**ATTACHMENT 1:**

**SPECIAL TERMS AND CONDITIONS**

|  |  |
| --- | --- |
| **Prime Recipient** |  |
| **Award No.** |  |
| **Type of Funding Agreement** |  |
| **Competitive or Noncompetitive Award** |  |
| **Funding Opportunity Announcement (if applicable)** |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Prime Recipient”), which is identified in Block 5 of the Cover Page (Assistance Agreement Form), and the Advanced Research Projects Agency-Energy (“ARPA-E”), an agency within the United States Department of Energy (“DOE”), enter into this agreement, Award No. \_\_\_\_\_\_\_\_\_\_\_\_, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 3 to this Award.

This Award consists of the Department of Energy (DOE) Financial Assistance Regulations, 2 CFR Part 200, as amended by Part 910, available at <http://eCFR.gov>; the Financial Assistance Application as approved by ARPA-E; and the following Award documents:

|  |  |
| --- | --- |
| Cover Page | Assistance Agreement Form |
| Attachment 1 | Special Terms and Conditions |
| Attachment 2 | Intellectual Property Clauses |
| Attachment 3 | Statement of Project Objectives and  Schedule of Technical Milestones and Deliverables |
| Attachment 4 | ARPA-E Reporting Checklist and Instructions |
| Attachment 5 | Budget Information (SF-424A) |
| Attachment 6 | National Policy Assurances |

The Prime Recipient agrees to comply with the terms and conditions of this Award. The Prime Recipient also agrees to apply the terms and conditions of this Award to all subrecipients (or subcontractors, as appropriate) and to require their strict compliance therewith.

Failure to comply with the terms and conditions of this Award may result in the imposition of additional award conditions which are consistent with 2 C.F.R. § 200.207. If ARPA-E determines that noncompliance cannot be remedied by imposing additional conditions, ARPA-E may temporarily withhold or disallow reimbursement of costs, suspend or terminate this Award, and/or other available remedies under 2 C.F.R. § 200.338.

All notifications, requests, and other communications to the ARPA-E Contracting Officer should be sent to [ARPA-E-CO@hq.doe.gov](mailto:ARPA-E-CO@hq.doe.gov) and the assigned Contract Specialist for this Award.

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# SUBPART A. GENERAL CLAUSES

## CLAUSE 1. LEGAL AUTHORITY AND EFFECT

An ARPA-E financial assistance Award, and any modification of such Award, is valid only if it is in writing and is signed, either in writing or electronically, by an ARPA-E Contracting Officer. The Prime Recipient may accept or reject this Award. Completing Blocks 22, 23, and 24 of the Assistance Agreement Face Page and returning it to the Contracting Officer; performing project work or incurring project cost; or submission of a reimbursement request constitute acceptance of the Award and all terms and conditions.

## CLAUSE 2. EFFECTIVE DATE

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

## CLAUSE 3. BUDGET PERIOD/PERIOD OF PERFORMANCE

*[Alt. 1: Use this clause when the agreement is fully funded at the time of award. Delete if clause is N/A]*

The budget period and period of performance are stated in Block 7 of the Cover Page (Assistance Agreement Form) to this Award.

*[Alt 2: Use this clause when the agreement is a continuing award over identified budget periods. Delete if clause is N/A.]*

1. Maximum Obligation for Current Budget Period

The Project Period for this award is [mm/dd/yyyy] through [mm/dd/yyyy] consisting of the following Budget Periods.

[Insert table of Budget Periods, effective and expiration dates, and corresponding cost estimates/amounts to be obligated.]

1. Continuation Application and Funding - Awards Under 2 CFR Part 200 as Amended by 2 CFR Part 910

Award of continuation funding in any subsequent Budget Period is contingent on: (1) availability of funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) substantial progress towards meeting the objectives of this Agreement as set forth in Attachment 3; (4) submittal of required reports; and (5) compliance with the terms and conditions of the award.

*[Alt 3: Use this clause when the award is fully funded but segregated into budget periods with performance being assessed at the end of each budget period.]*

a. Maximum Obligation for Current Budget Period

The Project Period for this award is [mm/dd/yyyy] through [mm/dd/yyyy] consisting of the following Budget Periods.

[Insert table of Budget Periods, effective and expiration dates, and corresponding cost estimates/amounts to be obligated.]

1. Payment of Costs/Deobligation of Funds

ARPA-E has obligated $[insert amount obligated] for completion of the project authorized by this award. However, only $[insert amount available] of the estimated ARPA-E share of the project is available for work performed by the Recipient during the Budget Period 1. Authorization to proceed with work in any subsequent Budget Period is contingent on: (1) substantial progress towards meeting the objectives of this Agreement as set forth in Attachment 3; (2) submittal of required reports; and (3) compliance with the terms and conditions of the award.

In the event the award is not continued into future Budget Periods or the award is terminated at any point, the maximum ARPA-E liability to the Recipient is ARPA-E’s share of incurred costs up to the approved budget for the budget period(s) authorized provided such costs are reasonable, allocable to the award, and allowable under the terms of the award and the applicable Federal Cost Principles. The Recipient may incur costs beyond this limit at its own risk, subject to later reimbursement by ARPA-E in the event the project proceeds beyond the current budget period. ARPA-E reserves the right to unilaterally deobligate the balance of funds obligated, but not authorized for expenditure, in the event that the project is terminated.

