

Funding Opportunity Announcement [FOA DE-FOA-0002271, Amendment 000002](#)
Appendix P

*This document sets forth anticipated terms and conditions for the cooperative agreement awards for the **Risk Reduction for Future Demonstrations**. It is a draft, and is included in the Funding Opportunity Announcement (FOA) for informational purposes, to put applicants on notice of the anticipated terms and conditions DOE plans for the awards.*

Additional terms and conditions may be required depending on what is proposed for the project, e.g., if construction or real property is involved, etc.

DRAFT

TERMS AND CONDITIONS FOR
RISK REDUCTION FOR FUTURE DEMONSTRATIONS
COOPERATIVE AGREEMENT AWARDS

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**TERMS AND CONDITIONS FOR
RISK REDUCTION FOR FUTURE DEMONSTRATIONS
COOPERATIVE AGREEMENT AWARDS**

ADMINISTRATIVE REQUIREMENTS (DECEMBER 2014)

The administrative requirements for DOE grants and cooperative agreements are contained in 2 CFR Part 200 as amended by 2 CFR Part 910 [DOE Financial Assistance Regulation] (See: <http://www.eCFR.gov>). All references to 2 CFR 200, 2 CFR 910, FAR and DEAR clauses and articles incorporated by reference are, unless otherwise specified, to the version applicable as of the effective date of this Agreement.

LEGAL AUTHORITY AND EFFECT (JUNE 2015)

a. A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

b. Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

AWARD AGREEMENT TERMS AND CONDITIONS (DECEMBER 2014)

This award/agreement consists of the Assistance Agreement cover page, plus the following:

a. Special terms and conditions.

b. Attachments:

Attachment No.	Title
1)	Intellectual Property Provisions
2)	Statement of Project Objectives
3)	Federal Assistance Reporting Checklist
4)	Budget Pages

c. Applicable program regulations [*Name of Regulations*], [*Date of Regulations*] at <http://www.eCFR.gov>.

d. DOE Assistance Regulations, 2 CFR Part 200, as amended by 2 CFR Part 910 at <http://www.eCFR.gov>, in effect on the date of award or as amended by the parties thereafter.

e. Application/proposal as approved by DOE.

f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at: <http://www.nsf.gov/awards/managing/rtc.jsp>.

AWARD PROJECT PERIOD AND BUDGET PERIODS

The Project Period for this award is [mm/dd/yyyy] through [mm/dd/yyyy], consisting of the following Budget Periods: to be completed at time of award

CONFERENCE SPENDING (FEBRUARY 2015)

The recipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant or cooperative agreement was awarded that would defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed \$20,000, thereby circumventing 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 conference.

PAYMENT PROCEDURES - REIMBURSEMENT THROUGH THE AUTOMATED CLEARING HOUSE (ACH) VENDOR INQUIRY PAYMENT ELECTRONIC REPORTING SYSTEM (VIPERS)

- a. Method of Payment. Payment will be made by reimbursement through ACH.
- b. Reimbursement. Requests for reimbursements must be made electronically through Department of Energy's Oak Ridge Financial Service Center (ORFSC) VIPERS. To access and use VIPERS, you must enroll at <https://vipers.doe.gov>. Detailed instructions on how to enroll are provided on the website.

For non-construction awards, you must submit a Standard Form (SF) 270, "Request for Advance or Reimbursement" at <https://vipers.doe.gov> and attach a file containing appropriate supporting documentation. The file attachment must show the total federal share claimed on the SF 270, the non-federal share claimed for the billing period, if cost sharing is required, and cumulative expenditures to date (both Federal and non-Federal) for each of the following categories: salaries/wages and fringe benefits; equipment; travel; participant/training support costs, if any; other direct costs, including subawards/contracts; and indirect costs. For construction awards, you must submit a SF 271, "Outlay Report and Request for Reimbursement for Construction Programs," through VIPERS.

- c. Timing of submittals. Submittal of the SF 270 or SF 271 should coincide with your normal billing pattern, but not more frequently than every two weeks. Requests for reimbursement must be limited to the amount of disbursements made during the billing period for the federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.
- d. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.
- e. Payments. The DOE approving official will approve the invoice as soon as practicable but not later than 30 days after your request is received, unless the billing is improper. Upon receipt of an invoice payment authorization from the DOE approving official, the ORFSC will disburse payment to you. You may check the status of your payments at the VIPER web site. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) that you filed.

INCREMENTAL FUNDING AND MAXIMUM OBLIGATION - DIFFERENT BUDGET PERIOD AND PROJECT PERIOD

If at any time during the award a budget period is funded on an incremental basis, the maximum obligation of the DOE is limited to the amount shown on the Award Agreement. The Recipient is not obligated to continue performance of the project beyond the total amount obligated and the Recipient's pro rata share of the project costs, if cost sharing is required.

Subject to the availability of additional funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority, DOE anticipates obligating the total estimated amount for the current budget period.

COST SHARING FFRDC'S PARTICIPATION (if applicable)

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

The Recipient's cost share must come from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award, you agree that you are liable for your percentage share of allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion. This cost is shared as follows:

[insert table entitled FA Special Terms and Conditions Tables.]

b.If you discover that you may be unable to provide cost sharing of at least the amount identified in paragraph a. of this term, you should immediately provide written notification to the DOE Award Administrator indicating whether you will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost sharing will be secured.

c.You must maintain records of all project costs that you claim as cost sharing, including in-kind costs, as well as records of costs to be paid by DOE. Such records are subject to audit.

d.Failure to provide the cost sharing required by this term may result in the subsequent recovery by DOE of some or all the funds provided under the award.

