

## PART V

## SPECIAL TERMS AND CONDITIONS

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Suggest saving these instructions (or print out this page only) until the changes have been made.

#### Instructions for updating Table of Contents:

If you delete a paragraph, just right click when the cursor is IN the table of contents. Then choose “update field,” then “update entire table.” If you right click outside the TOC (it should gray highlight), you may not get the correct right-click menu. You do have to watch for spacing between paragraphs when you delete a paragraph or the blue line instructions.

If you add a paragraph, you need to highlight the paragraph title, then apply “Heading 1.” You find the style in the block at the upper left-hand of the toolbar that usually says “normal.” After that, update the table of contents in the same way as for a paragraph deletion.

Automatic page numbering: before you change the page numbers at the top (after adding or deleting paragraphs), use print view first. Going into print view should “refresh” the page numbering.

Caution: If you manually retype paragraph letters or numbers, the table of contents may not refresh itself properly.

If you want to print out these pages so that the blue shows, send it to the color printer.

**Delete all the blueline instructions in this part. Since conversion to Word 2000, all blue (or any color) text prints as a very light gray. When you finish making your changes to the document, go to "Edit," then "select all" and change the color to black. You need to make this same change in the header.**

Note: The award, amendment number, and page numbers are included in a header. Delete all blue instructional areas. Tailor blue fill-in areas. This format is a starting point; specialists must still ensure that the terms and conditions fit the type of entity receiving the award plus any other different features or special terms applicable only to that award. When deleting paragraphs, watch for extra spaces between paragraphs that Word will add. If you get what appears to be a forced page break, check under "format/paragraph/line and page breaks" to see if "keep with next" is checked.

SPECIAL TERMS AND CONDITIONS

1. PRECEDENCE OF REQUIREMENTS

The requirements of these Special Terms and Conditions take precedence over all other requirements of the award found in DOE Orders, and Notices, but do not take precedence over the requirements of statutory law or regulations. Any apparent contradiction of statutory law stated herein should be presumed to be in error until awardee has sought and received clarification from the Contracting Officer, whose signature appears on the face of this award.

2. COST SHARE

Cost Share Required.

Cost Sharing Arrangement. The awardee shall cost share a minimum of \_\_\_\_\_% of the total project amount. (This paragraph will be tailored if the cost share negotiated is specified in dollars, rather than as a percentage.)

Total estimated project costs are \$ \_\_\_\_\_. These costs shall be shared as follows and shall be in accordance with the total approved budget. Any cost overruns exceeding DOE's share shall be borne by the awardee.

DOE	Awardee	Total
\$ <u>xxxxxxxxxxxxxxxx</u>	\$ <u>xxxxxxxxxxxxxxxx</u>	\$ <u>xxxxxxxxxxxxxxxx</u>

(or)

Cost Share Not Required.

There is no mandatory cost share associated with this award.

3. PAYMENTS

- a. The Financial Services Division of the DOE Idaho Operations Office shall be the cognizant finance office for this award. Payments shall be made using the Automated Clearing House (ACH) electronic payment system (OR) Automated Standard Application for Payments (ASAP) system. ACH payments require the use of payments on a reimbursement basis. Advance payments require the use of the ASAP system.

(Indicate which system (ACH or ASAP) and delete the system not used.

## ACH payments.

- (1) In lieu of payment by check, payments will be sent via ACH and automatically credited to the designated account at the designated financial institution. The awardee must complete Standard Form 3881, *ACH Vendor/Miscellaneous Payment Enrollment Form*, prior to receiving any payments under this award.
- (2) Payments due for amounts properly invoiced in accordance with the terms of this agreement will be on a reimbursement basis and will be in accordance with Treasury regulations at 31 CFR Part 205 (as implemented in DOE Financial Assistance Rules, 10 CFR 600).
- (3) Invoices using ACH payments must be submitted on Standard Form 270 or a computer-generated form, which includes the identical information. The awardee may invoice on a monthly basis. The awardee is encouraged to use regular mail in lieu of express mail methods in order to promote cost effectiveness. Distribution of the original invoice and copies shall be made as described below. Failure to comply with these invoice-mailing instructions will result in delayed payments.
- (4) The original of each Standard Form 270 shall be submitted to:  
  
