**ATTACHMENT 2:**

**ARPA-E INTELLECTUAL PROPERTY PROVISIONS**

**FOR COOPERATIVE AGREEMENT WITH**

**LARGE BUSINESSES—NO WAIVER (PATENT RIGHTS)**

**INCLUDING ENHANCED U.S. COMPETITIVENESS**

**AND A COMMERCIALIZATION PLAN**

1. 10 CFR Part 600, Subpart D, Appendix A, Patent Rights (Large Business Firms) – No Waiver
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 (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 award is for less than $100,000, in aggregate.*

1. Subawards
2. Commercialization Plan

NOTE: In reading these provisions, any reference to “*contractor*” shall mean “*recipient*,” and any reference to “contract” or “*subcontract*” shall mean “award” or “*subaward*.”

NOTE: Please refer to Attachment 4 (ARPA-E Reporting Checklist and Instructions) for guidance on complying with the intellectual property reporting obligations referenced herein.

**1.**  **10 CFR 600, Subpart D, Appendix A, Patent Rights (Large Business Firms) – No Waiver**

(a) Definitions

*DOE patent waiver regulations*, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award. See 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 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.

*Patent Counsel*, as used in this clause, means the Department of Energy Patent Counsel assisting the awarding activity.

*Secretary* means the Secretary of Energy.

*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*, as used in this clause, means any invention of the Recipient conceived or first actually reduced to practice in the course of or under this agreement; 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 agreement performance.

(b) Allocations of Principal Rights

(1) Assignment to the Government. The Recipient agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Recipient under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations. The Recipient, or an employee-inventor after consultation with the Recipient, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulation. Each determination of greater rights under this agreement shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(c) Minimum Rights Acquired by the Government

With respect to each subject invention to which the Department of Energy grants the Recipient principal or exclusive rights, the Recipient agrees to grant to the Government: A nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency); “march-in rights” as set forth in 37 CFR 401.14(a)(J)); preference for U.S. industry as set forth in 37 CFR 401.14(a)(I); periodic reports upon request, no more frequently than annually, on the utilization or intent of utilization of a subject invention in a manner consistent with 35 U.S.C. 202(c)(5); and such Government rights in any instrument transferring rights in a subject invention.

(d) Minimum Rights to the Recipient

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Recipient fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. 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 agreement 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 may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the Government similar to paragraph (c) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(e) Invention Identification, Disclosures, and Reports

(1) 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 performance of work under this agreement. 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 Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters or, if earlier, within 6 months after the Recipient becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to DOE shall be in the form of a written report and shall identify the agreement 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 DOE, the Recipient shall promptly notify 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. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Recipient contends in writing at the time the invention is disclosed that it was not so made.

(3) The Recipient shall furnish the Contracting Officer a final report, within 3 months after completion of the work listing all subject inventions or containing a statement that there were no such inventions, and listing all subawards/contracts at any tier containing a patent rights clause or containing a statement that there were no such subawards/contracts.

(4) 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 subaward/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 subparagraph (e)(2) of this clause.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of Records Relating to Inventions

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this agreement, 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 agreement to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;

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

(2) 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.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Subaward/Contract

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

 The Recipient shall not, as part of the consideration for awarding the subaward/contract, obtain rights in the subrecipient's/contractor's subject inventions.

(2) In the event of a refusal by a prospective subrecipient/contractor to accept such a clause the Recipient:

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient/contractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subaward/contract without the written authorization of the Contracting Officer.

(3) In the case of subawards/contracts at any tier, DOE, the subrecipient/contractor, and Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by this clause.

(4) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subaward/contract at any tier containing a patent rights clause by identifying the subrecipient/contractor, the applicable patent rights clause, the work to be performed under the subaward/contract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Recipient shall furnish a copy of such subaward/contract, and, no more frequently than annually, a listing of the subawards/contracts that have been awarded.