## CLAUSE 4. COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW

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

## CLAUSE 5. INCONSISTENCY WITH FEDERAL LAW

Any apparent inconsistency between Federal Law(s) and regulation(s) and the terms and conditions of this Award must be immediately referred to the ARPA-E Contracting Officer for resolution through a written notification providing the following information: (i) the Prime Recipient’s award number; (ii) the name and contact information (postal address, telephone number, and email address) for the individual(s) to whom the ARPA-E Contracting Officer should direct any inquiries regarding this matter; and (iii) a detailed description of the apparent inconsistency.

## CLAUSE 6. FEDERAL STEWARDSHIP

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

1. Review Meetings

The Prime Recipient, including but not limited to the principal investigator (or, if applicable, co-principal investigators), is required to participate in periodic review meetings with ARPA-E. Review meetings enable ARPA-E to assess the work performed under this Award and determine whether the Prime Recipient has timely achieved the technical milestones and deliverables stated in Attachment 3 to this Award.

ARPA-E shall determine the frequency of review meetings and select the day, time, and location of each review meeting.

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

* The Prime Recipient’s technical progress compared to the schedule of technical milestones and deliverables stated in Attachment 3 to this Award;
* The Prime Recipient’s actual expenditures compared to the approved budget in Attachment 5 to this Award; and
* Other subject matter specified by the ARPA-E Program Director.

b. Project Meetings

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

c. Site Visits

ARPA-E's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems; inspect property and records relating to this Award; and to provide technical assistance, if required. The Prime Recipient must provide, and must require its subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of ARPA-E’s representatives in the performance of their duties. To the maximum extent practicable, ARPA-E will perform site visits and evaluations in a manner that does not unduly interfere with or delay project work.

d. Review and Approval of Reimbursement Requests and Cost Share Compliance

See Clauses 23-32 below.

## CLAUSE 7. STATEMENT OF SUBSTANTIAL INVOLVEMENT

a. Substantial Involvement Generally

ARPA-E has substantial involvement in work performed under this Award, as described below.

* The Prime Recipient must adhere to ARPA-E’s agency-specific and programmatic requirements.
* ARPA-E may intervene at any time in the conduct or performance of work under this Award.
* ARPA-E does not limit its involvement to the administrative requirements of this Award. Instead, ARPA-E has substantial involvement in the direction and redirection of the technical aspects of the project as a whole.
* ARPA-E may, at its sole discretion, modify or terminate projects that fail to achieve predetermined Go/No Go decision points or technical milestones and deliverables.

b. Go/No Go Decisions

Attachment 3 to this Award establishes “Go/No Go” decision points. For each “Go/No Go” decision point, the ARPA-E Program Director must determine whether the Prime Recipient has fully and satisfactorily completed the work described in Attachment 3 to this Award. As a result of a Go/No Go review, ARPA-E may, at its sole discretion, authorize the following: (1) continuation of the project; (2) require redirection of work under the project; (3) place a hold on the project, pending further supporting data; (4) reduce the amount of the Award; (5) suspend or terminate the Award due to noncompliance with the terms and conditions of the Award; or (6) other appropriate actions.

c. Technical Milestones and Deliverables

Attachment 3 to this Award establishes technical milestones and deliverables. If the Prime Recipient fails to achieve any technical milestones and deliverables, ARPA-E may – at its discretion - revise the statement of project objectives or schedule of technical milestones and deliverables in Attachment 3 to this Award. In the alternative, ARPA-E may deem the Prime Recipient’s failure to achieve these technical milestones and deliverables to be noncompliance with the terms and conditions of this Award and suspend or terminate the Award.

d. Technology Transfer and Outreach

ARPA-E may provide guidance and/or assistance to the Prime Recipient to accelerate the commercial deployment of ARPA-E-funded technologies.

e. General Release

The Prime Recipient understands that any technical or other guidance or assistance provided by ARPA-E may result in positive or negative outcomes and may have unintended or unanticipated consequences. The Prime Recipient agrees to release the Federal Government, Federal officers and employees, contractors, and agents from any and all liability, responsibility, and claims arising out of or relating to technical or other guidance or assistance under this Award.

## CLAUSE 8. NEPA REQUIREMENTS

a. NEPA Generally

Consistent with DOE’s National Environmental Policy Act (“NEPA”) Implementing Regulations (10 C.F.R. Part 1021), the ARPA-E NEPA Compliance Officer is required to assess the impact of the work under this Award on the human environment and determine whether the work requires the preparation of an Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”), or is categorically excluded from preparation of either an EA or EIS.

The Prime Recipient is required to provide any information, documents, site access, or other assistance requested by the ARPA-E NEPA Compliance Officer.

b. Commencement of Work

The Prime Recipient may not start work under this Award until the ARPA-E NEPA Compliance Officer has made a written determination allowing the work to proceed.

If the ARPA-E NEPA Compliance Officer determines in writing that the work under this Award qualifies for a categorical exclusion, the Prime Recipient may commence work as of the effective date of this Award or the date of the written NEPA determination, whichever is later.