U.S. Department of Energy  
Albuquerque Operations Office  
ATTN: AFSC/VGST  
P.O. Box 5239  
Kirtland AFB  
Albuquerque, NM 87185-5239
- (5) One copy of the Standard Form 270 shall be mailed to the cognizant contract specialist (NFAA, Block 12) at:  
  
U.S. DOE; Idaho Operations Office  
Procurement Services Division, MS 1221  
1955 Fremont Avenue  
Idaho Falls, ID 83401-1221.
- (6) One copy of the Standard Form 270 shall be mailed to the cognizant DOE Project Officer (NFAA, Block 11) at:  
  
(Name of Project Officer) (Block 11)  
U.S. Department of Energy  
Idaho Operations Office  
1955 Fremont Avenue, MS (mail stop number, from Block 11)  
Idaho Falls, ID 83401-(mail stop number from NFAA Block 11)

- (or) (When you delete one of the paragraph sets, the remaining paragraphs should automatically renumber. You can tell if it's automatic renumbering because when you highlight the paragraph, the paragraph letter or number does not highlight.)
- b. ASAP system.
- (1) Payment will be made using the Automated Standard Application for Payments (ASAP) system. Requests for payment will be in accordance with ASAP guidance.
  - (2) Payments due for amounts properly invoiced in accordance with the terms of this agreement may be on either an advance or reimbursement basis and shall be in accordance with Treasury regulations at 31 CFR Part 205 (as implemented in DOE Financial Assistance Rules, 10 CFR 600).
  - (3) Excess cash advances erroneously withdrawn from the U.S. Treasury shall be promptly refunded to DOE unless the funds will be disbursed within seven calendar days or the amount is less than \$10,000 and will be disbursed within 30 calendar days. Advances by the awardee to subawardee organizations must conform substantially to the same standards of timing and amount that govern advances made by the Federal Government to the awardee.
  - (4) Interest earned on advance payments to other than state governments or their subawardees shall be reported on Standard Form 272, *Report of Federal Cash Transactions*, and promptly remitted to the cognizant finance office by check payable to the Department of Energy.
- c. Payments to the awardee shall equal the Federal share of actual allowable costs of performance of this award, provided however, and notwithstanding any other provision of this award, that the Government's monetary liability under this award will not exceed the Government share of the total approved budget or an amount equal to the Federal share of actual allowable costs, whichever is less. The awardee will be obligated to perform under this award throughout the agreed-upon period of performance, and to bear all costs that DOE has not agreed to pay. However, the awardee shall have the right to cease to perform when or after the Federal share of actual allowable costs equals or exceeds the Government share of the total approved budget and if prior written notice to that effect has been provided to DOE.
- d. The Contracting Officer may have vouchers and statements of costs submitted under this award audited at any time prior to the end of the required retention period for award records. Each payment will be subject to reduction of amounts included in the related invoice or voucher, which are found by the Contracting Officer, on the basis of audit, not to constitute allowable costs. If a final audit of costs has not been performed prior to close out of the award, DOE or its successor agency, will have the right to recover an appropriate amount after fully

considering the recommendations on disallowed costs resulting from the final audit when conducted.

- e. Upon termination or expiration of the total period of performance, the awardee will promptly refund to DOE (or make such disposition as DOE may direct in writing) any sums paid by DOE to the awardee under this award in excess of the cumulative government allowable cost incurred in performance under the award.
- f. The awardee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the awardee or any assignee under this award will be paid by the awardee to the Government, to the extent that they are properly allocable to costs for which the awardee has been reimbursed by the Government under this award. Reasonable expenses incurred by the awardee for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer.