DIRECT PAYMENT BY DOE OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER (FFRDC) CONTRACTOR COST

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

REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

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

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

PRE-AWARD COSTS (DECEMBER 2014) – (if prior approved by the DOE Contracting Officer)

You are entitled to reimbursement for costs incurred on or after *[MonthDayYear]*, as authorized by the pre-award costs letter dated *[Date of Approval Letter]*, if such costs are allowable in accordance with the applicable Federal cost principles referenced in 2 CFR part 200 as amended by 2 CFR part 910.

USE OF PROGRAM INCOME – ADDITION

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

STATEMENT OF FEDERAL STEWARDSHIP

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

STATEMENT OF SUBSTANTIAL INVOLVEMENT PROVIDED AS ATTACHMENT

A Statement of Substantial Involvement applicable to this cooperative agreement is provided as Attachment [Number] to this award.

SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

REPORTING REQUIREMENTS (APRIL 2018)

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Dissemination of scientific/technical reporting products. Reporting project results in scientific and technical information (STI) publications/products to the DOE Office of Scientific and Technical Information (OSTI) ensures dissemination of research results to the public as well as preservation of the results. The DOE form (F) 4600.2, B. Scientific/Technical Reporting, has instructions for the DOE Energy Link (E-Link) system managed by OSTI. Scientific/ technical reports and other STI products submitted under this award will be disseminated publicly on the Web via OSTI.GOV (<https://www.osti.gov>), unless the STI contains patentable material, protected data, or SBIR/STTR data, which must be indicated per instructions in DOE F4600.2.

c. Restrictions. STI products submitted to the DOE via E-link must not contain any Protected Personally Identifiable Information (PII), classified information, information subject to export control classification, or other information not subject to release.

PUBLICATIONS

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number(s) [Enter the award number(s)]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

Special Intellectual Property Provisions will apply to Agreements awarded under this FOA. These include special data protection provisions and the issuance of a class patent waiver to enhance commercialization of technology developed under this program. Additionally, specific intellectual property provisions can be found in Appendix R, and will be amended as directed under any class patent waiver.

Special Protected Data Statutes. This program is covered by a special protected data statute. The provisions of the statute provide for the protection from public disclosure, for a period of up to five (5) years, 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. Generally, the provision entitled, Rights in Data – Programs Covered Under Special Protected Data Statutes, (2 CFR 910 Appendix A to Subpart D —Patent and Data Provisions), would apply, but may be modified to accommodate NE program requirements. Otherwise, the government has unlimited rights in technical data created under the DOE agreement. Delivery or third-party licensing of proprietary software or data developed solely at private expense will not normally be required except as specifically negotiated in an agreement or patent waiver to satisfy DOE's needs or to ensure the commercialization of technology developed under the DOE agreement.

Class Patent Waiver: DOE is expecting to issue a class patent waiver for agreements awarded under this FOA, which will cover most large business recipients and lower-tier subrecipients under this FOA. The patent waiver will provide those recipients, not subject to the Bayh-Dole Act, the option to retain title to their own inventions, subject to the same government retained rights identified in the Act above. To qualify for the class waiver, a recipient must maintain the required cost-share under the program and agree to substantially manufacture technology created under this FOA in the U.S., or provide other economic benefits to the U.S. Specifically, the recipient must agree to the following U.S.

Competitiveness clause:

The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in an appropriate, legally binding manner. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention(s): (1) undergo a change in ownership amounting to a controlling

interest, or (2) sell, assign, or otherwise transfer title or exclusive rights in the invention (s), then the waiver, assignment, license, or other transfer of rights in the waived invention(s) is/are suspended until approved in writing by the DOE. Approval of any modification of this provision, shall require the concurrence of the Assistant Secretary for Nuclear Energy, the Acting Assistant Secretary, or the cognizant Principal Deputy Assistant Secretary.

If the recipient is unable to maintain the required cost-share or is unable to manufacture substantially in the U.S., the waiver may be terminated by DOE.

If DOE does not issue a class waiver or if applicants do not meet the criteria of the class waiver, applicants may request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of an agreement as a result of this FOA, in advance of or within 30 days after the effective date of the award. Even if such advance waiver is not requested or the request is denied, the recipient will have a continuing right under the award to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the award. Any patent waiver that may be granted is subject to certain terms and conditions in 10 CFR 784.

Small Businesses and Nonprofits: Domestic small businesses and domestic nonprofit organizations will receive the patent rights clause at 37 CFR 401.14, i.e., the implementation of the Bayh-Dole Act. This clause permits domestic small business and domestic nonprofit organizations to retain title to subject inventions. Therefore, small businesses and nonprofit organizations do not need to request a waiver.

CONTINUATION APPLICATION AND FUNDING - AWARDS UNDER 2 CFR Part 200 AS AMENDED BY 2 CFR Part 910

Continuation Application. A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least 90 days before the end of each budget period, the Recipient must submit its -continuation application to the DOE Program Manager whose name is in block 15 of the Award Agreement and to the Agreements Officer/Administrator whose name is in block 25 and address is listed in block 16 of the Award Agreement

The Recipient's continuation application must include the following information:

A report on the Recipient's progress towards meeting the objectives of the project, including any significant findings, conclusions, or developments, and an estimate of any unobligated balances remaining at the end of the budget period. If the remaining unobligated balance is estimated to exceed 20 percent of the funds available for the budget period, explain why the excess funds have not been obligated and how they will be used in the next budget period.