If the ARPA-E NEPA Compliance Officer determines that the work under this Award requires the preparation of an EA or EIS, the Prime Recipient *may not* commence work until the completion of the EA or EIS and the issuance of a written determination by the ARPA-E NEPA Compliance Officer allowing the work to proceed.

c. Significant Changes to Scope of Work

Significant changes to the scope of work under this Award may require the ARPA-E NEPA Compliance Officer to re-evaluate the impact of the work under this Award on the human environment.

## CLAUSE 9. FOREIGN WORK AND TRAVEL

1. Performance of Work in United States

All work under this Award must be performed in the United States (i.e., the Prime Recipient must expend 100% of the total project cost in the United States), unless the Prime Recipient receives advance written authorization from the ARPA-E Contracting Officer to perform certain work overseas.

1. Travel Outside the United States

The Prime Recipient is required to obtain written authorization from the ARPA-E Program Director before incurring any costs related to foreign travel.

In seeking prior approval for costs related to foreign travel, the Prime Recipient is required to provide a submittal to the ARPA-E Program Director which explains: (i) where the Prime Recipient will travel, (ii) the purpose of the trip, (iii) what the Prime Recipient will do, and (iv) how the travel relates to this Award.

## CLAUSE 10. PURCHASES

* 1. Sense of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be made in the United States.

* 1. Purchase of Equipment/Supplies

Any new equipment acquired under this Award must be made or manufactured in the United States, to the maximum extent practicable. This requirement does not apply to used or leased equipment. Any supplies acquired under this Award must be made or manufactured in the United States, to the maximum extent practicable.

c. Purchase of Foreign Equipment/Supplies

The Prime Recipient shall notify the ARPA-E Contracting Officer reasonably in advance of purchasing any equipment with a total acquisition cost of $250,000 or more not made or manufactured in the United States. The notification shall include: (a) a description of the equipment or supplies to be purchased, (b) identification of the proposed supplier, (c) the proposed price, (d) identification of the country of origin and the reason for acquiring the equipment or supplies outside of the United States.

The ARPA-E Contracting Officer will provide consent to purchase or reject within 30 calendar days of receipt of the Recipient’s notification. If the ARPA-E Contracting Officer fails to respond within the timeframe above, the Recipient may proceed with the purchase.

## CLAUSE 11. LOBBYING RESTRICTIONS

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

## CLAUSE 12. EXPORT CONTROLS

The Prime Recipient is required to comply with U.S. export control laws and regulations in the performance of work under this Award.

## CLAUSE 13. PUBLICATIONS

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

*Acknowledgment:* “The information, data, or work presented herein was funded in part by the Advanced Research Projects Agency-Energy (ARPA-E), U.S. Department of Energy, under Award Number DE-AR\_\_\_\_\_\_\_\_\_. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

## CLAUSE 14. EXTENSIONS OF PERIOD OF PERFORMANCE

The Prime Recipient may request an extension of the period of performance of this Award. Requests must be submitted in writing to the ARPA-E Contracting Officer at least 60 calendar days before the end of the project period. The ARPA-E Contracting Officer will promptly exercise discretion to grant or deny such requests.

## CLAUSE 15. PROPERTY TRUST RELATIONSHIP AND INSURANCE COVERAGE

Property acquired in whole or in part with Federal funds under this award may not be encumbered in any way without the written permission of the ARPA-E Contracting Officer, who may require the recording of liens or other appropriate notices of record such property. The Prime Recipient will ensure full replacement insurance coverage for such property.

Federally-owned property provided under the award need not be insured unless required by the terms and conditions of this Award.

## CLAUSE 16. PROPERTY – SUPPLIES AND EQUIPMENT

a. Supplies

The Prime Recipient takes title to any supplies acquired in whole or in part with Federal funds under the Award.

If the total aggregate value of unused supplies is $5,000 or less at the termination, discontinuation or completion of the project or program the Prime Recipient may retain the unused supplies with no further obligation to ARPA-E.

If the total aggregate value of unused supplies exceeds $5,000 at the termination, discontinuation, or completion of the project and the supplies are not needed for any other Federal award, the Prime Recipient may retain the supplies for use on other activities or sell them. In either case, the Prime Recipient must compensate ARPA-E for the ARPA-E funded share as specified in 2 C.F.R. § 200.314.

Upon request by ARPA-E, the Prime Recipient is required to provide information on the condition, location, value, and use of remaining supplies.

b. Equipment

Post-Award equipment purchases with a total acquisition cost of $250,000 or greater may be purchased only with the prior approval of the Contracting Officer.

The Prime Recipient takes title to any equipment purchased in whole or in part with Federal funds subject to the following conditions:

* The equipment must be used for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project;
* The equipment shall not be encumbered without approval of ARPA-E; and
* The equipment shall be used and disposed by for-profit entities in accordance with 2 C.F.R. § 910.360, and by all other entities in accordance with 2 C.F.R. § 200.313.

If the current per unit fair market value of particular equipment is $5,000 or less at the end of the project period (or the termination of the Award, if applicable), the Prime Recipient may retain, sell, or otherwise dispose of the equipment with no further obligation to ARPA-E.

If the current per unit fair market value of particular equipment exceeds $5,000 at the end of the project period (or the termination of the Award, if applicable), the equipment must be disposed of by for-profit entities in accordance with 2 C.F.R. § 910.360(f) and by all other entities in accordance with 2 C.F.R. § 200.313(e).

