**Special Terms and Conditions**

Metropolitan Energy Center, Inc (“Recipient”), which is identified in Block 5 of the Assistance Agreement, and the Office of Energy Efficiency and Renewable Energy (“EERE”), an office within the United States Department of Energy (“DOE”), enter into this Award, referenced above, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 1 to this Award.

This Award consists of the following documents, including all terms and conditions therein:

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The following are incorporated into this Award by reference:

- Research Terms & Conditions and the DOE Agency Specific Requirements at [http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp](http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp) (if the Award is for research and the Award is to a university or non-profit).
- The Recipient’s application/proposal as approved by EERE.
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Subpart A.  General Provisions

Term 1.  Conditions on Award

Notwithstanding any other Term and Condition of this cooperative agreement, the following provisions constitute Conditions on Award applicable to this agreement. The period of time established to resolve all Conditions on Award is referred to as the “definitization period”. DOE reserves the right to unilaterally de-obligate the balance of funds obligated in the event the Conditions on Award are not satisfied and the project is terminated.

a.  Accounting System Review

In order to definitize this award, DOE must be able to verify that the Recipient’s accounting system complies with applicable Federal regulations. To assist DOE in making this determination, DOE reserves the right to initiate a review of the Recipient’s accounting system to ensure its compliance with those regulations. Should the review identify deficiencies in the accounting system, or determine the accounting system to be inadequate, the Recipient shall have thirty (30) days from the issuance of the review to correct any such deficiencies.

If any issues identified in the review remain unresolved at the end of the 30-day period, or if the Recipient’s financial management systems are determined not to conform to the appropriate requirements, DOE shall suspend payment under the award until all issues are resolved. If all issues are not resolved to the satisfaction of the DOE Contracting Officer, within 45 days of the date of payment suspension, the Recipient agrees that DOE may declare the award terminated by mutual agreement of the parties upon written notice to the Recipient.

b.  Estimated Cost of Award and Verification of Recipient Cost-sharing

The estimated cost of the award is based on the Recipient’s application dated Month, Day, 2019. The estimated cost is subject to definitization within ninety (90) days of the award date. DOE and Recipient agree that the estimate may be adjusted based on the results of the accounting system review and other matters affecting the estimate that are identified during the definitization period. If the parties cannot mutually agree to a final estimated project cost, and/or Recipient fails to provide adequate evidence of financial commitments for the full private sector share of the project cost, either party may declare the award terminated by mutual agreement of the parties upon written notice to the other party.

c.  Intellectual Property

Within ninety (90) days after the date of award of this Cooperative Agreement, the Parties must agree on the following:
1. A publicly releasable list of limited rights data; and
2. A publicly releasable list of restricted computer software.

In the event the recipient is not showing a good faith effort to mutually agree to these data lists no later than 90 days after the date of award, the word “none” may be inserted for bullets 1 and 2.

**Term 2. Legal Authority and Effect**

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.

The Recipient may accept or reject the Award. A request to draw down DOE funds or acknowledgement of award documents by the Recipient’s authorized representative through electronic systems used by DOE, specifically FedConnect, constitutes the Recipient’s acceptance of the terms and conditions of this Award. Acknowledgement via FedConnect by the Recipient’s authorized representative constitutes the Recipient’s electronic signature.

**Term 3. Flow Down Requirement**

The Recipient agrees to apply the terms and conditions of this Award, as applicable, including the Intellectual Property Provisions, to all subrecipients (and subcontractors, as appropriate), as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.326 to all subrecipients (and subcontractors, as appropriate), and to require their strict compliance therewith.

**Term 4. Compliance with Federal, State, and Municipal Law**

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

**Term 5. Inconsistency with Federal Law**

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.

**Term 6. Federal Stewardship**

EERE 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 address deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.
Term 7. Substantial Involvement

EERE has substantial involvement in work performed under this Award. EERE does not limit its involvement to the administrative requirements of this Award. Instead, EERE has substantial involvement in the direction and redirection of the technical aspects of the project as a whole. Substantial involvement includes the following:

- EERE shares responsibility with the Recipient for the management, control, direction, and performance of the Project.
- EERE may intervene in the conduct or performance of work under this Award for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities.
- EERE may redirect or discontinue funding the Project based on the outcome of EERE’s evaluation of the Project at the Go/No Go decision point(s).
- EERE participates in major project decision-making processes.