A detailed budget and supporting justification for the upcoming budget period if additional funds are requested, a reduction of funds is anticipated, or a budget for the upcoming budget period was not approved at the time of award, or other annual bilateral budgetary pricing adjustments by the parties, if necessary, as the project progresses.

A description of the Recipient's plans for the conduct of the project during the upcoming budget period, if there are changes from the DOE approved application, including changes to the total project cost, if necessary.

Continuation Funding. Continuation funding 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 the Recipient's approved application; (4) submittal of required reports; and (5) compliance with the terms and conditions of the award.

NATIONAL SECURITY: CLASSIFIABLE RESULTS ORIGINATING UNDER AN AWARD (DECEMBER 2014)

a.This award is intended for unclassified, publicly releasable research. You will not be granted access to classified information. DOE does not expect that the results of the research project will involve classified information. Under certain

circumstances, however, a classification review of information originated under the award may be required. The Department may review research work generated under this award at any time to determine if it requires classification.

b. Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to the national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If you originate information during the course of this award that you believe requires classification, you must promptly:

1. Notify the DOE Project Officer and the DOE Award Administrator;
2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P.O. Box A; Germantown, MD 20875-0963, for classification review;
3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 30 days after receipt by the Director, Office of Classification and Information Control.

c. If you originate information concerning the production or utilization of special nuclear material (i.e., plutonium, uranium enriched in the isotope 233 or 235, and any other material so determined under section 51 of the Atomic Energy Act) or nuclear energy, you must:

1. Notify the DOE Project Officer and the DOE Award Administrator;
2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P. O. Box A; Germantown, MD 20875-0963 for classification review within 180 days of the date the recipient first discovers or first has reason to believe that the information is useful in such production or utilization; and
3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 90 days after receipt by the Director, Office of Classification and Information Control.

d. If DOE determines any of the information requires classification, you agree that the Government may terminate the award with consent of the recipient in accordance with 2 CFR part 200.339(a)(3). All material deemed to be classified must be forwarded to the DOE, in a manner specified by DOE.

e. If DOE does not respond within the specified time periods, you are under no further obligation to restrict access to the information.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

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

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

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

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

The recipient shall apply this term to its sub-recipients and contractors.

FUNDING OF BUDGET PERIODS

DOE has obligated \$[Total Amount of Funds Obligated: to be completed at time of award] for completion of the Project authorized by this agreement, however, only \$[DOE Share of Budget Period Costs] is available for work performed by the Recipient during Budget Period [Number(s)] of the Project. For Budget Period [Number(s)], the remainder or \$[DOE Share of Budget Period Costs] will be available contingent upon 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 the Recipient's approved application; (4) submittal of required reports; (5) compliance with the terms and conditions of the award; (6) the submission by the Recipient of a continuation application; and (7) written approval of the continuation application by the DOE Contracting Officer.

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

INSURANCE COVERAGE

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds.

At a minimum, the Recipient shall provide insurance in the minimum amounts as set forth below. The required amount of insurance to be carried by the Recipient under this section may be changed upon the Government's written notice to the Recipient.

(a) Worker's Compensation and Employer's Liability.

The Recipient is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when project operations are so commingled with a Recipient's commercial operations that it would not be practical to require this coverage. The Recipient and/or its subrecipients/subcontractors shall obtain employer's liability coverage of at least \$100,000.

(b) General Liability.

The Recipient is encouraged to obtain bodily injury liability insurance coverage written on the comprehensive form of policy. Recommended levels of at least \$500,000 per occurrence and property damage liability insurance coverage of at least \$500,000 per occurrence are encouraged.

(c) Automobile Liability.

The Recipient is encouraged to obtain automobile liability insurance written on the comprehensive form of policy. It is recommended that the policy provide for bodily injury and property damage liability covering the operation of all automobiles, including Government furnished vehicles, used in connection with performing the cooperative agreement, at the following recommended amounts: obtain coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$50,000 per occurrence for property damage, including any property damage to Government furnished vehicles.

SUPPLIES (DECEMBER 2014)

See 2 CFR Part 200.314 for requirements pertaining to supplies acquired under a Federal award. See also § 200.453 Materials and supplies costs, including costs of computing devices.

INTANGIBLE PROPERTY (DECEMBER 2014)

Title to intangible property (as defined in 2 CFR § 200.59) acquired under a Federal award vests upon acquisition in the non-Federal entity. Intangible property includes trademarks, copyrights, patents and patent applications.

See 2 CFR § 200.315 for additional requirements pertaining to intangible property acquired under a Federal award. Also, see 2 CFR § 910.362 for amended requirements for Intellectual Property for For-Profit recipients.

PROPERTY TRUST RELATIONSHIP (DECEMBER 2014)

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

See 2 CFR § 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

a. The Recipient shall immediately notify the DOE of the occurrence of any of the following events: (i) filing by Recipient or its parent entity(ies) of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) consent to the institution of an involuntary case under the Bankruptcy Act against the Recipient or its parent entity(ies); (iii) the filing of any similar proceeding for or against the Recipient or its parent entity(ies), or its or their consent to, the dissolution, winding-up or readjustment of debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the Recipient or its or parent entity(ies), under any other applicable state or federal law; or (iv) insolvency of recipient(s) or its parent entity(ies) due to the inability to pay debts generally as they become due.