Upon request by ARPA-E, the Prime Recipient is required to provide information on the condition, location, value, and use of remaining equipment.

## CLAUSE 17. POTENTIALLY CLASSIFIABLE RESULTS ORIGINATING UNDER THIS AWARD

This Award is intended for unclassified research to develop and commercialize advanced energy technologies. ARPA-E will not provide the Prime Recipient access to classified information, and ARPA-E does not expect that the results of the research project will involve classified information. If at any time the Prime Recipient believes work generated under this Award may need classification, it must immediately notify the ARPA-E Contracting Officer in writing for further instruction. Do not include potentially classifiable information in the notification.

## CLAUSE 18. RECORD RETENTION

Consistent with 2 C.F.R. § 200.333, the Prime Recipient is required to retain records relating to this Award for three years after the end of the project period, unless one of the following exceptions applies:

* If any litigation, claim, or audit is started before the expiration of the three-year period, the Prime Recipient is required to retain the records until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
* The Prime Recipient is required to retain records for any real property or equipment acquired with Federal funds for three years after final disposition of the real property or equipment.
* The Prime Recipient is not required to retain records after the end of the project period if ARPA-E agrees to maintain the records.

Copies of records may be substituted for originals.

## CLAUSE 19. AUDITS

a. Audits Generally

The Prime Recipient is required to provide any information, documents, site access, or other assistance requested by ARPA-E or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Prime Recipient’s records relating to this Award. ARPA-E will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

b. Government Audits

Consistent with 2 C.F.R. §200.503(b), ARPA-E may audit the Prime Recipient’s financial records or administrative records relating to this Award at any time.

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

c. Compliance Audits for For-Profit Recipients

For-profit Recipients are required to comply with the annual compliance audit requirements in 2 C.F.R. 910 Subpart F. An audit conducted in accordance with this part must be in lieu of any financial audit of DOE awards which a for-profit entity is required to undergo under any other Federal statute or regulation.

d. Single Audits for Entities Other than For-Profit Recipients

Recipients other than for-profits are required to comply with the single audit requirements in 2 C.F.R. 200 Subpart F. An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards the Recipient is required to undergo under any other Federal statute or regulation.

## CLAUSE 20. CLAIMS, DISPUTES, AND APPEALS

1. Claims

The Prime Recipient is required to submit all claims arising out of or relating to this Award to the ARPA-E Contracting Officer in writing. The Prime Recipient’s written submission must contain the following information: (i) the nature of the Prime Recipient’s claim(s) and the basis for relief, and (ii) all necessary information and documents supporting the Prime Recipient’s claim(s). The Prime Recipient shall negotiate in good faith with the ARPA-E Contracting Officer to resolve such claims.

b. Claims for Damages

The Prime Recipient agrees to release the Federal Government, Federal officers and employees, contractors, and agents from any and all liability, responsibility, and claims for consequential, punitive, special, or incidental damages, claims for lost profits, or other direct or indirect damages arising out of or relating to this Award.

c. Disputes and Appeals

The Prime Recipient is required to resolve all disputes in accordance with the procedures set forth in 2 C.F.R. § 910.128.

## CLAUSE 21. CONFERENCE SPENDING

The Prime Recipient shall not use any Federal funds to:

* Defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office which is not directly and programmatically related to the purpose for which its ARPA-E Award is made and for which the cost to the United States Government is more than $20,000; or

* To circumvent the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such a conference.

## CLAUSE 22. SYSTEM FOR AWARD MANAGEMENT REGISTRATION

Unless the Prime Recipient is exempt from this requirement under 2 C.F.R. § 25.110, the Prime Recipient must maintain current information in the System for Award Management (SAM) until submission of the final financial report required under this Award or receipt of final payment, whichever is later.

# SUBPART B. FINANCIAL CLAUSES

## CLAUSE 23. MAXIMUM OBLIGATION

*[Alt. 1: Use this clause if the agreement is fully funded.]*

The maximum obligation of ARPA-E/DOE for this Award is shown in Block 13 of the Cover Page (Assistance Agreement Form) to this Award. Costs incurred in excess of this amount shall be borne solely by the Prime Recipient. In the event that costs incurred under this Award are less than this amount, ARPA-E shall be liable only for actual costs incurred.

*[Alt. 2: Use this clause is the agreement is incrementally funded over identified budget periods.]*

The maximum ARPA-E obligation for the budget period(s) from mm/dd/yyyy through mm/dd/yyyy is $[insert amount]. Cost incurred in excess of this amount shall be borne solely by the grantee. In the event that costs incurred under this budget period are less than this amount, DOE shall be liable only for actual allowable costs incurred.

*[Alt 3: Use this clause if the agreement fully funded, but work authorization has been limited to specific Budget Period(s)]*

ARPA-E has authorized work to proceed for the budget period(s) from mm/dd/yyyy through mm/dd/yyyy, in the amount of $[insert amount]. Cost incurred in excess of this amount shall be borne solely by the grantee. In the event that costs incurred under this budget period(s) are less than this amount, DOE shall be liable only for actual allowable costs incurred.