Term 8. Federal Involvement

A. Review Meetings

The Recipient, including but not limited to, the principal investigator (or, if applicable, co-principal investigators), is required to participate in periodic review meetings with EERE. Review meetings enable EERE to assess the work performed under this Award and determine whether the Recipient has timely achieved the technical milestones and deliverables stated in Attachment 1 to this Award.

EERE shall determine the frequency of review meetings and select the day, time, and location of each review meeting and shall do so in a reasonable and good faith manner. EERE will provide the Recipient with reasonable notice of the review meetings.

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

- The Recipient’s technical progress compared to the Milestone Summary Table stated in Attachment 1 to this Award;
- The Recipient’s actual expenditures compared to the approved budget in Attachment 3 to this Award; and
- Other subject matter specified by the DOE Technology Manager/Project Officer.

B. Project Meetings

The Recipient is required to notify EERE in advance of scheduled tests and internal project meetings that would entail discussion of topics that could result in major changes to the baseline project technical scope/approach, cost, or schedule. Upon
request by EERE, the Recipient is required to provide EERE with reasonable access (by telephone, webinar, or otherwise) to the tests and project meetings. The Recipient is not expected to delay any work under this Award for the purpose of government insight.

C. Site Visits
EERE'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. The Recipient must provide, and must require 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.

D. Go/No Go Decisions
Attachment 1 to this Award establishes Go/No Go decision points. For each Go/No Go decision point, EERE must determine whether the Recipient has fully and satisfactorily completed the work described in Attachment 1 to this Award. As a result of a Go/No Go review, in its discretion, EERE may take one of the following actions:

- Authorize Federal funding for the next budget period for the Project;
- Recommend redirection of work under the Project;
- Place a hold on the Federal funding for the Project, pending further supporting data; or
- Discontinue providing Federal funding for the Project beyond the current budget period as the result of insufficient progress, change in strategic direction, or lack of available funding.

E. Technical Milestones and Deliverables
Attachment 1 to this Award establishes technical milestones and deliverables. If the Recipient fails to achieve two or more technical milestones and deliverables, EERE may renegotiate the Statement of Project Objectives and/or Milestone Summary Table in Attachment 1 to this Award. In the alternative, EERE may deem the Recipient’s failure to achieve these technical milestones and deliverables to be material noncompliance with the terms and conditions of this Award and take action to suspend or terminate the Award.

F. EERE Access
The Recipient must provide any information, documents, site access, or other assistance requested by EERE for the purpose of its Federal stewardship or substantial involvement.
Term 9. NEPA Requirements

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on information available, DOE has not issued a final NEPA determination for this project.

Notwithstanding the obligation of funds shown on the Assistance Agreement, the parties hereby agree that the availability of funds to the Recipient for payment of costs incurred by the Recipient is conditioned upon the final NEPA determination. The Recipient is prohibited from spending Federal funds at this time. No funds, therefore, shall be made available to the Recipient for payment, and DOE does not guarantee or assume any obligation to reimburse costs incurred by the Recipient prior to written authorization from the Contracting Officer.

Should the Recipient elect to undertake activities or change locations prior to authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities and such costs may not be recognized as allowable cost share?

Term 10. Performance of Work in United States

A. Requirement
   All work performed under this Award must be performed in the United States unless the Contracting Officer provides a waiver. This requirement does not apply to the purchase of supplies and equipment; however, the Recipient should make every effort to purchase supplies and equipment within the United States. The Recipient must flow down this requirement to its subrecipients.

B. Failure to Comply
   If the Recipient fails to comply with the Performance of Work in the United States requirement, the Contracting Officer may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Recipient cost share regardless if the work is performed by the Recipient, subrecipients, vendors or other project partners.

