting Requirements

(a) Research Progress Reports

Every quarter, the Seller is required to submit a Research Performance Progress Report in a format to be mutually agreed upon. Submission deadline is within seven (7) calendar days of every quarter (January 7, April 7, July 7, October 7). The Report shall include the following:

- (i) Accomplishments & Milestones Updates*
- (ii) Issues, Risks, and Mitigation*
- (iii) Changes in Approach*
- (iv) Key Personnel Changes or teaming arrangements*
- (v) Project Output*
- (vi) Subcontractor Disclosures*
- (vii) Conflicts of Interest*
- (viii) Performance of Work In the United States*
- (ix) Project Schedule Status*
- (x) Budget Status*
- (xi) Certification of Complete and Accurate Reporting*

Intellectual Property Reporting

(i) Seller shall send notificaitons to Buyer that a Subject Invention was created and reported to the DOE. Notifications shall reference this contract number 67N-1093930 and DOE Grant DE-AR0000333.

(ii) Seller shall disclose to the Buyer Subject Inventions, including anticipated uses and sales within 6 months of conception or first actual reduction to practice whichever occurs first under the award, and before sale, public use, or public disclosure of the invention.

(iii) Seller shall elect (or decline) to retain title to a Subject Invention no later than 3 months after disclosing the subject invention to the DOE or 60 days prior to any statutory deadline, whichever is earlier.

(iv) Seller shall disclose directly to the DOE the filing of any U.S. or foreign patent applications for a Subject Invention Including the filing date, patent . application number, and title. An initial patent application must be filed with the U.S. Patent and Trademark Office (USPTO) within one year after electing to retain title, but prior to any statutory deadline.

(v) Seller shall disclose directly to the DOE the patent number and issue date for any patent issued for a Subject Invention.

(vi) Seller shall discontinue prosecution of a patent application, maintenance of a patent application, or defense in a patent reexamination or oppositiol") proceeding, regardless of jurisdiction at least 30 days before the expiration of the response period required by a relevant domestic or foreign patent office.

(vii) Seller may complete ARPA-E's Intellectual Property Reporting Form to

fulfill its intellectual property reporting obligations under this contract. The ARPA Intellectual Property Reporting Form, available at: <http://www.eroae.energy.gov/sltes/defaultfiles/documents/files/ARPA%20IP%20Reporting%20Form.pdf> should be used to fulfill the requirements listed in paragraphs (I)-(vI) of this section as well as to request an extension of time to elect (or decline or retain title to a subject invention, or file an initial domestic or foreign patent application.

(viii) The requirements in this section do not relieve the Seller of its responsibility to disclose Subject Inventions.

(h) Subject Invention Utilization Reporting

Seller shall submit the Subject Invention Report to the DOE within 80 days after the end of the annual reporting period and for five (5) years after the end date of this contract. This report discloses Seller's actions to commercialize subject Inventions and its effort made by Seller and its licensees/assignees to stimulate such utilization.

4. Confidential Information and Data

The Subcontractor is required to mark confidential information and data in accordance with this guidance. Failure to properly mark confidential information and data may result in its public disclosure under the Freedom of Information Act (FOIA, 5 U.S.C. § 552) or otherwise.

Note: This guidance does not apply to information submitted to ARPA-E's Energy Program Information Center (EPIC), which has its own mechanisms to allow the Recipient to mark confidential information.

A. Protected Data

The Seller must properly mark any documents containing Protected Data. "Protected Data" is defined as information and data produced under the award that, if developed at private expense, would qualify as trade secret, privileged, or confidential information or data. Protected Data is protected from public disclosure for five (5) years from the time it is first produced.

- The cover page must be marked with the following wording and identify the specific pages containing Protected Data:

PROTECTED RIGHTS NOTICE

Pages ___ of this document contain protected data that was produced under Agreement No. ___ with the U.S. Department of Energy. This data may not be published, disseminated, or disclosed to others outside the Government until 5 years after development of information under this Agreement, unless express written authorization is obtained from the recipient. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data.