## CLAUSE 24. COST SHARING

1. Cost Sharing Obligations

All cost share contributions must be provided in accordance with 2 C.F.R. § 200.306 and 2 C.F.R. § 910.130. The Prime Recipient is required to pay the “Cost Share” amount stated in Block 12 of the Cover Page (Assistance Agreement Form) to this Award. By accepting federal funds under this Award, the Prime Recipient agrees that it is liable for its percentage of the total allowable project costs as specified below:

|  |  |  |
| --- | --- | --- |
| Government Share  $/% | Prime Recipient Share  $/% | Total Project Cost |
|  |  |  |

The Prime Recipient is required to pay the “Cost Share” amount as a percentage of the total project costs in each invoice period for the duration of the period of performance. If the Prime Recipient receives advance written authorization from the ARPA-E Associate Director for Finance, the Prime Recipient may pay the “Cost Share” amount on a basis as mutually agreed by the non-Federal entity and ARPA-E.

If the Prime Recipient is a small business and has been granted a “Cost Share Grace Period” by ARPA-E, the Prime Recipient will not be required to pay cost share during the first 12 months of the period of performance. If the project is continued beyond the Cost Share Grace Period, the Prime Recipient is required to pay at least 10% of the Total Project Cost (including the costs incurred during the Cost Share Grace Period) as cost share over the remaining period of performance.

If the project is terminated or is otherwise not funded to completion, the Prime Recipient is not required to pay the entire “Cost Share” amount stated in Block 12 of the Cover Page (Assistance Agreement Form) to this Award; however, the Prime Recipient is required to pay its share (i.e., percentage) of the total project cost incurred to date as of the termination or end date of the Award (except for instances where agreements are terminated during the Cost Share Grace Period, per Clause 24.a).

1. Source of Cost Share

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

1. Cost Share Recordkeeping

The Prime Recipient is required to document and maintain records of project costs paid by ARPA-E and project costs that the Prime Recipient claims as cost sharing, including in-kind contributions. Upon request, the Prime Recipient is required to provide such records to ARPA-E.

1. Inability to Comply with Cost Sharing Obligations

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

If the Prime Recipient fails to meet its cost sharing obligations, ARPA-E may terminate this Award or otherwise recover some or all of the financial assistance provided.

1. Modifying Cost Sharing Contributions

The Prime Recipient must notify and receive written authorization from the ARPA-E Contracting Officer before modifying the amount of cost share contributions. (also see Clause 31.b.7)

## CLAUSE 25. REFUND OBLIGATION

The Prime Recipient is required to refund any excess payments received from ARPA-E. At the end of the period of performance (or the termination of the Award, if applicable), the Prime Recipient is required to refund to ARPA-E the difference between (i) the total payments received from ARPA-E, and (ii) the Federal share of the costs incurred.

## CLAUSE 26. APPLICABLE COST PRINCIPLES

1. Cost Principles for For-Profit Entities

Pursuant to 2 C.F.R. § 910.352, the cost principles in the Federal Acquisition Regulations (48 C.F.R. Part 31.2) apply to for-profit entities.

b. Cost Principles for Entities other than For-Profits

The cost principles contained in 2 C.F.R. Part 200 Subpart E apply to all entities other than for-profits.

## CLAUSE 27. INDIRECT COSTS

a. Lower-than-Expected Indirect Costs

If the Prime Recipient’s actual allowable indirect costs are less than those budgeted in Attachment 5 to this Award, the Prime Recipient may use the difference to pay additional allowable direct costs during the period of performance.

b. Higher-than-Expected Indirect Costs

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

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

## CLAUSE 28. PRE-AWARD COSTS

The Recipient may incur pre-award costs in accordance with 2 C.F.R. § 200.308(d)(1) and 2 C.F.R. § 200.458. All pre-award costs must have been incurred within 90 calendar days or less of the award date, set forth in Block 27 of the cover page. All costs incurred prior to the award date are at the Recipient’s risk.

## CLAUSE 29. PATENT COSTS

* 1. Reimbursable Patent Costs

ARPA-E will reimburse the Prime Recipient up to $30,000 for filing and prosecution of United States patent applications, including international applications (“PCT application”) submitted to the USPTO that are related to subject inventions disclosed to DOE in accordance with Attachment 2 to this Award.  The Prime Recipient may request a waiver of the $30,000 reimbursement limit which is subject to review by the ARPA-E Program Director and approval by the Contracting Officer. Allowable costs associated with reporting subject inventions are not included in this $30,000 limitation.

* 1. Unrecovered Patent Costs

The Prime Recipient may use unrecovered patent costs that are reasonable and allowable to meet its cost sharing obligations under this Award.

## CLAUSE 30. PAYMENT PROCEDURES

a. Reimbursement Requests Generally

Only the Prime Recipient may submit reimbursement requests to ARPA-E. Subrecipients must submit reimbursement requests to the Prime Recipient, which is responsible for conveying reimbursement requests to ARPA-E on behalf of subrecipients. Subrecipients may not submit reimbursement requests directly to ARPA-E.

The Prime Recipient is required to submit reimbursement requests electronically through DOE’s Oak Ridge Financial Service Center Vender Inquiry Payment Electronic Reporting System (VIPERS). To access and use VIPERS, the Prime Recipient is required to enroll and login to the VIPERS website (https://vipers.oro.doe.gov/).