C. Waiver for Work Outside the U.S.
   All work performed under this Award must be performed in the United States. However, the Contracting Officer may approve the Recipient to perform a portion of the work outside the United States under limited circumstances. Recipient must obtain a waiver from the Contracting Officer prior to conducting any work outside the U.S. To request a waiver, the Recipient must submit a written waiver request to the Contracting Officer, which includes the following information:
   • The rationale for performing the work outside the U.S.;
   • A description of the work proposed to be performed outside the U.S.;
   • Proposed budget of work to be performed; and
• The countries in which the work is proposed to be performed.

For the rationale, the Recipient must demonstrate to the satisfaction of the Contracting Officer that the performance of work outside the United States would further the purposes of the FOA that the Award was selected under and is in the economic interests of the United States. The Contracting Officer may require additional information before considering such request.

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.

Term 12. Reporting Requirements

A. Requirements
The reporting requirements for this Award are identified on the Federal Assistance Reporting Checklist, 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. Restrictions
Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

Term 13. Lobbying
By accepting funds under this Award, the Recipient agrees that none of the funds obligated on the Award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Term 14. Publications
EERE encourages the Recipient to publish or otherwise make publicly available the results of work performed under this Award. The Recipient is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award, whether copyrighted or not:
• **Acknowledgment:** “This material is based upon work supported by the U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy (EERE) under the Award Number DE-EE0008887.”

• **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.”

**Term 15. No-Cost Extension**

As provided in 2 CFR 200.308, the Recipient must provide the Contracting Officer with notice in advance if it intends to utilize a one-time, no-cost extension of this Award. The notification must include the supporting reasons and the revised period of performance. The Recipient must submit this notification in writing to the Contracting Officer and DOE Technology Manager/Project Officer at least 30 days before the end of the current budget period.

Any no-cost extension will not alter the project scope, milestones, deliverables, or budget of this Award.

**Term 16. Property Standards**

The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

**Term 17. Insurance Coverage**

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

**Term 18. Real Property**

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.
Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (1) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (2) sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (3) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award. Also see 2 CFR 910.360 for additional requirements for real property for For-Profit recipients.

**Term 19. Equipment**

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

A state must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity.

Disposition will be made as follows: (1) items of equipment with a current fair market value of $5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (2) Non-Federal entity may retain title or sell the equipment after compensating DOE as described in 2 CFR 200.313(e)(2); or (3) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR 910.360 for additional requirements for equipment for For-Profit recipients. See also 2 CFR 200.439 Equipment and other capital expenditures.
Term 20. Supplies
See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

Term 21. Property Trust Relationship
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.

Term 22. Record Retention
Consistent with 2 CFR 200.333 through 200.337, the Recipient is required to retain records relating to this Award.

Term 23. Audits

A. Government-Initiated Audits
The Recipient is required to provide any information, documents, site access, or other assistance requested by EERE, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient’s records relating to this Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Recipient’s financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

B. Annual Independent Audits (Single Audit or Compliance Audit)
The Recipient is required to comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500
through .521 for for-profit entities (Compliance audit).

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term, and must be paid for by the Recipient. To minimize expense, the Recipient may have a compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is not a substitute for the compliance audit. If the audit (Single audit or Compliance audit, depending on Recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.338, Remedies for Noncompliance.

**Subpart B. Financial Provisions**

**Term 24. Maximum Obligation**

The maximum obligation of DOE for this Award is the total “Funds Obligated” stated in Block 13 of the Assistance Agreement to this Award.

**Term 25. Funding of Budget Periods**

EERE has obligated funding as shown in Block 13 of the Assistance Agreement for completion of the Project. However, only the Federal share of costs associated with the current Period of Performance is available for work performed by the Recipient. The Federal share of costs is shown on Attachment 3. The current Period of Performance is shown in Block 7 of the Assistance Agreement.

The remainder of funding is contingent upon: (1) availability of Federal funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) Recipient’s technical progress compared to the Milestone Summary Table stated in Attachment 1 to this Award; (4) Recipient’s submittal of required reports; (5) Recipient’s compliance with the terms and conditions of the Award; (6) EERE’s Go/No-Go decision; (7) the Recipient’s submission of a continuation application; and (8) written approval of the continuation application by the Contracting Officer.