~~a. You shall immediately notify the DOE of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.~~

b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.

c. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines that there are significant deficiencies or concerns with your performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.

d. Failure of the Recipient to comply with this term may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards.

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

2. Where and when to report.

- i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsr.gov>.
- ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. **What to report.** You must report the information about each obligating action that the submission instructions posted at <http://www.fsr.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

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

- i. the total Federal funding authorized to date under this award is \$25,000 or more;
- ii. in the preceding fiscal year, you received;
 - a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - b) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - c) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)), or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

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

- i. As part of your registration profile at <http://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

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

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

- a) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and
 - b) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)), or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

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

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

d. Exemptions

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

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

e. Definitions. For purposes of this award term:

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

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

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

3. Subaward:

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

- iv. Subrecipient means an entity that:
- v. Receives a subaward from you (the recipient) under this award; and
- vi. Is accountable to you for the use of the Federal funds provided by the subaward.

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

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

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

Unless you are exempted from this requirement under 2 CFR § 25.110, you as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

If you had an active registration in the CCR, you have an active registration in SAM.

b. Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you

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

c. Definitions

For purposes of this award term:

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

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

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

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see § __.210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

LOBBYING RESTRICTIONS (MARCH 2012)

By accepting funds under this award, you agree 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.

CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES (MARCH 2014)

By entering into this agreement, the undersigned attests that [*insert corporation name*] has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

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

For purposes of these assurances, the following definitions apply:

A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.

NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUNE 2015)

1. By entering into this agreement, the undersigned attests that *[insert awardee name]* does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

2. The undersigned further attests that *[insert awardee name]* does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

a. "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

b. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

c. Notwithstanding provision listed in paragraph a., a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (DECEMBER 2015)

a. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

b. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

2. Reached its final disposition during the most recent five-year period; and

3. Is one of the following:

- i. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
- ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- iii. An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- iv. Any other criminal, civil, or administrative proceeding if:
 - 1) It could have led to an outcome described in this award term and condition;
 - 2) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - 3) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

c. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

d. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

e. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or Reporting of Matters Related to Recipient Integrity and Performance.

2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

- i. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
- ii. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

ADDITIONAL SPECIAL TERMS AND CONDITIONS

The following additional special terms and conditions are required for the award due to size, nature, and complexity of the project, including project performance risks.

PROHIBITION ON PERSONALLY IDENTIFIABLE INFORMATION (PII)

The Recipient / Contractor must not provide PII, either printed or electronic, to the U.S. Department of Energy within any deliverable, report or submittal under this agreement / contract. Personally Identifiable Information (PII) is any information maintained by the Contractor / Recipient about an individual, including but not limited to, education, financial transactions, medical history and criminal or employment history, and information that can be used to distinguish or trace an individual's identity, such as his/her name, social security number, date and place of birth, mother's maiden name, biometric data, etc., and including any other personal information that is linked or linkable to a specific individual. This requirement must be incorporated into any and all subcontracts or subagreements to the lowest tier.

CONFIDENTIAL BUSINESS INFORMATION

The Government acknowledges that the recipient or its subcontractors may provide to DOE confidential or proprietary business, technical or financial information. DOE will manage this information consistent with the Trade Secrets Act, 18 U.S.C. §1905. DOE will also process any request for release of this information to the public consistent with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and DOE's FOIA regulations, 10 C.F.R Part 1004. DOE agrees that any confidential business, financial, and legal information provided by the recipient is not "data" within the meaning of the Rights in Data clause.

CHANGE OF CONTROL

a. Change of Control is defined as any of the following:

- i. Any event by which any individual or entity other than the recipient becomes the beneficial owner of more than 50% of total voting power of the voting stock of the recipient;
- ii. The recipient merges with or into any entity other than a transaction in which the shares of the recipient's voting stock are converted into a majority of the voting stock of the surviving entity;
- iii. The sale, lease or transfer of all or substantially all of the assets of the recipient to any individual or entity other than the recipient in one or a series of related transactions;
- iv. The adoption of a plan relating to the liquidation or dissolution of the recipient; or
- v. Where the recipient is a wholly-owned subsidiary at the time of award or novation, and the recipient's parent entity undergoes a Change of Control as defined in this section.

b. Upon any Change of Control or if DOE requests the information in writing, the recipient must provide the Contracting Officer with documentation identifying all parties who exercise control in the recipient at the time of award.

c. When there is a Change of Control of a recipient, or the recipient has reason to know a Change of Control is likely, the recipient must notify the Contracting Officer within thirty (30) days of its knowledge of such Change of Control. Such notification must include, at a minimum, copies of documents necessary to reflect the transaction that resulted or will result in the Change of Control, and identification of all entities, individuals or other parties to such transaction. Failure to notify the Contracting Officer of a Change of Control is grounds for suspension of the award or termination for failure to comply with the terms and conditions of the award.

d. The Contracting Officer must authorize a Change of Control for the purposes of the award. Failure to receive the Contracting Officer's authorization for a Change of Control may lead to a suspension of the award, termination for failure to comply with the terms and conditions of the award, or imposition of special award conditions pursuant to 10 CFR § 600.304. Special award conditions may include, but are not limited to:

- i. Additional reporting requirements related to the Change of Control; and
- ii. Suspension of payments due to the recipient.

ONE TIME EXTENSION

As permitted by 2 CFR § 200.308(d)(2), a one-time extension of the period of performance by up to 12 months. However, the following restriction applies: Unilateral ~~no-cost-one~~-time extensions by the recipient will NOT be permitted under this award.