#### 4. PRE-AWARD COSTS

- a. **Research Awards.** For new or renewal research awards, awardees may incur reimbursable pre-award costs up to ninety (90) days prior to the effective date of the award. Should the awardee incur such costs, it is done at the awardee's risk and does not impose any obligation on DOE to issue an award.
- b. **Non-research Awards.** All non-research project awardees may incur reimbursable pre-award costs only if the awardee provides a written request for authorization of pre-award costs and if written authorization by the Contracting Officer is given. The request and authorization must take place before pre-award costs are incurred.
- c. **Contracting Officer Authorized Pre-award Costs.** (If the event that pre-award costs are authorized by the Contracting Officer, that information will be included in this paragraph. Otherwise, this paragraph will be non-applicable and must be deleted.)
- d. **Pre-award Costs Between Budget Periods.** Costs incurred between budget periods are authorized for payment in accordance with 10 CFR 600.125. However, incurring such costs is done at the awardee's risk and imposes no requirement on DOE to issue a continuation award. Continuation awards will be based upon prior budget period performance, timely submittal and quality of reports or other deliverables, project merit review, and availability of future DOE funding.

#### 5. DESIGNATED KEY PERSONNEL

Changes to designated key personnel require prior DOE approval. The individual (s) named in Block 8 of the *Notice of Financial Assistance Award* is (are) designated as key personnel.

(Other designated key personnel may also be identified, if the project requires them.)

6. DOE PROJECT OFFICER

- a. The individual identified in Block 11 of the *Notice of Financial Assistance Award* as the DOE Project Officer is the Project Manager (PM). The PM is responsible for
- (1) Monitoring the research efforts being conducted by the awardee under the scope of this award;
  - (2) Advising the Contracting Officer on technical matters related to administration of the award, including progress and status of the awardee's research; and
  - (3) Providing technical advice and guidance to the awardee in order to assist both the research efforts of the awardee and the awardee's adherence to the terms and conditions of the award.
- b. The PM does not have the authority to
- (1) Cause an increase or decrease in the total estimated cost of, or the time required for, the research effort being supported;
  - (2) Cause any change in the express terms and conditions of the award;
  - (3) Cause any change in the objectives or scope of the effort being supported;
    - (a) Act in the capacity of the Contracting Officer by issuing any approval or disapproval required by the terms and conditions of the award; or
    - (b) Interfere with the awardee's right to perform under the terms and conditions of the award.

7. STATEMENT OF SUBSTANTIAL INVOLVEMENT

(Applies to Cooperative Agreements Only – Delete if award is a grant.)  
(Paragraphs should automatically renumber themselves.)

(Generic substantial involvement statement; may change for individual programs or awards.)

- a. DOE anticipates having substantial involvement during the project period, through technical assistance, advice, intervention, integration with other awardees performing related activities, and technical transfer activities. The

recipient's responsibilities are listed in paragraph b and DOE's responsibilities are listed in paragraph c.

- b. Recipient's responsibilities. The recipient is responsible for:
- (1) Performing the activities supported by this award, including providing the required personnel, facilities, equipment, supplies and services;
  - (2) Defining approaches and plans, submitting the plans to DOE for review, and incorporating DOE's comments;
  - (3) Managing and conducting the project activities, including coordinating with a DOE management and operating (M&O) contractor on activities performed under the M&O contract that are related to the project;
  - (4) Attending annual program review meetings and reporting project status;
  - (5) Submitting technical reports as stated in the *Federal Assistance Reporting Checklist*, and incorporating DOE comments; and
  - (6) Presenting the project results at appropriate technical conferences or meetings as directed by the DOE Project Officer.
- c. DOE responsibilities. DOE is responsible for:
- (1) Reviewing in a timely manner project plans, including technology transfer plans, and redirecting the work effort if the plans do not address critical programmatic issues;
  - (2) Conducting annual program review meetings to ensure adequate progress and that the work accomplishes the program and project activities. Redirecting work or shifting work emphasis, if needed;
  - (3) Promoting and facilitating technology transfer activities, including disseminating program results through presentations and publications; and
  - (4) Serving as scientific/technical liaison between awardees and other program or industry staff.
- d. There are limitations on recipient and DOE responsibilities and authorities in the performance of the project activities. Performance of the project activities must be within the scope of the Statement of Objectives, the terms and conditions of the Cooperative Agreement, and the funding and schedule constraints.