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

**Term 26. Continuation Application and Funding**

**A. Continuation Application**
A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least ninety (90) days before the end of each budget period, the Recipient must submit to the DOE Technology Manager/Project Officer and the DOE Award Administrator its continuation application, which includes the following information:

i. 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.

ii. A detailed budget and supporting justification if there are changes to the negotiated budget, or a budget for the upcoming budget period was not approved at the time of award.

iii. A description of any planned changes from the negotiated Statement of Project Objectives and/or Milestone Summary Table.

B. Continuation Funding

Continuation funding is contingent on (1) the availability of funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) Recipient’s technical progress compared to the Milestone Summary Table stated in Attachment 1 to this Award; (4) Recipient’s submittal of required reports; (5) Recipient’s compliance with the terms and conditions of the Award; (6) EERE’s Go/No-Go decision; (7) the Recipient’s submission of a continuation application; and (8) written approval of the continuation application by the Contracting Officer.

C. EERE waives prior written approval requirements to carry forward unobligated balances to subsequent periods of performance.

Term 27. Cost Sharing

A. Cost Sharing Obligations

The Recipient must provide the “Cost Share” amount stated in Block 12 of the Assistance Agreement to this Award. EERE and the Recipient’s cost share for the total estimated project costs are listed below.

Table 1
The Recipient must provide its required “Cost Share” amount as a percentage of the total project costs. EERE authorized the Recipient to provide cost share on a budget period basis. Specifically, the cumulative cost share percentage in each budget period must reflect, at a minimum, the cost sharing percentage specified in the Award.

B. **Cost Share Obligation If Award Terminated or Discontinued**

If the Award is terminated or is otherwise not funded to completion, the Recipient is not required to provide the entire “Cost Share” amount stated in Block 12 of the Assistance Agreement to this Award; however, the Recipient must provide its share (i.e., percentage as shown in Table 1 above) of the total project cost reimbursed as of the date of the termination or discontinuation.

C. **Source of Cost Share**

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

D. **Inability to Comply with Cost Sharing Obligations**

If the Recipient determines that it is unable to meet its cost sharing obligations, the Recipient must notify the DOE Award Administrator in writing immediately. The notification must include the following information: (1) whether the Recipient intends to continue or phase out the project, and (2) if the Recipient intends to continue the project, how the Recipient will pay (or secure replacement funding for) the Recipient’s share of the total project cost.

If the Recipient fails to meet its cost sharing obligations, EERE may recover some or all of the financial assistance provided under this Award. The amount EERE would seek to recover under this Term would be predicated on EERE’s analysis of the Recipient’s compliance with their cost sharing obligation under the Award.

**Term 28. Refund Obligation**

The Recipient must refund any excess payments received from EERE, including any costs determined unallowable by the Contracting Officer. Upon the end of the project period (or the termination of the Award, if applicable), the Recipient must refund to EERE the difference between (1) the total payments received from EERE, and (2) the Federal share of the costs incurred.
Term 29. Allowable Costs
EERE determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subrecipients and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Recipient is required to provide such records to EERE. Such records are subject to audit. Failure to provide EERE adequate supporting documentation may result in a determination by the Contracting Officer that those costs are unallowable.

The Recipient is required to obtain the prior written approval of the Contracting Officer for any foreign travel costs.

Term 30. Indirect Costs
The Recipient has a Federally approved negotiated indirect cost rate agreement of 104.27% and it applies uniformly across all Federal awards. These costs shall be trued up (actual incurred costs) on an annual basis with the Recipient’s cognizant agency.

A. Lower-than-Expected Indirect Costs
   If the Recipient’s actual allowable indirect costs are less than those budgeted in Attachment 3 to this Award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If annual true up reveals that the Government share of total allowable incurred indirect costs is less than the cost reimbursed, the Recipient must refund the difference as soon as costs are reconciled.

B. Higher-than-Expected Indirect Costs
   The Recipient understands that it is solely and exclusively responsible for managing its indirect costs. The Recipient further understands that EERE will not amend this Award solely to provide additional funds to cover increases in the Recipient’s indirect cost rate.