- Title header and footer of each page containing protected information must be marked with the following wording: *"May contain protected information that is privileged or confidential and exempt from public disclosure."*
- Ensure that all e-mails containing protected information are categorized as "confidential." (Learn how to mark a message confidential in Outlook: <http://office.microsoft.com/en-us/outlook-help/mark-a-message-as-privatepersonal-or-confidential-HP005242880.aspx>).

B. Other Confidential Information and Data

The Subcontractor must properly mark any documents containing trade secrets or commercial/financial information that is privileged or confidential.

- The cover page must be marked with the following wording and identify the specific pages containing such information:

NOTICE OF RESTRICTION ON DISCLOSURE AND USE OF DATA Pages ___ of this document may contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

- The header and footer of each page containing such information must be marked with the following wording: *"May contain trade secrets or commercial or financial information that is privileged or*

confidential and exempt from public disclosure."

- Each line and paragraph containing such Information must be marked with double brackets or other clear identification, such as highlighting.
- Ensure that all e-mails containing protected information are categorized as "confidential." (Learn how to mark a message confidential in Outlook: [http://office.mlcrosoft.com/en-us/oullool\(-help/mark-a-message-as-privatepersonal-or-confidential-HP005242880.aspx\)](http://office.mlcrosoft.com/en-us/oullool(-help/mark-a-message-as-privatepersonal-or-confidential-HP005242880.aspx)).

5. Protected Personally Identifiable Information

The Seller should not include any Protected Personally Identifiable Information (Protected PII) In their submissions to ARPA-E. Protected Pills defined as any data that, if compromised, could cause harm to an individual such as identify theft Protected PII Includes:

- Social Security Numbers In any form;
 - Place Of Birth associated with an Individual;
 - Date of Birth associated with an individual;
 - Mother's maiden name associated with an Individual;
 - Biometric record associated with an individual;
 - Fingerprint;
 - Iris Scan;
 - DNA
- Medical history information associated with an individual;
 - Medical conditions, Including history of disease;
 - Metric information, e.g., weight, height, blood pressure;
 - Criminal history associated with an Individual;
 - Ratings;
 - Disciplinary actions;
 - Financial Information associated with an individual;
 - Credit card numbers; and
 - Security clearance history OR related information (not including actual clearances held).

6. National Policy Assurances

(a) Nondiscrimination

Seller shall comply with applicable provisions of the following national policies prohibiting discrimination:

- (i) Discrimination on the basis of race, color, or national origin
- (ii) Discrimination on the basis of race, color, religion, sex" or national origin against any person employed by or seeking employment with Government contractors or contractors performing under Federally assisted construction contracts.
- (iii) Discrimination on the basis of sex or blindness
- (iv) Discrimination on the basis of age.
- (v) Discrimination on the basis of disability or handicap.
- (vi) Failure to provide handicap access In the construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel.

(b) Live Organisms

Seller shall comply with applicable provisions of the following national policy concerning live organisms:

(i) Prohibition on trafficking In persons

(c) Environmental Standards

Seller agrees that activities under this contract will be conducted tn accordance with the following environmental laws and regulations:

- (i) The Clean Water Act
- (ii) The Clean Air Act

Exhibit C to 67N-1093930

(iii) The Resource Conservation and Recovery Act (RCRA)

(iv) The Lead-Based Paint Poisoning Prevention Act

(d) Potential Environmental Impacts

Seller agrees that it will immediately notify Customer, through Buyer, of any potential impacts that activities conducted under this contract may have on the following areas and resources:

(i) The quality of the human environment

(ii) Flood-prone areas and wetlands

(iii) The use of land and water in coastal zones

(iv) Existing or proposed components of the national Wild and Scenic Rivers System

(v) Barriers along the Atlantic and Gulf Coast and Great Lake shores

(vi) Underground drinking water

(vii) Streams and natural bodies of water that house fish and wildlife'

(viii) Significant pre-historical, historical, or archeological data that is potentially subject to irreparable loss or destruction

(e) Health and Safety

Seller agrees that activities conducted under this contract will be conducted in accordance with the following health and safety laws, regulations, policies and requirements:

(i) Occupational Safety and Health Administration standards for laboratories engaged in the use of hazardous chemicals

(ii) The Public Health Service Act

(iii) Provision of drug education and training, drug testing, employee assistance, and removal, discipline, treatment, and rehabilitation of any employees using drugs and DOE notification of drug-related actions taken.

