**ATTACHMENT 2:**

**ARPA-E INTELLECTUAL PROPERTY PROVISIONS**

**FOR SBIR/STTR SUBAWARDS**

**(LARGE BUSINESSES- Patent Waiver)**

1. Patent Rights - Large Business Firms [Class Waiver W(C) 2015-001, issued in accordance with 10 CFR 784); including U.S. Competitiveness provisions in Section (t)]
2. FAR 52.227-20 Rights in Data – SBIR/STTR Program
3. FAR 52.227-1 Authorization and Consent (DEC 2007) Alternate I (APR 1984)
4. FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright

Infringement (DEC 2007)

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

NOTE: Please refer to Attachment 4 (ARPA-E Reporting Checklist and Instructions) to ARPA-E Award No. DE-AR000\_\_\_\_\_\_\_\_\_ for guidance on complying with the intellectual property reporting obligations referenced herein.

**1. Patent Rights – Large Business Firms**

[Class Waiver issued in accordance with 10 CFR 784; including U.S. Competitiveness provisions in Section (t)]

(a) Definitions.

 As used in this clause:

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

1. Which the Recipient, 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 hereof) which is a subject of the research, development, or demonstration work performed under this contract.

 *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.

 *Invention* as used in this clause, 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.).

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

 *Nonprofit organization* means a 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.

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

 *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.

 *Secretary* means the Secretary of Energy.

 *Small business firm* means a small business concern as defined at Section 2 of the Pub. L. 85‑536 (15 U.S.C. 632) 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 121.3‑12, respectively, will be used.

 *Subject invention* means any invention of the Recipient 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 the Recipient, the Recipient 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. 202 and 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.

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

(1) The Recipient 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 the Recipient. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the inventors and the contract under which the invention was made. 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, the Recipient 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 the Recipient.

(2) The Recipient shall elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Recipient 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. The Recipient shall notify the Patent Counsel as to those countries (including the United States) in which the Recipient will retain title not later than 60 days prior to the end of the statutory period.

(3) The Recipient shall file its United States 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 Recipient 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 foreign 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 notwithstanding an existing waiver.

The Recipient shall assign and hereby assigns to DOE, upon written request from DOE, title to any subject invention‑‑

(1) If the Recipient elects not to retain title to a subject invention;

 (2) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause (provided that DOE may only request title within 60 days after learning of the Recipient's failure to report or elect within the specified times);

(3) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country;

(4) In any country in which the Recipient 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;

(5) If the waiver authorizing the use of this clause is terminated as provided in paragraph (p) of this clause; or

(6) Upon a breach of paragraph (h) or paragraph (t) of this clause.

(e) Minimum rights to Recipient when the Government retains title.

(1) The Recipient 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 the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this clause or breaches paragraph (h) or (t). The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a part and includes the right to grant sublicenses of the same scope to the extent the Recipient 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 the Recipient's business to which the invention pertains.

(2) The Recipient'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 the Recipient 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 the Recipient, 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 Recipient a written notice of its intention to revoke or modify the license, and the Recipient shall be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient action to protect the Government's interest.

(1) The Recipient 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 the Recipient elects to retain title, and

(ii) convey title to DOE when requested under paragraphs (d) and (n)(2) of this clause, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient 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 Recipient each subject invention made under contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, 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 paragraph (c)(1) of this clause. The Recipient 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 Recipient 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 Recipient 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 (enter the award number starting with DE-AR) awarded by DOE, Office of ARPA-E. The Government has certain rights in this invention."

(5) The Recipient shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Recipient 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, the Recipient shall furnish the Patent Counsel a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Recipient 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 Recipient shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and certifying 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 certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(8) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subrecipient, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Recipient 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 subrecipient to accept one of the clauses in subparagraph (g)(1) or (2) below, the Recipient –

1. Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient'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 the Contracting Officer.

(10) The Recipient 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 Recipient shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) Subcontracts.