## 8. REPORTING

Failure to comply with the reporting requirements contained in this award will be considered a material noncompliance with the terms of the award. Noncompliance may result in a 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 of unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

## 9. REPORTS, PUBLICATIONS, AND PRESS RELEASES

- a. Copies of reports and other related data and information generated under this award shall be submitted in accordance with:
  - (1) The attached *Federal Assistance Reporting Checklist*;
  - (2) Applicable financial reporting requirements;
  - (3) Intellectual property reporting requirements; and
  - (4) Property reporting requirements.
- b. All reports delivered to DOE shall be the sole property of DOE. The awardee shall not claim that any report contains any trade secrets or commercial or financial information deemed by the awardee to be privileged or confidential, or that the awardee has any proprietary or copyright interest in any report. Final reports shall be released to the public. Interim reports submitted to DOE are subject to the Freedom of Information Act (FOIA).
- c. When issuing statements, press releases, requests for proposals, bid solicitations, or other documents describing projects or programs funded in whole or in part with federal money, all awardees shall clearly state (1) the percentage of the total cost of the program or project which will be financed with federal money, and (2) the dollar amount of federal funds for the project or program.
- d. Subject to patent restrictions or export controls, the awardee may publish the results of its work.

## 10. ACKNOWLEDGEMENT OF SUPPORT AND DISCLAIMER

The awardee is responsible for assuring that an acknowledgement of support and a disclaimer are included on any publication based on or developed under this project.

- (1) Acknowledgement: Include the following or a similar acknowledgement of support: "This material is based upon work supported by the U.S. Department of Energy under Award No. (DOE award number)."
- (2) Disclaimer: Every publication of material based on or developed under this award, except scientific articles or papers appearing in scientific, technical, or professional journals, must contain the following disclaimer:

"Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of Energy."

## 11. SUBMISSION OF SCIENTIFIC/TECHNICAL REPORTS

(Applicable to research awards)

- a. Electronic submission. Scientific/technical reports must be submitted electronically via the DOE Energy Link System (E-Link) with the appropriate DOE Form 241 (see *Federal Assistance Reporting Checklist*, DOE F 4600.2). E-Link will allow you to complete the DOE F 241 online and then upload your report. It can be accessed at <http://www.osti.gov/elink-2413>.
- b. DOE Form 241.3, *U.S. Department of Energy (DOE) Announcement of Scientific and Technical Information (STI)*. This form and instructions are available on E-Link. If there is any patentable material, protected data, or SBIR/STTR data in the report, the recipient must, consistent with the data protection provisions of the grant, clearly identify patentable or protected data on each page of the report, identify such material on the cover of the report, and mark the appropriate blocks in Section K of the DOE F 241.3. Other than patentable material, protected data, or SBIR/STTR data, reports must not contain any proprietary data (limited rights data), classified information, information subject to export control classification, or other information not subject to release. Protected data are specific technical data, first produced in the performance of the award, that are protected from public release for a period of time by the terms of the award agreement.
- c. Electronic format. Reports must be submitted in the ADOBE PORTABLE DOCUMENT FORMAT (PDF) and be one integrated PDF file that contains all text, tables, diagrams, photographs, schematic, graphs, and charts. E-Link can provide more details about converting a file to PDF. Materials, such as prints, videos, and books, that are essential to the report but cannot be submitted electronically, should be sent to the Contract Specialist at the address listed in Block 12 of the *Notice of Financial Assistance Award*.

## 12. ENVIRONMENTAL, SAFETY, AND HEALTH

The awardee shall comply with all federal, state, and local environmental, safety, and health regulations in all work under this award.

13. LIABILITIES AND LOSSES

DOE assumes no liability with respect to any damages or loss arising out of any activities undertaken with the financial support of this award.

14. LOBBYING RESTRICTIONS

(as appropriated, based upon funding source)

Interior Act

The awardee agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(or)

Energy and Water Appropriations

The awardee agrees that none of the funds obligated on this 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.

15. NOTICE REGARDING UNALLOWABLE COSTS AND LOBBYING ACTIVITIES

Awardees of financial assistance are cautioned to carefully review the allowable cost and other provisions applicable to expenditures under their particular award instruments. If financial assistance funds are spent for purposes or in amounts inconsistent with the allowable cost or any other provisions governing expenditures in an award instrument, the government may pursue a number of remedies against the awardee, including in appropriate circumstances, recovery of such funds, termination of the award, suspension or debarment of the awardee from future awards, and criminal prosecution for false statements.