The recipient must request any extension from DOE at least ~~60 days~~^{3 months} prior to the award's period of performance end date, unless otherwise agreed to by DOE. Any ~~no-cost-one~~-time extension must receive prior written approval from the DOE Contracting Officer.

COST SHARING ON INVOICES SUBMITTED FOR PAYMENT

The recipient must at least meet its cost sharing minimum obligation (as calculated based on total cost incurred to date) on every invoice submitted for payment to ensure that the awardee's cost sharing requirement is always met on an on-going basis throughout performance, unless otherwise authorized by the Contracting Officer.

The recipients must contribute the required cost share amount incrementally over the life of the award. Standard Form 270, Request for Advance or Reimbursement (hereafter "Invoice") is to be used for invoices. The recipient is required to submit an Invoice to DOE for payment for reimbursement as the project progresses; the recipient's cost share amount listed for each billing period must always reflect not less than the 50 percent from nonfederal sources overall cost share ratio for the current Budget Period, i.e., the amount of cost sharing included on each Invoice – and the cumulative amount of cost sharing listed relative to the total costs billed - must always be at least equal to the figure calculated by multiplying the total costs of the project incurred to date (including costs incurred by the FFRDC/NL) by the cost sharing percentage required by the award. If the recipient has incurred a greater amount of cost sharing than is required at that point in the Budget Period, the higher amount of cost sharing may be reflected on the Invoice - but in no case may the Invoice ever reflect a lower amount of cost share than is required.

WAIVER REQUESTS: PERFORMANCE OF WORK IN THE UNITED STATES

Work performed (i.e., purchases and labor) under awards must be performed in the U.S., unless otherwise approved as part of the original application, or during performance, by DOE in accordance with the thresholds set forth in this clause.

Below \$1M: This requirement does not apply to the foreign purchase of supplies and equipment or for foreign labor (cumulative) performed below \$1M; however, the Awardee should make reasonable efforts to perform labor and/or purchase supplies and equipment within the U.S. below this threshold.

At \$1M or above, up to \$5M, the awardee must notify DOE at least 30 days prior to foreign purchase of supplies and equipment or for foreign labor (cumulative) performed, using the Special Status report specified in the award's Reporting Requirements checklist.

Over \$5M, the awardee must obtain prior written DOE approval using the Waiver Request for Non-US Work at Appendix F, at least 30 days prior to the foreign purchase of supplies and equipment or for foreign labor (cumulative) performed.

In adherence to the above thresholds, awards proposing foreign purchase of supplies and equipment or for foreign labor performed must clearly specify what work is to be done, by which entity, where the work is to be performed, the estimated time period for the work, the estimated dollar value of the work and the rationale for doing the work outside the U.S.

The Awardee must flow down these requirements to its subrecipients.

DOE APPROVAL FOR SUBAWARDS AND SUBCONTRACTS

The Recipient is required to obtain DOE approval on all subcontracts or subawards over \$5 million, including all options and/or material modifications thereto, unless these are already otherwise listed in the award's approved project narrative and/or as listed below: LIST

For subawards, DOE intends to allow the recipient to make subawards to entities that are in the economic interest of the United States; this would be to companies that are either United States-owned, or that are incorporated or organized under the laws of any State and that have a parent company which is incorporated or organized under the laws of a country which affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Energy Policy Act of 1992, 42 U.S.C. 13525; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

In addition, any subaward entity receiving funds of more than \$200,000 under the DOE Advanced Small Modular Reactor Research and Development (R&D) program is ineligible to receive funding under this award for the advanced reactor demonstration project.

TECHNICAL PROJECT OFFICER/PROJECT MANAGER AUTHORITY

The DOE Technical Project Officer/Project Manager assigned to the award is not authorized to issue, and the Recipient is not required to follow, any technical advice that constitutes work which:

- is not within the agreed work scope approved by the award;
- in any manner causes an increase or decrease in the total estimated Project cost or in the time required for performance of the Project;
- has the effect of changing any of the terms or conditions of the award;
- unduly interferes with the recipient's contractual negotiations or obligations with third-parties;
- unduly interferes with recipient's health, safety, security, and environmental obligations whether provided by statute, ordinance or regulation ("law"), or recipient corporate policy that is consistent with law; or
- interferes with the recipient's right to perform the project in accordance with the terms and conditions of the award.

ADMINISTRATION BY NON-FEDERAL PERSONNEL

The Government may use non-Federal personnel to conduct award oversight and administrative activities. Non-Federal personnel must sign conflict of interest and non-disclosure agreements prior to doing any work regarding the award.

DIRECT COST FUNDS TRANSFERS

The awardee is restricted from transferring funds between direct cost categories; the cumulative amount of such transfers must not exceed \$750,000 for the current Budget Period, as last approved by DOE. For funds transfers greater than this the recipient is required to obtain DOE Contracting Officer prior approval.

RESTRICTION ON SMR FUNDING

Any entity, other than a national laboratory, that receives fiscal year 2020 funds of more than \$200,000 under the U.S. Department of Energy Advanced Small Modular Reactor Research and Development (SMR R&D) program, is not eligible to receive fiscal year 2020 funds from within the Advanced Reactor Demonstration Program. Further, funds provided under the Advanced Reactor Demonstration project award are not permitted to be used for the SMR R&D award activities.