(1) See Section 5 of this Attachment 2 for instructions regarding intellectual property provisions, for subawards under this agreement.

(2) The Recipient shall not, as part of the consideration for awarding the subcontract, obtain rights in the subrecipient's subject inventions.

(3) In the case of subrecipients at any tier, the Department, the subrecipient, and Recipient 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 on utilization of subject inventions.

(1) The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of each waived subject invention or on efforts at obtaining such utilization that are being made by the Recipient and any of its licensees or assignees including compliance with paragraph (t) of this clause. Each report shall include information regarding the status of development, date of first commercial sale or use, products that embody or are made through the use of the waived such invention, manufacturing locations of such products and such other data and information as DOE may reasonably specify. The report shall further include a certification from the Recipient that the Recipient, including its licensees, is in compliance with the requirements of this clause.

(2) The Recipient also agrees to provide additional reports as may be requested by DOE in connection with any march‑in proceedings undertaken by DOE in accordance with paragraph (j) of this clause.

(3) To the extent data or information supplied under this paragraph is considered by the Recipient, its licensee or assignee to be privileged and confidential and is so marked, DOE 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 Recipient 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 Recipient 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 Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 48 CFR 27.304‑1(g) to require the Recipient, 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 Recipient, 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 the Recipient 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 the Recipient, 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 the Recipient, 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) Background Patents [reserved]

(l) Communications.

 For reporting to the Patent Counsel under subsection (c) in this clause, the Recipient should use iEdison at <https://s-edison.info.nih.gov/iEdison/>. All questions concerning this Patent Rights clause should be sent to the DOE Patent Counsel via email at GC-62@hq.doe.gov.

 (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 Contracting Officer 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 the Recipient 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 Recipient has established and maintains the procedures required by paragraphs (f)(2) and (f)(5) of this clause; and

(iii) The Recipient and its inventor have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Recipient in accordance with the procedures required by paragraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with paragraphs (d)(2) and (d)(3) of this clause. However, if the Recipient establishes that the failure to disclose did not result from the Recipient's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Recipient invention which the Contracting Officer believes may be a subject invention, the Recipient may be required to disclose the invention to DOE 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) Withholding of payment. (reserved)

(p) Waiver Terminations.

Any waiver granted to the Recipient authorizing the use of this clause (including any retention of rights pursuant thereto by the Recipient under paragraph (b) of this clause) may be terminated at the discretion of the Secretary or his designee in whole or in part, if the request for waiver by the Recipient 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 or the cost share requirement as set forth in the applicable statement of considerations is not met. Prior to any such termination, the Recipient 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 Recipient'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 Recipient 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 Recipient, 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 Recipient, Patent Counsel may waive the right of prepublication review.

(s) Forfeiture of rights in unreported subject inventions.

(1) The Recipient 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 Recipient fails to report to Patent Counsel within six months after the time the Recipient:

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

(ii) Submits the final report required by paragraph (f)(7)(ii) of this clause, whichever is later.

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

(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 Recipient nevertheless discloses the subject invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer, 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 Recipient 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 Recipient 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 Recipient 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 Recipient 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 Recipient 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.

(End of clause)

**2. FAR 52.227-20 Rights in Data – SBIR/STTR Program**

(a) Definitions

*Computer software* as used in this clause, means computer programs, computer databases, and documentation thereof.

*Data* as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The "Data" includes technical data and computer software. The "Data" does not include information incidental to subaward 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, matching, 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.

*SBIR/STTR data* as used in this clause, means data first produced by a Subrecipient in performance of a Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) subaward issued under the authority of Section 9 of the Small Business Act (15 U.S.C. 638), which data are not generally known, and which data without obligation to its confidentiality have not been made available to others by the Subrecipient or are not already available to the Government.

*SBIR/STTR rights* as used in this clause, means the rights in SBIR/STTR data set forth in the SBIR/STTR Rights Notice of paragraph (d) of this clause.