16. 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.

17. COMPLIANCE WITH BUY AMERICAN ACT

*(Applicable when funding is made available under any Interior Act)*

In accepting this award, the awardee agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act"). The awardee should review the provisions of the Act to ensure that expenditures made under this award are in accordance with it.

18. REAL AND TANGIBLE PERSONAL PROPERTY

- a. No real property is provided nor may be purchased under this award.
- b. In the event of resale or donation of any property acquired in connection with this award, the awardee must adhere to any and all non-proliferation or export control requirements or prohibitions. Any export or attempt to export property that is subject to United States export controls under Code of Federal Regulations Titles 10, 15, 22, and 31, is prohibited. Property may also contain or have attached to it or connected with it, technical data whose export are also restricted by statute. Dissemination of or attempted dissemination of these data may result in administrative, civil, or criminal penalties. If there is any doubt or question, the awardee should contact the Property Officer. The name and telephone number of the Property Officer are available from the contract administrator.

19. INTELLECTUAL PROPERTY PROVISIONS

- a. The point of contact for patent, copyright, or other intellectual property issues related to this award is:

Chief, Office of Intellectual Property Law  
U.S. Department of Energy  
Chicago Operations Office  
9800 South Cass Avenue  
Argonne, IL 60439.

(Choose the appropriate paragraph b, based upon whether the award is a grant and the awardee is an FDP participant.)

- b. The intellectual property provisions applicable to this award are:

(Tailor as appropriate. Select the correct IP set and delete the remainder.)

Research, Development, or Demonstration  
Domestic Nonprofit Organizations and Educational Institutions

Research, Development, or Demonstration  
Large Business, State and Local Governments, and Foreign Organizations

Research, Development, or Demonstration  
Domestic Small Business and Nonprofit Organizations

Non Research and Development

## Domestic Nonprofit Organizations and Educational Institutions

## Non Research and Development

## Large and Small Business, Nonprofit Organizations, Educational Institutions, and Others

- c. The full texts of the provisions are included at Appendix A to this Part.  
[Print out the applicable provision set and attach as Appendix A.](#)

(or) [\(Delete paragraphs b and c if the award is a GRANT to a FDP institution. The paragraphs should automatically renumber themselves.\)](#)

- d. FDP Awards. The intellectual property provisions applicable to this award are contained in the FDP General Terms and Conditions, as supplemented by the DOE Agency-Specific terms and conditions.
- e. The awardee shall include the applicable intellectual property provisions in any subaward or contract awarded under this award and shall assure that the applicable provisions are also included by subrecipients in contracts.

## 20. AGREEMENT TO AWARD TERMS AND CONDITIONS

- a. In addition to these special terms and conditions the awardee must comply with all governing requirements, including those identified in Block 18 of the Notice of Financial Assistance Award and those incorporated on the continuation sheet(s).
- b. Except for technical data contained on pages [\(insert specific page numbers\)](#), which the awardee asserts to be proprietary data, the awardee agrees as a condition of this award, notwithstanding the provisions of any other notice appearing on the application, that the Government or its agent shall have the right to use, duplicate, and disclose the technical data contained in the application on which this award is based.
- c. The awardee's signature on the application and on the Notice of Financial Assistance Award signifies the awardee's agreement to all of the terms and conditions of award.

## 21. OTHER SPECIAL PROVISIONS

[Other special provisions, applicable to a specific award, may also be included in the terms and conditions. These special provisions would be on a case-by-case basis. Examples are use of limited year appropriations or awards that are incrementally funded.](#)

- a. Incremental Funding. This amendment obligates [\\$xxxxx](#) against the approved budget. The balance of [\\$xxxxx](#) is to be incrementally funded, contingent upon funds availability.

- b. Limited Year Appropriations. This award involves one-year appropriations to be used only for the specific phase or budget period to which they are applied. This (state type of award, e.g., new, continuation, renewal) award is for one phase or budget period only, which corresponds with the statement of objectives proposed and accepted for this award. Funds shall not be carried forward into the next phase or budget period. Funds not used (i.e., costs incurred) in the stated phase or budget period shall be deobligated from the award.

*(End of Special Terms and Conditions)*