(5) The Recipient shall identify all subject inventions of a subrecipient/contractor of which it acquires knowledge in the performance of this agreement and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(h) Atomic Energy

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this agreement.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Recipient will obtain patent agreements to effectuate the provisions of subparagraph (h)(1) of this clause from all persons who perform any part of the work under this agreement, except nontechnical personnel, such as clerical employees and manual laborers.

(i) Publication

It is recognized that during the course of the work under this agreement, 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 agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Recipient, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(j) 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 subparagraph (e)(3) of this clause, whichever is later.

(2) However, the Recipient shall not forfeit rights in a subject invention if, within the time specified in subparagraph (e)(2) 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 agreement and delivers the decision to Patent Counsel, with a copy to the Contracting Officer, or

(ii) Contending that the invention is not a subject invention, the Recipient nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy of 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 Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this agreement), 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 (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

**2.**  **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;

* 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 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.
	3. (2) The Recipient shall have the right to-­
1. 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.

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) 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.

1. Commercialization Plan

Notwithstanding paragraph (c)(1) of this clause, the Recipient agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in specified computer software and data sets, without prior written permission of the Contracting Officer. The specified computer software products and specified data sets shall be identified and negotiated in the Commercialization Plan described below. Permission of the Contracting Officer shall be granted as long as the Recipient provides and ARPA-E, at its sole discretion, accepts a Commercialization Plan regarding the specified computer software and data. The Commercialization Plan is included in this Attachment 2 as an ADDENDUM and is an enforceable part of this Agreement.

The Commercialization Plan shall include:

1. a listing and brief description of the specified computer software and data sets that will be the subject of the commitments made by the Recipient under the Commercialization Plan;
2. measurable commitments by the Recipient to bring the listing of specified computer software and data sets to their relevant markets including describing any benefits to the U.S. economy;
3. Reporting During Performance or at Closeout: a commitment by the Recipient to report to ARPA-E / DOE (a) any of the specified computer software and data sets from the Commercialization Plan; and (b) any associated trademarks for commercializing the specified computer software and data sets, where the reporting occurs per the reporting requirements set forth in Attachment 4 of this agreement; and
4. Reporting Following Performance: a commitment by the Recipient to report on the utilization of the listed, specified computer software and data sets to ARPA-E for a period of ten (10) years following the award period of performance. Such a report is to include: (a) a description of any modifications made to the specified computer software or data sets; (b) any associated trademarks for commercializing the specified computer software or data sets; (c) the manner in which such computer software, data sets, and modifications are being commercialized; and (d) such other data and information as the agency may reasonably specify.

When claim to copyright is made, the notice and acknowledgement requirements and the government license set forth in paragraph (c)(1) applies. However, in exchange for the Commercialization Plan and the commitments made by the Recipient therein, the government license for the specified computer software and data shall not include the right by the Government to distribute copies to the public or to display publicly the specified computer software and data. If the Government desires to obtain copyright in data first produced in the performance of this agreement and permission has not been granted as set forth in subdivision (c)(1)(i) of this clause, the Contracting Officer may direct the Recipient to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee and provide a copy of source code and manuals necessary to enable use of the software.

A waiver of this section, including the Commercialization Plan and its commitments, is available upon sufficient written justification to ARPA-E and may be granted by ARPA-E in its sole discretion. However, if a waiver is granted, the Government license shall be as set forth in paragraph (c)(1). Additionally, a Recipient may petition ARPA-E to revise the Commercialization Plan at any time. Such a petition must include sufficient written justification to support the revision. The granting of such a petition is at ARPA-E’s sole discretion.

Noncompliance with the Commercialization Plan may be considered a material breach of this award. In case of such a material breach, the Contracting Officer may require, in addition to other possible remedies and after an opportunity to cure, revision of the Government license to restore the Government’s right to distribute copies to the public or to display publicly the specified computer software and data and to require delivery of the software or data sets to the Government.

1. Unauthorized Marking of Data
2. 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.
	1. 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;
	2. 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 (f)(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 (f)(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.