FINANCIAL COMMITMENT/FUNDING PLAN

Not later than 90 days prior to the budget period start date:

a. The Recipient shall provide to DOE an updated cost estimate for the subsequent budget along with evidence of firm commitments for the full private sector share of the subsequent budget cost. Such evidence may include executed loans, bond financing agreements, state or local grants, and third party contribution agreements. For each non-governmental source of cost-sharing, the DOE may request audited financial statements for the most recent two years, which if requested will be provided directly to the DOE from such recipient.

b. If firm commitments for the full private sector share of the subsequent budget period cost have not been secured, Recipient shall provide evidence of firm commitments made to date, as set forth in paragraph a. of this Section (42), and a detailed Funding Plan in accordance with the requirements set forth below:

•The Funding Plan will demonstrate a reasonable plan to obtain the balance of funding for the private sector share of the project cost. The Funding Plan must identify all anticipated sources of the private sector cost-share such as bank loans, bond offerings, state or local grants, and equity contributions.

•The Recipient shall provide a full description of any limitations, conditions or other factors that could affect the availability of funding. If third party financing will be a source of project funds, the Recipient shall discuss the timing, conditionality and terms and conditions of such financing.

•If requested by DOE, audited financial statements for the most recent two fiscal years shall be provided for each non-governmental source of funds. If a source does not have audited financial statements, that source should provide equivalent financial statements prepared by the party, in accordance with Generally Accepted Accounting Principles, and certified as to accuracy and completeness by the Chief Financial Officer of the party providing the statements.

•The Recipient shall obtain and provide a commitment letter from each source, signed by an officer of the corporation or other entity that is authorized to commit the funding to the proposed project. The amount of funds to be provided, the timing of the funding, and any contingencies, should be specified. Commitment letters should identify the type of proposed cost sharing (e.g., cash, services, and/or property) to be contributed.

•If in-kind contributions of property or services are proposed, the Recipient shall provide support for their valuation and explain how the valuation was determined.

•If the project will be financed on a non-recourse basis, the Recipient shall provide a working financial model (in MS Excel 2003 or 2007) that provides projections of the project including an income statement, balance sheet, cash flow statement, and sources and uses of funds statement, all on an annual basis with appropriate supporting schedules. The financial projections should be developed in this financial model, commencing with the initial project development phase and extending through the period of operations needed to obtain funding. The model should be provided in electronic form including cell formulas so that review of the model assumptions and sensitivity calculations may be facilitated. The recipient shall provide a description and explanation for each of the financial, economic, and operating assumptions for the project. The assumptions should be consistent with and supported by the information provided in the project cost estimate.

In the event DOE determines that the information provided by Recipient is inadequate to assure the availability of full funding for the private sector share of the subsequent budget period, DOE reserves the right, at DOE's discretion, to: (1) stop payment, (2) renegotiate the project scope and/or payment schedule, or (3) after Recipient is provided 30 days advance written notice and opportunity to cure, declare the grant terminated by mutual agreement. Should DOE declare the grant terminated, the Recipient shall be entitled to payment of DOE's share of allowable project cost incurred prior to the date of termination plus the reasonable cost of terminating contracts. DOE's maximum liability for project cost in the event of termination is [enter amount of max liability].

DATA MANAGEMENT PLAN (SEPT 2015)

a. Not later than 90 days after the effective date of the award the Recipient must provide the Contracting Officer with a Data Management Plan. A Data Management Plan (“DMP”) explains how data generated in the course of the research or work performed under an assistance award will be shared and preserved or, when justified, explains why data sharing or preservation is not possible or scientifically appropriate. (2) In the event the Recipient fails to submit the DMP within 90 days after award or DOE determines that information provided by the Recipient in its DMP does not meet the requirements in section b), DOE may take one or more of the actions identified in 2 CFR 200.388, including, but not limited to, temporarily withholding payments to the Recipient pending correction of the deficiency, or wholly or partially suspending or terminating the Federal award.

b. DMP Requirements - In order for a DMP to be considered acceptable, the DMP must address the following:

- At a minimum, the DMP must describe how data sharing and preservation will enable validation of the results from the proposed work, or how results could be validated if data are not shared or preserved.
- The DMP must provide a plan for making all research data displayed in publications resulting from the proposed work digitally accessible at the time of publication. This includes data that are displayed in charts, figures, images, etc. In addition, the underlying digital research data used to generate the displayed data should be made as accessible as possible in accordance with the principles stated above. This requirement could be met by including the data as supplementary information to the published article, or through other means. The published article should indicate how these data can be accessed.
- The DMP should consult and reference available information about data management resources to be used in the course of the proposed research work. In particular, a DMP that explicitly or implicitly commits data management resources at a facility beyond what is conventionally made available to approved users should be accompanied by written approval from that facility. In determining the resources available for data management at DOE User Facilities, researchers should consult the published description of data management resources and practices at that facility and reference it in the DMP. Information about other DOE facilities can be found in the additional guidance from the sponsoring program.
- The DMP must protect confidentiality, personal privacy, Personally Identifiable Information, and U.S. national, homeland, and economic security; recognize proprietary interests, business confidential information, and intellectual property rights; avoid significant negative impact on innovation, and U.S. competitiveness; and otherwise be consistent with all laws (e.g., export control laws), and DOE regulations, orders, and policies.

c. Data Determination for a DMP

The Principal Investigator should determine which data should be the subject of the DMP and, in the DMP, propose which data should be shared and/or preserved in accordance with the DMP Requirements noted above.