*Technical data* as used in this clause, means that data which are of a scientific or technical nature.

*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;

* 1. 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
	2. All other data delivered under this agreement unless provided otherwise for SBIR/STTR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.
	3. (2) The Subrecipient shall have the right to-­
1. Protect SBIR/STTR rights in SBIR/STTR data delivered under this agreement in the manner and to the extent provided in paragraph (d) of this clause;
2. Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (f) of this clause;
3. Substantiate use of, add, or correct SBIR/STTR rights of copyright notices and to take other appropriate actions, in accordance with paragraph (e) of this clause; and
4. 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 Subrecipient may establish claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Subrecipient shall affix the applicable copyright notice of 17 U.S.C. 401 and 402 and acknowledgment of Government sponsorship (including award 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 published work in the U.S. Copyright Office. For data other than computer software, the Subrecipient 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. For computer software, the Subrecipient grants to the Government, and others acting on its behalf, a paid‑up nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) *Data not first produced in the performance of this agreement.* The Subrecipient shall not, without prior written permission of the Contracting Officer/Agreements Officer, incorporate in data delivered under this agreement; and that contain the copyright notice of 17 U.S.C. 401 and 402, unless the Subrecipient 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.

1. *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) Rights to SBIR/STTR Data

1. The Subrecipient is authorized to affix the following SBIR/STTR Rights Notice to SBIR/STTR data delivered under this agreement and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

**SBIR/STTR RIGHTS NOTICE**

These SBIR/STTR data are furnished with SBIR/STTR rights under a subaward under Award No.\_\_\_\_\_\_\_\_\_\_\_. For a period of four (4) years after acceptance of all items to be delivered under this subaward, the Government agrees to use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Subrecipient, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support contractors. After the aforesaid four‑year period, the Government has a royalty‑free license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data in whole or in part.

 **(End of Notice)**

Notwithstanding the foregoing, the Subrecipient agrees that the following types of data are not considered to be SBIR/STTR data and shall be provided to the Government when required by this award as unlimited rights 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-SBIR/STTR data, nor does the following list constitute any admission by the Government that technical data not on the list is SBIR/STTR data.

[INSERT]

1. The Government’s sole obligation with respect to any SBIR/STTR data shall be as set forth in this paragraph (d).

(e) Omitted or Incorrect Marking

1. Data delivered to the Government without any notice authorized by paragraph (d) of this clause, and without a copyright notice, 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 have not been disclosed without restriction outside the Government, the Subrecipient may request within six months (or a longer time approved by the Contracting Officer/Agreements Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subrecipient’s expense, and the Contracting Officer/Agreements Officer may agree to do so if the Subrecipient:
	1. Identifies the data to which the omitted notice is to be applied;
	2. Demonstrates that the omission of the notice was inadvertent;
	3. Establishes that the use of the proposed notice is authorized; and
	4. Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.
2. The Contracting Officer/Agreements Officer may also:
	1. Permit correction, at the Subrecipient's expense, of incorrect notices if the Subrecipient identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized; or
	2. Correct any incorrect notices.
3. Protection of Limited Data Rights

When data other than that listed in subdivisions (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 Subrecipient, if the Subrecipient 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 Subrecipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

1. Contracts under the Subaward

 The Subrecipient has the responsibility to obtain from its Contractors all data and rights therein necessary to fulfill the Subrecipient's obligations to the Government under this agreement. If a Contractor refuses to accept terms affording the Government such rights, the Subrecipient shall promptly bring such refusal to the attention of the Contracting Officer/Agreements Officer and not proceed with contract without further authorization.

1. [Reserved]
2. Relationship to Patents

Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

**3. FAR 52.227-1 Authorization and Consent (Dec 2007)-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 shall include the substance of this clause, including this paragraph (b), in all subcontracts that are 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.

(End of clause)

**4. FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)**

(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 Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Recipient's possession pertaining to such claim or suit. 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 Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

(End of clause)