To facilitate the expeditious processing of reimbursement requests, the Prime Recipient is required to send a copy of every reimbursement request by email to the ARPA-E support personnel designated by the ARPA-E Program Director.

The Prime Recipient’s submission of reimbursement requests should coincide with the Prime Recipient’s normal billing pattern. Reimbursement requests may be submitted no more frequently than every two weeks. Reimbursement requests must be submitted no less frequently than once in any consecutive thirteen week period.

With the exception of Budget Plan Payments, reimbursement requests must be limited to the amount of disbursements during the billing period.

b. Documentation Required

Every reimbursement request submitted by the Prime Recipient must include:

1. A Standard Form (SF) 270 (“Request for Advance or Reimbursement”);
2. A “Reimbursement Request Spreadsheet,” which must contain the information shown in Appendix B hereto; and
3. Supporting documentation, which may consist of summary information (e.g., printouts from internal financial systems) or detailed documentation (e.g., invoices on appropriate letterhead, time cards, travel vouchers). The supporting documentation must show the method by which the Prime Recipient calculated the total Federal share and non-Federal cost share.

Upon request by ARPA-E, the Prime Recipient is required to provide ARPA-E with additional supporting documentation to explain or justify particular expenditures for which it is seeking reimbursement.

c. Cost Share Reporting

Every reimbursement request submitted by the Prime Recipient must show the Federal share and the non-Federal cost share contribution for the invoice period, and the method by which the Prime Recipient calculated the total Federal share and non-Federal cost share.

Upon request by ARPA-E, the Prime Recipient is required to provide ARPA-E with additional supporting documentation to verify the Prime Recipient’s compliance with its cost sharing obligations.

d. Payments

ARPA-E will approve reimbursement requests within 30 days of receipt, unless the billing is improper or the Prime Recipient fails to comply with the terms and conditions of this Award.

Among other things, failure to submit reimbursement requests with the frequency set forth in this clause’s paragraph a may be considered as non-compliance with this Award and its terms and conditions. This may result in partial payments, delayed payments (i.e., approval of reimbursement requests in an amount of time exceeding 30 days of receipt), suspension or termination of the award (in whole or in part), or implementation of any other remedies that may legally be available per 2 C.F.R. § 200.338.

ARPA-E will disburse payments under this Award through Automated Clearing House (ACH) VIPERS. The Prime Recipient may check the status of its payments at the VIPERS website. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) filed by the Prime Recipient.

e. Budget Plan Payments

In exceptional circumstances, ARPA-E may, at its discretion, reimburse the Prime Recipient on a prospective basis through Budget Plan Payments. All requests for Budget Plan Payments must be submitted in writing to the ARPA-E Associate Director for Finance and the support personnel designated by the ARPA-E Program Director. Consistent with Clause 30(a), all Budget Plan Payment requests must be submitted by the Prime Recipient.

Each request must be limited to a single quarter, unless otherwise authorized by the ARPA-E Associate Director for Finance.

Requests for Budget Plan Payments must include:

1. A signed cover letter on appropriate letterhead stating the basis for the request, the total amount of funding requested, the duration of funding, and the technical milestone(s) and deliverable(s) to be achieved with the prospective funding;
2. A detailed budget spreadsheet showing how the prospective funding will be spent during each month of the quarter in each of the following categories:
   1. *Personnel* – include descriptions of the types of positions (e.g., engineer, risk manager, communications director) that will be funded during the quarter;
   2. *Travel* – include description of trips (i.e., destinations, persons traveling, purpose of trip) that will be funded during the quarter;
   3. *Equipment* – include description of equipment that will be purchased or leased during the quarter;
   4. *Supplies* – include description of supplies (e.g., lab supplies) that will be purchased or leased during the quarter;
   5. *Contractual* – include description of contractors that will be funded during the quarter;
   6. *Construction* – include description of approved construction that will be funded during the quarter;
   7. *Other Direct Costs* – include description of miscellaneous expenses; and
   8. *Cost Share* – include the Prime Recipient’s cost share contributions for the quarter; and
3. A one-page invoice showing the total amount requested; and
4. If the Budget Plan Payment will be used to purchase equipment, the Prime Recipient is required to provide supporting documentation (e.g., vendor quote, catalog price).

Upon request by ARPA-E, the Prime Recipient is required to provide ARPA-E with additional supporting documentation for its Budget Plan Payment request.

Variances between the prospective monthly budgets and amounts actually incurred will be reconciled at the end of each quarter. Failure to provide a reconciliation invoice may be considered non-compliant with this Award’s terms and conditions and subject to the same remedies set forth in this clause’s paragraph d.

The Prime Recipient is required to submit reimbursement requests electronically through DOE’s Oak Ridge Financial Service Center Vender Inquiry Payment Electronic Reporting System (VIPERS). To access and use VIPERS, the Prime Recipient is required to enroll and login to the VIPERS website (https://vipers.oro.doe.gov/).

## CLAUSE 31. BUDGET CHANGES

a. Budget Changes Generally

The ARPA-E Contracting Officer has reviewed and approved the SF-424A in Attachment 5 to this Award; including any costs requiring prior approval set forth in Attachment 5, per 2 C.F.R. § 200.308(c)(4). Any increase in the total project cost, which is stated as “Total” in Block 12 to the Cover Page (Assistance Agreement Form) of this Award, must be approved in advance and in writing by the ARPA-E Program Director and the ARPA-E Contracting Officer.