(f) National Security

Subcontractor agrees that it will comply with the following national security laws, regulations, policies, and requirements:

- (i) Cooperation with the Government in blocking and prohibiting transactions with persons who commit, threaten to commit, or support terrorism
- (ii) Use of a uniform system for classifying, safeguarding, and declassifying national security information

(k) Domestic Preference

Seller agrees that activities under this contract will be conducted in accordance with the following domestic preference laws, regulations, and policies:

- (i) At least fifty (50) percent of equipment, materials, or commodities procured and transferred by ocean vessel must be transported on privately owned U.S. commercial vessels
- (ii) Air transport of people or properly involving a country other than the United States must be performed by a U.S. carrier or under a cost-sharing arrangement with a U.S. flag carrier

(I) Project Management

Seller agrees that activities under this contract will be conducted in accordance with the following project management laws, regulations, and policies:

- (i) The U.S. Government may recover for damage, loss, or destruction of Government property through negligence or wrongful acts.
- (ii) Audit of project to ensure that Seller funds are expended properly by non Federal entities
- (iii) Prohibition on research misconduct
- (iv) Exclusion of any person or company who is debarred or suspended based on fraud, waste, or poor performance from Federal financial assistance and benefits
- (v) The Paperwork Reduction Act
- (vi) Registration for a DUNS number.

Additional Terms and Conditions

Seller agrees that it will comply with the following policies:

- (i) Ensure that women-owned businesses have the maximum practicable opportunity to participate in contracts awarded by any Federal agency
- (ii) Use of the metric system
- (iii) Prohibition on the use, possession, sale, distribution, or manufacture of illegal drugs in the workplace

INTELLECTUAL PROPERTY MANAGEMENT PLAN:

The California Institute of Technology (Caltech) is engaged in a collaborative project (Project) under grant DE-AR0000333 from the US Department of Energy (DOE) to produce a solar module that converts greater than half of incoming light into electricity.

(a) Caltech brings pre-existing Background Intellectual Property (BIP) to the Project.

(b) The purpose of this Agreement is to address management of new Intellectual Property ("Foreground Intellectual Property" or FIP), that may be developed as a result of work performed under the above described Project. The general purpose of the Plan is to address the protection and disposition of FIP developed under the ARPA-E financial

assistance award, within the framework of Federal Intellectual property laws, regulations, and policies.

(c) The Plan objectives include:

I. Promoting the patenting, licensing, and rapid commercialization of Subject Inventions developed hereunder, and

II. Promoting the rapid dissemination of scientific data for the public good.

Definitions

1. "Award" and "ARPA-E Award" refers to a grant of financial assistance from ARPAE to Caltech and collaborators by means of a cooperative agreement, work authorization, Technology Investment Agreement, or other authorized financial assistance Instrument.

2. "Award Work" means any work or activity performed by a Seller pursuant to the Project funded by ARPA-E.

3. "Background Intellectual Property" (BIP) means pre-existing inventions and information, in hard copy or In electronic form; including, without limitation, documents, drawings, models, designs, data memoranda, tapes, records, and databases developed before or independent of performance under the Award that is necessary for the performance of Project.

4. "Foreground Intellectual Property" (FIP) means and Includes all Intellectual Property first conceived, discovered, developed, reduced to practice and/or generated under the Project, as well as technical information, other developments, discoveries, know-how, methods, techniques, formulae, algorithms, data, processes and other proprietary ideas (whether or not patentable or copyrightable) developed through/under the Project. Intellectual Property also includes patent applications, patents, copyrights, trademarks, mask works, trade secrets, and any other legally protectable information, including computer software.

5. "Invention" means any discovery or a new device, method, or process developed from study and experimentation that Is or may be patentable or otherwise protectable -under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

6. "Owner" means a party, public or private, holding legal title to Intellectual Property, consistent with Federal laws and regulations.

7. "Participant" means a Seller who contributes to the execution of Award Work as part of a Project Team.

8. "Project Team" refers to a collective of Participants working in a collaborative manner to execute an ARPA-E funded project.

9. "Project Technical Data" means Information (In hard copy or in electronic form) including, without limitation: documents, drawings, models, designs, data, memoranda, taps, records, and databases developed during the performance of Award Work.