   EERE recognizes that the Recipient may not be fully reimbursed for increases in its indirect cost rate, which may result in under-recovery. In the event that the Recipient is not fully reimbursed for increases in its indirect cost rate, the Recipient may use any under-recovery to meet its cost sharing obligations under this Award, with prior approval from the Contracting Officer.

C. Subrecipient Indirect Costs
   The Recipient must ensure its subrecipient’s indirect costs are appropriately managed, allowable and otherwise comply with the requirements of this Award and
Term 31.  Use of Program Income
If the Recipient earns program income during the project period as a result of this Award, the Recipient must add the program income to the funds committed to the Award and used to further eligible project objectives.

Term 32.  Payment Procedures

A.  Method of Payment
Payment will be made by reimbursement through the Department of Treasury’s ASAP system.

B.  Requesting Reimbursement
Requests for reimbursements must be made through the ASAP system.

C.  Adjusting Payment Requests for Available Cash
The Recipient 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 EERE.

D.  Payments
All payments are made by electronic funds transfer to the bank account identified on the Bank Information Form that the Recipient filed with the U.S. Department of Treasury.

E.  Unauthorized Drawdown of Federal Funds
For each budget period, the Recipient may not spend more than the Federal share authorized to that particular budget period, without specific written approval from the Contracting Officer. The Recipient must immediately refund EERE any amounts spent or drawn down in excess of the authorized amount for a budget period. The Recipient and subrecipients shall promptly, but at least quarterly, remit to DOE interest earned on advances drawn in excess of disbursement needs, and shall comply with the procedure for remitting interest earned to the Federal government per 2 CFR 200.305, as applicable.

Term 33.  Budget Changes

A.  Budget Changes Generally
The Contracting Officer has reviewed and approved the SF-424A in Attachment 3 to this Award.
Any increase in the total project cost, whether DOE share or Cost Share, which is stated as “Total” in Block 12 to the Assistance Agreement of this Award, must be approved in advance and in writing by the Contracting Officer.

Any budget change that alters the project scope, milestones or deliverables requires prior written approval of the Contracting Officer. EERE may deny reimbursement for any failure to comply with the requirements in this term.

B. Transfers of Funds Among Direct Cost Categories
The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total project cost, which is stated as “Total” in Block 12 to the Assistance Agreement of this Award.

The Recipient is required to notify the DOE Technology Manager/Project Officer of any transfer of funds among direct cost categories where the cumulative amount of such transfers is equal to or below 10 percent of the total project cost, which is stated as “Total” in Block 12 to the Assistance Agreement of this Award.

C. Transfer of Funds Between Direct and Indirect Cost Categories
The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds between direct and indirect cost categories.

Subpart C. Miscellaneous Provisions

Term 34. Corporate Felony Conviction and Federal Tax Liability Assurances
This term applies to Recipients that are organized as corporations. 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.

By entering into this Award, the Recipient attests that its corporation has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

The Recipient further attests that its corporation 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.

Term 35. Insolvency, Bankruptcy or Receivership
A. The Recipient shall immediately, but no later than five days, notify EERE of the occurrence of any of the following events: (1) the Recipient or the Recipient’s parent’s filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (2) the Recipient’s consent to the institution of an involuntary case under the Bankruptcy Act against the Recipient or the Recipient’s parent; (3) the filing of any similar proceeding for or against the Recipient or the Recipient’s parent, or the Recipient’s consent to the dissolution, winding-up or readjustment of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the Recipient, under any other applicable state or Federal law; or (4) the Recipient’s insolvency due to its inability to pay debts generally as they become due.

B. Such notification shall be in writing and shall: (1) specifically set out the details of the occurrence of an event referenced in paragraph A; (2) provide the facts surrounding that event; and (3) 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 paragraph A of this term, EERE reserves the right to conduct a review of the Recipient’s Award to determine the Recipient’s 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 EERE review determines that there are significant deficiencies or concerns with the Recipient’s performance under the Award, EERE reserves the right to impose additional requirements, as needed, including (1) change of payment method; or (2) institute payment controls.

D. Failure of the Recipient to comply with this term may be considered a material noncompliance of this Award by the Contracting Officer.