1. Revision of Budget and Program Plans

Per 2 C.F.R. § 200.308(c), prior written approval of the ARPA-E Contracting Officer is required for:

* + 1. Changes in the scope or objective of the project.
    2. Changes in key personnel specified in this agreement or the corresponding Full Application.
    3. Disengagement from the project for more than three months or a 25 percent reduction in budgeted time, by the project director or principal investigator.
    4. To the extent not previously agreed, costs requiring prior approval as set forth at 2 C.F.R. § 200.308(c)(1)(iv).
    5. The transfer of funds budgeted for participant support as defined at 2 C.F.R. § 200.75.
    6. To the extent not previously agreed, subawarding, transferring out, or contracting out of any work under this agreement.
    7. Changes in the amount of cost sharing or matching provided. (also see Clause 24.e)

## CLAUSE 32. USE OF PROGRAM INCOME

If the Prime Recipient earns program income during the period of performance as a result of this Award, it may use the program income as defined by 2 C.F.R. § 200.80 to meet its cost sharing requirement.

# SUBPART C. MISCELLANEOUS CLAUSES

## CLAUSE 33. FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES

By entering into this agreement, the Prime Recipient attests that it has not been convictedof a felony criminal violation under Federal law in the 24 months preceding the date of signature.

The Prime Recipient further attests that it does not have any unpaid Federal tax liabilitythat has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

## CLAUSE 34. NON-ASSIGNABILITY

This Award may not be transferred, assigned, or assumed, by operation of law or otherwise, without the prior written consent of the ARPA-E Contracting Officer.

## CLAUSE 35. NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES

By entering into this agreement, the Prime Recipient attests that it does not require its employees or contractors to sign nondisclosure or confidentiality agreements which prohibit or otherwise restrict signatories from reporting the following to the DOE Inspector General: a violation of law, rule, or regulation, mismanagement, waste, fraud, abuse, or a substantial and specific danger to public health or safety.

## CLAUSE 36. PROVISIONAL RATES

*[Alt. 1. Use this version when Prime has provisional rates. Delete Clause if N/A.]*

Pending modification to this agreement, the Prime Recipient shall be reimbursed for its indirect costs and the Prime Recipient’s cost share calculated at the following rates:

*[insert pertinent rate info, allocation base and effective period of rate proposal]*

The Prime Recipient is responsible for application of Federally approved indirect cost rates or negotiation of rates in accordance with 2 CFR 200.331(a)(4) with its subrecipients.

*[Alt. 2. OR use this version when only Subrecipients are using provisional rates. Delete Clause if N/A.]*

The Prime Recipient is responsible for application of Federally approved indirect cost rates or negotiation of rates in accordance with 2 CFR 200.331(a)(4) with its subrecipients.

## 

## CLAUSE 37. COORDINATION OF PROJECT

*[Alt. 1. Use this clause when a DOE Lab is the Project Lead. Delete Clause if N/A.]*

The Prime Recipient and any Subrecipients of this Award are members of a project team with a DOE/NNSA Federally Funded Research and Development Center (FFRDC). The DOE/NNSA FFRDC is the Project Lead funded through a Work Authorization. Work Authorizations are issued through the DOE/NNSA Field Work Proposal system for work performed under DOE Management and Operation Contracts. The Prime Recipient and its Subrecipients agree to comply with the DOE/NNSA FFRDC direction and coordination, of the project. The DOE/NNSA FFRDC shall be permitted to monitor the activities of the Prime Recipient and any Subrecipients as necessary to ensure that the technical and administrative requirements of the project are met.

*[Alt. 2. Use this clause when a DOE Lab is a project sub. Delete Clause if N/A.]*

The Prime Recipient and any Subrecipients of this Award are members of a project team with a DOE/NNSA Federally Funded Research and Development Center (FFRDC). The Prime Recipient is the Project Lead. The DOE/NNSA FFRDC is a team member funded through a Work Authorization. Work Authorizations are issued through the DOE/NNSA Field Work Proposal system for work performed under DOE Management and Operation Contracts. The Prime Recipient will coordinate the project, including work performed by its Subrecipients and the DOE/NNSA FFRDC.

## CLAUSE 38. PUBLIC NOTICE OF ARPA-E AWARD

Awardee will make reasonable efforts to educate its employees, partners, investors, engineering community, and the general public of receipt of the award from ARPA-E, including the research to be conducted. Such educational effort/notice will include press releases, announcement on awardee’s web page and social media networks/accounts, and other appropriate means.

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# APPENDIX A:

**DEFINITIONS**

*The terms defined in 2 C.F.R. Part 200, Subpart A and this Appendix apply to this Award.*

*ARPA-E* is the Advanced Research Projects Agency – Energy, an agency within the U.S. Department of Energy.

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

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

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

*Cooperative agreement* is a legal instrument which, consistent with 31 U.S.C. 6302-6305, is used to enter into a relationship, the principle purpose of which is to transfer anything of value from the Federal awarding agency to carry out a public purpose, except that substantial involvement is expected between ARPA-E and the Prime Recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include “cooperative research and development agreements” as defined in 15 U.S.C. § 3710a.

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

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

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

*DOE* is the U.S. Department of Energy.