10. Reserved

11. "Subject Invention" means any Invention of a Participant that is conceived or first actually reduced to practice In the performance of work under an ARPA-E Award, and enabling of the primary Project purpose, provided that in the case of a

variety of plant, the date of determination (the date a new plant is discovered/developed or the date a new plant is asexually reproduced, *see* the Plant Variety Protection Act, 7 U.S.C. 2401Ia)(2)) must also occur during the period of award performance.

III. Title to Subject Inventions and Other Project Intellectual Property

(a) Each Participant shall retain title to Subject Inventions and other FIP developed solely by its employees and agents.

(b) Unless agreed otherwise, the Participant filing a patent application shall pay all preparation and filing expenses, prosecution fees, issuance fees, post issuance fees, patent maintenance fees, annuities, interference expenses, and attorneys fees for that patent application and any resulting patent(s).

(c) Participants shall be joint owners of FIP that is developed jointly by those Participants. Each owner shall have an undivided interest in the jointly owned FIP, The jointly developed FIP shall be protected with joint patent applications in which the co-owners are co-applicants, and leadership in the patenting and management process, as well as sharing in the costs of patenting will be established by good faith discussions among the jointly-inventing Participants where variations from the process of IV below are preferred. If a Participant co-inventor elects not to participate in commercialization proceeds of FIP, that Participant shall have the right to withdraw and shall not be liable for patenting expenses. In the event of infringement, the parties will agree in good faith on a process for enforcement of FIP.

IV. Intellectual Property Licensing

(a) If a Participant desires not to retain title to a Subject Invention, ownership will be offered to the other Participants in the Project. In the event that no Participant desires to own, protect and manage an FIP Invention, DoE will be so advised and offered the opportunity to directly take title. If a Participant is instead granted an exclusive license to use that Subject Invention, then Participant shall be responsible for all expenses and fees, past and future, in connection with the preparation, filing, prosecution, and maintenance of any patent applications and patents claiming exclusively-licensed Subject Inventions. If such Participant is granted a non-exclusive license, then the Participant shall be responsible for a pro-rated share, divided equally among all licensees, of expenses and fees for the non-exclusively licensed Subject Inventions.

(b) Participants who retain title to FIP may grant exclusive and non-exclusive licenses for use of technologies arising out of the FIP, subject to government rights described below. To the extent that the Joint Owners so agree, joint-Owners of FIP shall share equally in paying licensing expenses, and any benefits from licensing (i.e. *royalties and equity*) received shall be distributed equally between co-owners. Any such license that an Owner may grant shall be subject to a reservation of certain rights to the Federal Government under the provisions of 35 U.S.C. § 201 et seq, which include march-in rights and U.S. Competitiveness.

(c) Any license that an owner may grant will reserve the option to permit private or public educational institutions to use the FIP on a royalty-free basis for research and education, but not for commercial purposes, subject to confidentiality requirements.

(d) Any licensing of FIP shall be conducted pursuant to and in accordance with the terms of the Contract under which the FIP was developed, licensing of FIP shall not inhibit performance of Project.

(e) Where access to BIP is required in order to perform research or practice FIP Inventions, to the maximum extent possible, the owner of the relevant BIP. shall grant such limited license as is necessary and on mutually agreed reasonable commercial terms to enable licensing of useful rights to practice FIP, subject to any pre-existing license commitments to non-Project parties.

ARPA-E INTELLECTUAL PROPERTY PROVISIONS
FOR LARGE BUSINESSES—WAIVER (PATENT RIGHTS)

1. Patent Rights - (Large Business Firms – Class Waiver issued in accordance with 10 CFR 784); [including U.S. Competitiveness provisions in Section (t)]
2. 10 CFR Part 600, Subpart D, Appendix A, Rights in Data - Programs Covered Under Special Data Statutes (OCT 2003)
3. FAR 52.227-1 Authorization and Consent (JUL 1995)-Alternate I (APR 1984)
4. FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)

The above clause is not applicable if the award is for less than \$100,000, in aggregate.

5. FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)
6. Subawards

1. Patent Rights – Large Business Firms

[Class Waiver W(C) 2012-001, issued in accordance with 10 C.F.R. 784; including U.S. Competitiveness provisions in Section (t)]

(a) Definitions

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C.2321, et seq.).

Background patent means a domestic patent covering an invention or discovery which is not a Subject Invention and which is owned or controlled by Seller at any time through the completion of this contract:

(i) Which Seller, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

Made, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

Contract means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment or substitution of parties.

DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.

Patent Counsel means the Department of Energy Patent Counsel assisting the procuring activity.

Secretary means the Secretary of Energy.

Nonprofit organization means a domestic university or other institution of higher education or an

organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 532) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.312, respectively, will be used.

Subject invention means any invention of Seller conceived or first actually reduced to practice in the course of or under this contract; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) Allocation of principal rights.

Whereas DOE has granted a waiver of rights to subject inventions to Seller, Seller may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. This license will include the right of the government to sublicense foreign governments, their nationals, and international organizations, pursuant to the following treaties or international agreements: the United Nations Framework Convention on Climate Change and the Copenhagen Accord.

DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of this contract, and effectuate those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under treaties or international agreements with respect to subject inventions made after the date of the amendment.

(c) Invention disclosure, election of title, and filing of patent applications by Seller.

(1) Seller shall disclose each subject invention to the Patent Counsel within six months after conception or first actual reduction to practice, whichever occurs first in the course of or under this contract, but in any event, prior to any sale, public use, or public disclosure of such invention known to Seller. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, Seller shall promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by Seller.

(2) Seller shall elect in writing whether or not to retain title to any such invention by notifying DOE at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Seller will retain title; provided, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period. Seller shall notify the Patent Counsel as to those countries (including the United States) in which Seller will retain title not later than 60 days prior to the end of the statutory period.

(3) Seller shall file its initial patent application on an elected invention within 1 year after election, but not later than at least 60 days, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Seller shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing may, at the discretion of DOE, be granted, and will normally be granted unless the Patent Counsel has reason to believe that a particular extension would prejudice the Government's interest.

(d) Conditions when the Government may obtain title.

Seller shall convey to DOE, upon written request, title to any subject invention:

- (1) If the Seller elects not to retain title to a subject invention;
 - (2) If Seller fails to disclose or elect the subject invention within the times specified in paragraph (c) above (DOE may only request title within 60 days after learning of Seller's failure to report or elect within the specified times);
 - (3) In those countries in which Seller fails to file patent applications within the times specified in paragraph (c) above; provided, however, that if Seller has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of DOE, Seller shall continue to retain title in that country;
 - (4) In any country in which the Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention; or
 - (5) If the waiver authorizing the use of this clause is terminated as provided in paragraph (p) of this clause.
- (e) Minimum rights to Seller.
- (1) Seller shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title under paragraph (d) of this clause except if Seller fails to disclose the subject invention within the times specified in paragraph (c) above. Seller's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which Seller is a part and includes the right to grant sublicenses of the same scope to the extent Seller was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of Seller's business to which the invention pertains.
 - (2) Seller's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and DOE licensing regulations. This license shall not be revoked in that field of use or the geographical areas in which Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent Seller, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 - (3) Before revocation or modification of the license, DOE shall furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller shall be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by Seller after the notice to show cause why the license should not be revoked or modified. Seller has the right to appeal, in accordance with applicable DOE licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.
- (f) Seller action to protect the Government's interest.
- (1) Seller agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to –
 - (i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which Seller elects to retain title; and
 - (ii) Convey title to DOE when requested under paragraph (d) above and subparagraph (n)(2) below, and to enable the Government to obtain patent protection throughout the world in that subject invention.
 - (2) The Seller agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Seller each subject invention made under contract in order that Seller can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Seller shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