**Term 36. Reporting Subawards and Executive Compensation**

A. Reporting of first-tier subawards

   i. **Applicability.** Unless the Recipient is exempt as provided in paragraph D of this award term, the Recipient 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).

   ii. **Where and when to report.**

      1. The Recipient must report each obligating action described in
paragraph A.i. of this award term to https://www.fsrs.gov.

2. 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.)

iii. What to report. The Recipient must report the information about each obligating action that the submission instructions posted at https://www.fsrs.gov specify.

B. Reporting Total Compensation of Recipient Executives

i. Applicability and what to report. The Recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if

1. The total Federal funding authorized to date under this Award is $25,000 or more;

2. In the preceding fiscal year, the Recipient received;

   a. 80 percent or more of the Recipient’s 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

3. 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).

ii. Where and when to report. The Recipient must report executive total compensation described in paragraph B.i. of this award term:
1. As part of the Recipient’s registration profile at https://www.sam.gov.

2. 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

i. Applicability and what to report. Unless the Recipient is exempt as provided in paragraph D. of this award term, for each first-tier subrecipient under this award, the Recipient 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:

1. 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

2. 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).

ii. Where and when to report. The Recipient must report subrecipient executive total compensation described in paragraph C.i. of this award term:

1. To the recipient.

2. By the end of the month following the month during which the Recipient makes 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), the Recipient must report any required compensation information of the subrecipient by November
30 of that year.

D. Exemptions
If, in the previous tax year, the Recipient had gross income, from all sources, under $300,000, it is 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:

i. Entity means all of the following, as defined in 2 CFR Part 25:

1. A Governmental organization, which is a State, local government, or Indian tribe;
2. A foreign public entity;
3. A domestic or foreign nonprofit organization;
4. A domestic or foreign for-profit organization;
5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

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

iii. Subaward:

1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this award and that the recipient awards to an eligible subrecipient.

2. The term does not include the Recipient’s procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) Subrecipients and Contractors and/or 2 CFR 910.501 Audit requirements, (f) Subrecipients and Contractors).

3. A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.
iv. Subrecipient means an entity that:

1. Receives a subaward from the Recipient under this award; and

2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

v. 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)):

1. Salary and bonus.

2. 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.

3. 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.

4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

5. Above-market earnings on deferred compensation which is not tax-qualified.

6. 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.

Term 37. System for Award Management and Universal Identifier Requirements

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

Unless the Recipient is exempted from this requirement under 2 CFR 25.110, the Recipient must maintain the currency of its information in SAM until the Recipient submits the final financial report required under this Award or receive the final
payment, whichever is later. This requires that the Recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

If the Recipient had an active registration in the CCR, it has an active registration in SAM.

B. Requirement for Data Universal Numbering System (DUNS) Numbers
If the Recipient is authorized to make subawards under this Award, the Recipient:

i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its DUNS number to the Recipient.

ii. May not make a subaward to an entity unless the entity has provided its DUNS number to the Recipient.

C. Definitions
For purposes of this award term:

i. 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 https://www.sam.gov).

ii. 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).

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

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

iv. Subaward:
1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.

2. The term does not include the Recipient’s procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) Subrecipients and Contractors and/or 2 CFR 910.501 Audit requirements, (f) Subrecipients and Contractors).

3. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.

v. Subrecipient means an entity that:

1. Receives a subaward from the Recipient under this Award; and
2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

Term 38. Nondisclosure and Confidentiality Agreements Assurances

A. By entering into this agreement, the Recipient attests that it 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.

B. The Recipient further attests that it 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:

i. “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.”
ii. 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.

iii. 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.

Term 39. Subrecipient Change Notification
Except for subrecipients specifically proposed as part of the Recipient’s Application for award, the Recipient must notify the Contracting Officer and Project Manager in writing 30 days prior to the execution of new or modified subrecipient agreements, including naming any To Be Determined subrecipients. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR part 200 as amended by 2 CFR part 910, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, the Recipient documentation must, as a minimum, include the following:

- A description of the research to be performed, the service to be provided, or the equipment to be purchased;
- Cost share commitment letter if the subrecipient is providing cost share to the Award;
- An assurance that the process undertaken by the Recipient to solicit the subrecipient complies with their written procurement procedures as outlined in 2 CFR 200.317 through 200.329;
- An assurance that no planned, actual or apparent conflict of interest exists between the Recipient and the selected subrecipient and that the Recipient’s written standards of conduct were followed\(^1\);