For data that will be generated through the course of the proposed research/work, the Principal Investigator should indicate what types of data should be protected from immediate public disclosure by DOE (referred to as “protected data”) and what types of data that DOE should be able to release immediately. Similarly, for data developed outside of the proposed research work at private expense that will be used in the course of the proposed research work, the Principal Investigator should indicate whether that type of data will be subject to public release or kept confidential (referred to as “Limited Rights Data”). Any use of Limited Rights Data or labeling of data as “protected data” must be consistent with the DMP Requirements noted above.

d. Suggested Elements for a DMP - The following list of elements for a DMP provides suggestions regarding the data management planning process and the structure of the DMP:

•Data Types and Sources: A brief, high-level description of the data to be generated or used through the course of the proposed research work and which of these are considered digital research data necessary to validate the research findings or results.

•Content and Format: A statement of plans for data and metadata content and format including, where applicable, a description of documentation plans, annotation of relevant software, and the rationale for the selection of appropriate standards. Existing, accepted community standards should be used where possible. Where community standards are missing or inadequate, the DMP could propose alternate strategies for facilitating sharing, and should advise the sponsoring program of any need to develop or generalize standards.

•Sharing and Preservation: A description of the plans for data sharing and preservation. This should include, when appropriate: the anticipated means for sharing and the rationale for any restrictions on who may access the data and under what conditions; a timeline for sharing and preservation that addresses both the minimum length of time the data will be available and any anticipated delay to data access after research findings are published; any special requirements for data sharing, for example, proprietary software needed to access or interpret data, applicable policies, provisions, and licenses for re-use and re-distribution, and for the production of derivatives, including guidance for how data and data products should be cited; any resources and capabilities (equipment, connections, systems, software, expertise, etc.) requested in the research proposal that are needed to meet the stated goals for sharing and preservation (this could reference the relevant section of the associated research proposal and budget request); and whether/where the data will be preserved after direct project funding ends and any plans for the transfer of responsibilities for sharing and preservation.

•Protection: A statement of plans, where appropriate and necessary, to protect confidentiality, personal privacy, Personally Identifiable Information, and U.S. national, homeland, and economic security; recognize proprietary interests, business confidential information, and intellectual property rights; and avoid significant negative impact on innovation, and U.S. competitiveness.

•Rationale: A discussion of the rationale or justification for the proposed data management plan including, for example, the potential impact of the data within the immediate field and in other fields, and any broader societal impact.

e. Additional Guidance

In determining which data should be shared and preserved, researchers must consider the data needed to validate research findings as described in the DMP Requirements, and are encouraged to consider the potential benefits of their data to their own fields of research, fields other than their own, and society at large.

DMPs should reflect relevant standards and community best practices and make use of community accepted repositories whenever practicable.

Costs associated with the project description/scope of work and resources articulated in a DMP may be included in the proposed research budget as permitted by the applicable cost principles.

To improve the discoverability of and attribution for datasets created and used in the course of research, DOE encourages the citation of publicly available datasets within the reference section of publications, and the identification of datasets with persistent identifiers such as Digital Object Identifiers (DOIs). In most cases, DOE can provide DOIs free of charge for data resulting from DOE-funded research through its Office of Scientific and Technical Information (OSTI) DataID Service.

f. Definitions

Data Preservation: Data preservation means providing for the usability of data beyond the lifetime of the research activity that generated them.

Data Sharing: Data sharing means making data available to people other than those who have generated them. Examples of data sharing range from bilateral communications with colleagues, to providing free, unrestricted access to anyone through, for example, a web-based platform.

Digital Research Data: The term digital data encompasses a wide variety of information stored in digital form including: experimental, observational, and simulation data; codes, software and algorithms; text; numeric information; images; video; audio; and associated metadata. It also encompasses information in a variety of different forms including raw, processed, and analyzed data, published and archived data.

Research Data: The recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This 'recorded' material excludes physical objects (e.g., laboratory samples). Research data also do not include:

- Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
- Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.”

Validate: In the context of DMPs, validate means to support, corroborate, verify, or otherwise determine the legitimacy of the research findings. Validation of research findings could be accomplished by reproducing the original experiment or analyses; comparing and contrasting the results against those of a new experiment or analyses; or by some other means.

PERSONNEL (DECEMBER 2014)

The individual named in Block 14 of the Assistance Agreement is designated a key person; additional key personnel are listed below. Changes to designated key personnel or participating organizations require prior written DOE approval in accordance with 2 CFR 200.308.

To be completed at time of award

MILESTONES AND MILESTONEPAYMENTS

This award uses a milestone for payments approach. Specifically, payments will be made upon the successful completion of performance milestones as proposed by the applicant or as negotiated with DOE.

The project milestones, along with milestone payments, performance metrics and measurements, and quality assurance requirements, submitted and approved in the application shall be maintained and implemented by the recipient throughout the project period of performance. Regular updates to the milestones shall be made by the recipient, as necessary, during project performance. All updates shall be submitted to DOE for review and approval. These milestones must include structuring budget periods around go/no-go decisions, special reporting requirements and milestone-based payment schedules.

Remaining on schedule is a key indicator of successful project execution. This award uses project progress milestones, as established in a budget period, to assess the project execution team’s adherence to schedule. This ensures the project progresses as planned and any emergent project issues are addressed.

For the first budget period of this award, which is anticipated to be one year in duration:

- The project team will provide, subject to DOE approval, specific progress milestones against which the project execution team's performance will be assessed;
- These progress milestones will occur no more frequently than monthly, with at least one progress milestone occurring within each quarter of the budget period;
- A single progress milestone can document progress in several separate project areas; and
- DOE and the project team will agree on these progress milestones prior to commencement of the budget period, unless otherwise mutually agreed.