- (3) The Seller shall notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
 - (4) The Seller agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by DOE). The Government has certain rights in this invention."
 - (5) The Seller shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Seller personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the course of or under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, Seller shall furnish the Buyer a description of such procedures for evaluation and for determination as to their effectiveness.
 - (6) The Seller agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.
 - (7) The Seller shall furnish Buyer the following:
 - (i) Interim reports every 12 months (or such longer period as may be specified by Buyer from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.
 - (ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no such subcontracts.
 - (8) The Seller shall promptly notify Buyer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of Buyer, the Seller shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.
 - (9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in subparagraph (g)(1) or (2) below, the Seller:
 - (i) Shall promptly submit a written notice to Buyer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
 - (ii) Shall not proceed with such subcontracting without the written authorization of Buyer.
 - (10) The Seller shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Recipient has retained title.
 - (11) Upon request, the Seller shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.
- (g) Subcontracts
- (1) See Section 6 for instructions regarding intellectual property provisions, for subawards under this contract.
 - (2) The Seller shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
 - (3) In the case of subcontractors at any tier, the Department, the subcontractor, and Seller agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient and the Department with respect to those matters covered by this clause.
- (h) Reporting utilization of subject inventions.
- The Seller agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Seller, and such other data and information as the agency may reasonably specify. The Seller also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by Seller, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.
- (i) Preference for United States industry.

Notwithstanding any other provision of this clause, the Seller agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Seller or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-In rights.

The Seller agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in FAR 27.304-1(g) to require Seller, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Seller, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that –

- (1) Such action is necessary because Seller or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by Seller, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) [RESERVED]

(l) Communications.

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel via email at GC-62@hq.doe.gov and ARPA-E Chief Counsel via email at ARPA-E-Counsel@hq.doe.gov. Alternatively, awardees may utilize iEdison at <https://s-edison.info.nih.gov/iEdison/>.

(m) Other inventions.

Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention except with respect to Background Patents, above.

(n) Examination of records relating to inventions.

- (1) The Customer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of Seller relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether –
 - (i) Any such inventions are subject inventions;
 - (ii) The Seller has established and maintains the procedures required by subparagraphs (f)(2) and (f)(3) of this clause; and
 - (iii) The Seller and its inventors have complied with the procedures.
- (2) If Customer determines that an inventor has not disclosed a subject invention to the Seller in accordance with the procedures required by subparagraph (f)(5) of this clause, Customer may, within 60 days after the determination, request title in accordance with subparagraphs (d)(2) and (d)(3) of this clause. However, if Seller establishes that the failure to disclose did not result from the Seller's fault or negligence, the Customer shall not request title.
- (3) If Customer learns of an unreported Seller invention which the Customer believes may be a subject invention, the Seller may be required to disclose the invention to the agency for a determination of ownership rights.
- (4) Any examination of records under this paragraph shall be conducted in such a manner as to protect the confidentiality of the information involved.

(o) Reserved

(p) Waiver Terminations.

Any waiver granted to the Seller authorizing the use of this clause (including any retention of rights pursuant thereto by the Seller under paragraph (b) of this clause) may be terminated in whole or in part, if the request for waiver by the Seller is found to contain false material statements or nondisclosure of material facts, and such were specifically relied upon by DOE in reaching the waiver determination. Prior to any such termination, the Seller will be given written notice stating the extent of such proposed termination and the reasons therefor, and a period of 30 days, or such longer period as the Secretary or his designee shall determine for good cause shown in writing, to show cause why the waiver of rights should not be so terminated. Any waiver termination shall be subject to the Seller's minimum license as provided in paragraph (e) of this clause.

(q) Atomic Energy.

No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Recipient or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

(r) Publication.

It is recognized that during the course of work under this contract, the Seller or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Seller, approval for release of publication shall be secured from Patent Counsel prior to any such release or publication. In appropriate circumstances, and after consultation with the Seller, Patent Counsel may waive the right of prepublication review.

(s) Forfeiture of rights in unreported subject inventions.

(1) The Seller shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Seller fails to report to Patent Counsel within six months after the time the Seller:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by paragraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Seller shall not forfeit rights in a subject invention if, within the time specified in paragraph (m)(1) of this clause, the Seller:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the subject invention is not a subject invention, the Seller nevertheless discloses the subject invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Buyer ; or

(iii) Establishes that the failure to disclose did not result from the Recipient's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Contracting Officer to be forfeited (such determination to be a Final Decision under the Disputes clause of this contract), the Seller shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph shall be in addition to and shall not supersede any other rights and remedies which the Government may have with respect to subject inventions.