1. The time limits in the procedures set forth in subparagraph (f)(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.
2. Omitted or Incorrect Markings
	1. Data delivered to the Government without the limited rights or restricted rights notice as authorized by paragraph (i) of this clause, the protected data notice as authorized in paragraph (h), 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-­
3. Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

1. Establishes that the use of the proposed notice is authorized; and
2. 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.
	1. The Contracting Officer may also:
	2. 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
	3. Correct any incorrect notices.
3. 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).

1. 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 subrecipients 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

* 1. 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 (h).

1. 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.

1. Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor 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 subaward/contract award without further authorization. See Section 5 of this Attachment 2 for instructions regarding intellectual property provisions for subawards under this agreement.

1. 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.

1. 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 (i) 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.

(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)

1. **Subawards**
2. Small Business Subawardees: The Recipient shall incorporate all of the intellectual property provisions found in Attachment 2 ARPA-E INTELLECTUAL PROPERTY PROVISIONS FOR COOPERATIVE AGREEMENT WITH DOMESTIC UNIVERSITIES AND NONPROFIT ORGANIZATIONS INCLUDING ENHANCED U.S. COMPETITIVENESS AND A COMMERCIALIZATION PLAN (published at https://arpa-e.energy.gov/?q=site-page/funding-agreements) 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, expressly including the terms related to the Commercialization Plan.

(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) INCLUDING ENHANCED U.S. COMPETITIVENESS of the ARPA-E Model Cooperative Agreement (published at https://arpa-e.energy.gov/?q=site-page/funding-agreements) 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, expressly including the terms related to the Commercialization Plan.

(c) Large Business and Foreign Entity Subawardees:

(1) If a large business receiving a subaward provides cost sharing of at least 20% under its subaward the Recipient shall incorporate all of the intellectual property provisions found in Attachment 2 ARPA-E INTELLECTUAL PROPERTY PROVISIONS FOR COOPERATIVE AGREEMENT WITH LARGE BUSINESSES—WAIVER (PATENT RIGHTS) INCLUDING ENHANCED U.S. COMPETITIVENESS IN SUBAWARDS AND A COMMERCIALIZATION PLAN of the ARPA-E Model Cooperative Agreement (published at https://arpa-e.energy.gov/?q=site-page/funding-agreements) into its subaward with the large business.

(2) If a large business receiving a subaward does not provide cost sharing of at least 20% under its subaward or a foreign entity receiving a subaward, the Recipient shall incorporate all of the intellectual property provisions found in Attachment 2 ARPA-E INTELLECTUAL PROPERTY PROVISIONS FOR COOPERATIVE AGREEMENT WITH LARGE BUSINESSES—NO WAIVER (PATENT RIGHTS) INCLUDING ENHANCED U.S. COMPETITIVENESS AND A COMMERCIALIZATION PLAN of the ARPA-E Model Cooperative Agreement (published at https://arpa-e.energy.gov/?q=site-page/funding-agreements) into its subaward with the large business or foreign entity. Upon request to Patent Counsel for good cause shown, the right to use the Attachment 2 ARPA-E INTELLECTUAL PROPERTY PROVISIONS FOR COOPERATIVE AGREEMENT WITH LARGE BUSINESSES—WAIVER (PATENT RIGHTS) INCLUDING ENHANCED U.S. COMPETITIVENESS IN SUBAWARDS AND A COMMERCIALIZATION PLAN in the award to the large business or foreign entity may be granted.

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

(d) Subaward Unlimited Rights Data List: For any subaward/subcontract with a for-profit entity (including subcontracts with for-profit vendors) for experimental, developmental or research work, the Recipient will insert the unlimited rights data list found in paragraph (g)(4) under the Rights in Data clause into the corresponding Rights in Data provision in the subaward/subcontract.

(End of clause)

**6. Commercialization Plan**

The Recipient agrees that a purpose of this contract is to provide substantial benefit to the U.S. economy. In exchange for the benefits and rights received under this contract, the Recipient agrees, in addition to other commitments contained in this agreement, to comply with the Commercialization Plan described above in Section 2(e) and which is an addendum to this Attachment 2.

(End of clause)

ADDENDUM

(INSERT APPROVED COMMERCIALIZATION PLAN HERE)