Invoice payments will be tied to the successful achievement of milestones. As this is a cost-reimbursable award, payments will only be made for actual allowable, allocable, and reasonable costs incurred. Accordingly, invoices submitted can only include actual costs incurred. Milestones and the associated milestone based payment amounts proposed and negotiated/accepted by the parties prior to award are estimates as agreed to in writing by the Contracting Officer, with each milestone having a designated percentage of total budget period funding. Upon successful completion of a milestone, the recipient may invoice for all costs, subject to available funding based on the achievement of milestones to date.

Any changes to proposed application milestone-based payments or proposed different/additional milestones will be proposed by the recipient at least 30 calendar days prior to the milestone completion date for DOE review and approval and negotiation with the recipient, if necessary. If the parties cannot agree on the milestones, milestone payments, amounts, etc., the Contracting Officer will issue a unilateral decision regarding these which is not subject to appeal.

The award not only requires milestone achievement for payments but also for continuation awards under the project. These will be done to include "off ramps" during performance should the Department need to down select the number of awards.

A milestone based payment approach is used on this award. This means the Government will pay after successful completion of milestones by the Recipient. However, recognizing that some time may lapse between the time the milestone has begun until the milestone is achieved and invoiced for, DOE will permit the Recipient to submit a monthly cost tracking document similar to an invoice of all incurred allowable, allocable, and reasonable costs for that month. DOE will review this information for completeness and adequacy just as it would for an invoice. This will allow the parties to track costs incurred and greatly assist in the timely processing/payment of the actual invoice submitted once a milestone is achieved.

POST AWARD CONFERENCE

The recipient is required to attend a post-award conference. The recipient will contact the designated TPO for details regarding this meeting. DOE may limit the number of recipient personnel attending. All recipient personnel attending must have a valid ID for security clearance into the building.

PROJECT MANAGEMENT PLAN

The Project Management Plan (PMP) submitted and approved in the application shall be maintained and implemented by the recipient throughout the project period of performance. Regular updates to the PMP shall be made by the recipient, as necessary, during project performance. All updates shall be submitted to DOE for review and approval.

Within 30 days following the post award conference as a first task, the recipient will revise the version of the PMP that was submitted with its application by including details from the negotiation process. The PMP, is updated by the recipient as the project progresses to reflect updates to the approved cost and schedule baselines. The Recipient prepares periodic

reports which include schedule and budget variances. The PMP contains the project cost and schedule baseline and is used as a basis to report budget and schedule variances.

Post award, in conjunction with a PMP, DOE will jointly develop quality assurance requirements and plans with the Recipient to monitor performance to ensure standards are met. The PMP will not specify how the award recipient will do the work, but rather describe the work in terms of outcomes or results. The PMP will provide flexibility to account for variations and changes in requirements as the project progresses.

COORDINATION AND MANAGEMENT PLAN

If the recipient uses multiple project managers (PMs), the recipient must provide for DOE approval a “Coordination and Management Plan” that describes the organization structure of the project as it pertains to the designation of multiple PMs. This plan must be updated by the recipient throughout the project period, as necessary (with a copy of any update provided to DOE). The plan must include (at a minimum):

- Process for making decisions on scientific/technical direction
- Publications
- Intellectual property issues
- Communication plans
- Procedures for resolving conflicts
- PMs’ roles and administrative, technical, and scientific responsibilities for the project.

TECHNICAL DIRECTION

Performance of the work under this award shall be subject to the technical direction of the DOE Technical Project Officer (TPO). The term “technical direction” is defined to include:

- Providing direction to the Recipient that may redirect award effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the project.
- Providing written information to the Recipient that assists in interpreting drawings, specifications, or technical portions of the work description.
- Reviewing and, where required by the award, approving, technical reports, drawings, specifications, and technical information to be delivered by the Recipient to the Government.
- The Recipient will receive a copy of the written TPO designation from the Contracting Officer. It will specify the extent of the TPO's authority to act on behalf of the Contracting Officer.

Technical direction must be within the scope of work stated in the award. The TPO does not have the authority to, and may not, issue any technical direction that—

- Constitutes an assignment of additional work outside the Project Narrative;
- Constitutes a change;
- In any manner causes an increase or decrease in the total estimated award project cost or the time required for award performance;
- Changes any of the expressed terms, conditions or specifications of the award;
- Interferes with the Recipient's right to perform the terms and conditions of the award. All technical direction shall be issued in writing by the TPO; or

- Conflicts with US NRC issued permits, licenses or guidance under which the project is performing.

The Recipient must proceed promptly with the performance of technical direction duly issued by the TPO in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Recipient, any instruction or direction by the TPO falls within one of the categories defined as being beyond its authority, in this Section, the Recipient must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the award accordingly. Upon receiving the notification from the Recipient, the Contracting Officer must—

- Advise the Recipient in writing within thirty (30) days after receipt of the Recipient's letter that the technical direction is within the scope of the award effort and does not constitute a change under the Changes clause of the award;
- Advise the Recipient in writing within a reasonable time that the Government will issue a written change order; or
- Advise the Recipient in writing within a reasonable time not to proceed with the instruction or direction of the TPO.

A failure of the Recipient and Contracting Officer either to agree that the technical direction is within the scope of the award or to agree upon the award action to be taken with respect to the technical direction will be subject to a final decision by the Contracting Officer.

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