(t) U.S. Competitiveness.

The Seller agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States, unless the Seller can show to the satisfaction of DOE that it is not commercially feasible to do so. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Seller further agrees to make the above condition binding on any assignee or licensee or any entity otherwise acquiring rights to any waived invention, including subsequent assignees or licensees. Should the Seller or other such entity receiving rights in any waived invention undergo a

change in ownership amounting to a controlling interest, then the waiver, assignment, license or other transfer of rights in any waived invention is suspended until approved in writing by DOE.

EXISTING COMMERCIAL COMPUTER SOFTWARE LICENSING

(This Article is applicable to the acquisition of any existing commercial computer software under this Contract.)

(a) Where the Seller proposes its standard commercial software license, only those applicable portions that comply with the provisions of this Contract are incorporated into and made a part of this Contract.

(b) If Seller does not propose its standard commercial software license until after this Contract has been Issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Contract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Supplier; however, such signing shall not add to or alter any of the terms and conditions of this Contract.

(c) If the specified computer software is shipped or delivered to Buyer, it shall be understood that the Seller has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Contract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) Seller understands and agrees that the computer software *may* be:

(1) Used, or copied for use, in or with any computer owned or leased by, or on behalf of the Institute provided that the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted;

(2) Reproduced for safekeeping (archives) or backup purposes;

(3) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(4) Disclosed and reproduced for use in accordance with this Article.

(e) Seller agrees that the software may be used by the Customer in support and furtherance of any of its obligations to the US Government or other funding organization.

(f) Seller warrants that it has the right to sell, license, or transfer the license for the software furnished under this Contract in accordance with the terms of this Contract.

10 CFR Part 600, Subpart D, Appendix A , Rights in Data - Programs Covered Under Special Data Statutes (OCT 2003)

(a) Definitions

Computer databases , as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software , as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data , as used in this clause, 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.

Form, fit, and function data , as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights data , as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software , as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

Protected data , as used in this clause, means technical data or commercial or financial data first produced in the

performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552(b)(4) and which data is marked as being protected data by a party to the award.

Protected rights, as used in this clause, mean the rights in protected data set forth in the Protected Rights Notice of paragraph (g) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in-
 - (i) Data specifically identified in this agreement as data to be delivered without restriction;
 - (ii) Form, fit, and function data delivered under this agreement;
 - (iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and
 - (iv) All other data delivered under this agreement unless provided otherwise for protected data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause.
- (2) The Recipient shall have the right to-
 - (i) Protect rights in protected data delivered under this agreement in the manner and to the extent provided in paragraph (g) of this clause;
 - (ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (h) of this clause;
 - (iii) Substantiate use of, add, or correct protected rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and
 - (iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright

- (1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Recipient may establish, without the prior approval of the Contracting Officer, claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.
- (2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data that are not first produced in the performance of this agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software, the Government shall acquire a copyright license as set forth in subparagraph (h)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated or made a part of this agreement.
- (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

- (1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this

paragraph of this clause or expressly set forth in this contract.

- (2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized Marking of Data

- (1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement bears any restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.
 - (i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination become final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

- (1) Data delivered to the Government without the limited rights or restricted rights notice as authorized by paragraph (h) of this clause, the protected data notice as authorized in paragraph (g), or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient-
 - (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (ii) Establishes that the use of the proposed notice is authorized; and
 - (iii) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (2) The Contracting Officer may also:
 - (i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
 - (ii) Correct any incorrect notices.

(g) Rights to Protected Data

- (1) The Recipient may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of this award that would have been treated as a trade secret if developed at private expense. Any such claimed "protected data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of this clause.

PROTECTED RIGHTS NOTICE

These protected data were produced under agreement no.____ with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until 5 years after development of information under this agreement, unless express written authorization is obtained from the recipient. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part. (End of notice).

- (2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:
- (a) For evaluation purposes under the restriction that the ``Protected Data" be retained in confidence and not be further disclosed; or
 - (b) To subcontractors or other team members performing work under the Government's program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.
- (3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data.
- (a) At the end of the protected period;
 - (b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;
 - (c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or
 - (d) If the Recipient disseminates or authorizes another to disseminate such data without obligations of confidentiality.
- (4) However, the Recipient agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this award without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data.
- <Insert>
- (5) The Government's sole obligation with respect to any protected data shall be as set forth in this paragraph (g).