\(^1\) It is DOE’s position that the existence of a “covered relationship” as defined in 5 CFR 2635.502(a)&(b) between a member of the Recipient’s owners or senior management and a member of a subrecipient’s owners or senior management creates at a minimum an apparent conflict of interest that would require the Recipient to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the subrecipient agreement does...
• A completed Environmental Questionnaire, if applicable;
• An assurance that the subrecipient is not a debarred or suspended entity; and
• An assurance that all required award provisions will be flowed down in the resulting subrecipient agreement.

The Recipient is responsible for making a final determination to award or modify subrecipient agreements under this agreement, but the Recipient may not proceed with the subrecipient agreement until the Contracting Officer determines, and provides the Recipient written notification, that the information provided is adequate.

Should the Recipient not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the subrecipient documentation stipulated above, Recipient may proceed to award or modify the proposed subrecipient agreement.

**Term 40. Conference Spending**

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.

**Term 41. Recipient Integrity and Performance Matters**

A. **General Reporting Requirement**

If the total value of your currently active Financial Assistance awards, 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 term. 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, not create an actual conflict of interest. The Recipient must also notify the Contracting Officer of any new subrecipient agreement with: (1) an entity that is owned or otherwise controlled by the Recipient; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient, as it is DOE’s position that these situations also create at a minimum an apparent conflict of interest.
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:
   i. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
   ii. Reached its final disposition during the most recent five year period; and
   iii. Is one of the following:
       1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
       2. 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;
       3. An administrative proceeding, as defined in paragraph E of this term, 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
       4. Any other criminal, civil, or administrative proceeding if:
          a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
          b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
          c. The requirement in this term 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 B of this term. 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 A of this term, 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, Financial Assistance awards, (including 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 term:
   i. 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 Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.
   ii. Conviction 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.
   iii. Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—
      1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
      2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

Term 42. Foreign National Access Under DOE Order 142.3A, “Unclassified Foreign Visits and Assignments Program”

Pursuant to DOE Order 142.3A, the Recipient, including its subrecipients and subcontractors, may be required to provide information to the Department of Energy (DOE) in order to satisfy requirements for foreign nationals’ access to DOE sites, information, technologies, equipment, programs, and personnel. A “foreign national” is any person who was born outside the jurisdiction of the United States, is a citizen of a foreign government, and has not been naturalized under U.S. law.

If the Recipient (including its subrecipients and subcontractors) anticipates involving foreign nationals in the performance of its award, the Recipient may be required to provide DOE with specific information about each foreign national to ensure compliance with the requirements of DOE Order 142.3A for access approval. Recipients that are institutions of higher education (and subrecipients and subcontractors that are institutions of higher education) are exempt from obtaining DOE approval for foreign nationals’ access to DOE information provided that: (1) the foreign national is an employee, student, or other individual with a direct affiliation with the institution of higher education; (2) the institution of higher education is performing research under the award; (3) the award is sponsored by a DOE program office that reports to the Under Secretary for Science and Energy; and (4) the institution of higher education intends to publish the results of its research for access by the general public. However, this exemption does not apply to visits by
any foreign nationals to DOE sites, or any access to DOE information, equipment or personnel that are not exempted in DOE Order 142.3A (e.g., to awards sponsored by DOE program offices that do not report to the Under Secretary for Science and Energy).

Access approval for foreign nationals from countries identified on the U.S. Department of State’s list of State Sponsors of Terrorism and who are not employees, students, or other individuals with a direct affiliation with a recipient, subrecipient, or subcontractor that is an institution of higher education must be granted by the Secretary of Energy before they can commence any work under the award.

The Recipient must include this term in any subaward or subcontract associated with this award.

**Term 43. Data Management Plan (SEPT 2015)**

(a) (1) 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 the 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:

(1) 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.

(2) 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.

(3) 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.
(4) 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:
(1) 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.
(2) 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.
(3) 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.
(4) 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.

(5) 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:
(A) 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
(B) 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.