*Equipment* is tangible property, other than real property, having a useful life of more than one year and a per unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000.

*Expenditures* are charges made by a non-Federal entity to a project or program for which a Federal award received. Charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied.

*Financial assistance* means the transfer of money or property from ARPA-E to a Prime Recipient to carry out a public purpose of support or stimulation authorized by law.

*Indirect Costs* are those that have been incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

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

*Institution of higher education* is an educational institution that (i) meets the criteria in section 101 of the Higher Education Act of 1965 (20 U.S.C. § 1001).

*Intangible property is property having no physical existence, such as* trademarks, copyrights, patents and patent applications and property, such as loans, notes and other federal debt instruments, lease agreements, stock and other instruments of property ownership.

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

*Nonprofit organization* means any corporation, trust, association, cooperative, or other organization, not including Institutions of Higher Education, which is operated primarily for scientific, educational, service, charitable, or similar purpose in the public interest; not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

*Program Director* is the ARPA-E official who is responsible for managing the technical program carried out under this Award.

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

*Period of Performance* is defined in Clause 2 of Attachment 1 to this Award.

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

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

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

*Subaward* means an award provided by a pass-through entity to a subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

*Subrecipient* is non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program.

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

*Termination* means the ending of an APRA-E award, in whole or in part, at any time prior to the planned end of the period of performance.

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

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

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# APPENDIX B:

**SAMPL****E**

**REIMBURSEMENT REQUEST**

**SPREADSHEET**

**Sample Reimbursement Request Spreadsheet**

**TOTAL BUDGET**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | **Total Project Cost** | | **Expenditures during Invoice Period** | | **Cumulative Expenditures To Date** | |  |
|  | **Category** | **ARPA-E** | **Cost Share** | **ARPA-E** | **Cost Share** | **ARPA-E** | **Cost Share** | **Remaining Balance** |
| **a.** | **Personnel** | 342,518 | 171,259 | 32,154 | 22,596 | 73,659 |  | 268,859 |
| **b.** | **Fringe Benefits** | 137,007 | 68,504 | 45,852 | 25,000 | 124,588 | 95,852 | 12,419 |
| **c.** | **Travel** | 25,000 | 12,500 | 4,569 | 2,500 | 11,526 | 41,268 | 13,474 |
| **d.** | **Equipment** | 312,338 | 156,169 | 26,987 | 50,000 | 144,589 |  | 167,749 |
| **e.** | **Supplies** | 216,346 | 108,173 | 35,648 | 50,000 | 142,633 |  | 73,713 |
| **f.** | **Contractual** |  |  |  |  |  |  | 0 |
|  | **Subrecipient** |  |  |  |  |  |  | 0 |
|  | **FFRDC** |  |  |  |  |  |  | 0 |
|  | **Vendor** | 3,600 | 1,800 | 1,256 |  |  |  | 3,600 |
|  | **Total Contractual** | 3,600 | 1,800 | 1,256 |  |  |  | 3,600 |
| **g.** | **Construction** |  |  |  |  |  |  | 0 |
| **h.** | **Other Direct Charges** | 336,598 | 30,522 | 56,985 |  |  |  | 336,598 |
| **i.** | **Indirect Charges** | 308,191 | 154,096 | 35,698 | 18,526 |  |  | 308,191 |
|  |  |  |  |  |  |  |  |  |
|  | **Total Project Cost** | 1,685,198 | 704,823 | 240,405 | 168,622 | 496,995 | 137,120 | 1,188,203 |

**SEPARATE TT&O WORKSHEET**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | **Total Project Cost** | | **Expenditures during Invoice Period** | | **Cumulative Expenditures To Date** | |  |
|  | **Category** | **ARPA-E** | **Cost Share** | **ARPA-E** | **Cost Share** | **ARPA-E** | **Cost Share** | **Remaining Balance** |
| **a.** | **TT&O Personnel** | 85,695 |  | 9,584 |  | 11,569 |  | 74,126 |
| **b.** | **TT&O Fringe Benefits** | 15,326 |  | 3,563 |  | 5,643 |  | 9,683 |
| **c.** | **TT&O Travel** | 15,496 |  |  |  | 6,985 |  | 8,511 |
| **d.** | **TT&O Equipment** |  |  |  |  |  |  | 0 |
| **e.** | **TT&O Supplies** | 35,265 |  |  |  | 12,548 |  | 22,717 |
| **f.** | **TT&O Contractual** |  |  |  |  |  |  | 0 |
|  | **TT&O Subrecipient** |  |  |  |  |  |  | 0 |
|  | **TT&O FFRDC** |  |  |  |  |  |  | 0 |
|  | **TT&O Vendor** |  |  |  |  |  |  | 0 |
|  | **Total TT&O Contractual** |  |  |  |  |  |  | 0 |
| **g.** | **TT&O Construction** |  |  |  |  |  |  | 0 |
| **h.** | **TT&O Other Direct Charges** |  |  |  |  |  |  | 0 |
| **i.** | **TT&O Indirect Charges** | 59,878 |  | 4,985 |  | 9,965 |  | 49,913 |
|  |  |  |  |  |  |  |  |  |
|  | **Total TT&O Cost** | 211,660 |  | 18,132 |  | 46,710 |  | 164,950 |