(h) Protection of Limited Rights Data

When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and such data qualify as either limited rights data or restricted computer software, the Recipient, if the Recipient desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(i) Subaward/Contract

The Recipient has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subcontractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization. See Section 6 for instructions regarding intellectual property provisions for subawards under this agreement.

(j) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(k) The Recipient agrees, except as may be otherwise specified in this agreement for specific data items listed as not subject to this

paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Recipient's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

FAR 52.227-1 Authorization and Consent (JUL 1995)-Alternate I (APR 1984)

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) The Recipient agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development expected to exceed the simplified acquisition threshold; however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)

- (a) The Recipient shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Recipient has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Recipient shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Recipient pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Recipient has agreed to indemnify the Government.
- (c) The Recipient agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated _____, upon which this contract is based.)

6. Subawards

- (a) **Small Business Subawardees:** The Recipient shall incorporate all of the intellectual property provisions found in Attachment 2 (Domestic Small Businesses) of the ARPA-E Model Cooperative Agreement (published at <http://arpa-e.energy.gov/>) in all subawards with domestic small businesses. In incorporating the above-referenced intellectual property provisions, the Recipient shall expressly require compliance with their terms and conditions.
- (b) **University and Nonprofit Organization Subawardees:** The Recipient shall incorporate all of the intellectual property provisions found in Attachment 2 (Domestic Universities and Nonprofit Organizations) of the ARPA-E Model Cooperative Agreement (published at <http://arpa-e.energy.gov/>) into all subawards with domestic universities or domestic nonprofit organizations. In incorporating the above-referenced intellectual property provisions, the Recipient shall expressly require compliance with their terms and conditions.
- (c) **Large Business and Foreign Entity Subawardees:**
 - (1) If a large business or foreign entity receiving a subaward provides cost sharing of at least 20% under its subaward or if the project team, as a whole, (i.e., the Prime Recipient, Subrecipients, and others performing or otherwise supporting work under the award) provides cost sharing of at least 20% under the award, the Recipient shall incorporate all of the intellectual property provisions found in Attachment 2 (Large Businesses)—Waiver (Patent Rights) of the ARPA-E Model Cooperative Agreement (published at <http://arpa-e.energy.gov/>) into its subaward with the large business or foreign entity.
 - (2) If a large business or foreign entity receiving a subaward does not provide cost sharing of at least 20% under its subaward and if the project team, as a whole, (i.e., the Prime Recipient, Subrecipients, and others performing or otherwise supporting work under the award) does not provide cost sharing of at least 20% under the award, the Recipient shall incorporate all of the intellectual property provisions found in Attachment 2 (Large Businesses)—No Waiver (Patent Rights) of the ARPA-E Model Cooperative Agreement (published at <http://arpa-e.energy.gov/>) into its subaward with the large business or foreign entity.

- (3) In incorporating the above-referenced intellectual property provisions, the Recipient shall expressly require compliance with their terms and conditions.

GOVERNMENT FUNDED GRANT PROVISIONS

- A. If this Order Is Issued under a U.S. Government Grant, the Terms and Conditions below, as contained in O.M.B. Circular A-110, form a part of the terms and conditions of this Order. In the event of any conflict between the Terms and Conditions of this Section and any other provisions of this Contract, the Terms and Conditions of this Section shall prevail.
1. Equal Employment Opportunity (E.O. 11246 as amended by E.O. 11375 and supplemented by 41 CFR part 60).
 2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 as supplemented by 29 CFR part 3).
 3. For construction contracts, Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7 as supplemented by 29 CFR part 5).
 4. Where applicable, Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333 as supplemented by 29 CFR part 5).
 5. For non-profit organizations and small business firms, patent rights shall be governed by 37 CFR part 401, titled "Rights to Inventions Made by Non-Profit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements".
 6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.
 7. BYRD Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid (any Federal award) for an award of \$150,000.00 or more shall file the required certification.
 8. When applicable, this contract is subject to Debarment and Suspension (E.O.s 12549 and 12689).