OT Agreement Articles

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# **OT Agreement Articles**

*Mandatory – Articles marked as Mandatory must be included in the OT agreement. The sample text is provided as a model and may be altered to fit each OT agreement except for Articles required by statute must use the language as provided.*

*Optional – Articles marked as Optional will be included in OT agreements when the scope of work requires agreed to requirements.*

*Suggested – Titles of articles to consider depending on the project being funded.*

# **Mandatory Articles**

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| Authority to enter into the Agreement | |
| Description of Use | MANDATORY  Provide the appropriate OT authority and program authority |
| Sample Language | This Agreement is entered into under 42 USC 7256 and *(add program authority)*. This agreement between the Department of Energy and INSERT AWARDEE is a transaction other than a procurement, grant, cooperative agreement, or loan. Only those terms or requirements set forth in this agreement and required by law for other transaction agreements awarded under [42 USC 7256(a)][42 USC 7256(g)Additional Authorities] are applicable. |

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| Scope of the agreement - background, definitions, scope, goals and objectives | |
| Description of Use | MANDATORY |
| Sample Language | This article should be taken from the application. It should also include a description of the substantial involvement by DOE. |

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| Period of Performance | |
| Description of Use | MANDATORY - The Agreements Officer shall insert the following article in all cost reimbursable agreements. |
| Sample Language | The Awardee shall commence performance of this agreement in accordance with the agreement terms and conditions on [insert effective date of agreement or date on which work is to begin] and continue through [insert the end date for agreement performance].  *[Insert the following in any awards that include more than one budget period:*  The period of performance consists of the following Budget Periods: [insert project budget periods]. The threshold of each budget period following the first shall be considered a go/no-go decision point. Continuation into a subsequent budget period shall be determined by DOE following submission of a Continuation Application.  Continuation Application. A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least 90 days before the end of each budget period, you must submit your continuation application to XXXXXX.    The continuation application must include the following information:  1. A report on 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.  2. A detailed budget and supporting justification for the upcoming budget period if additional funds are requested, a reduction of funds is anticipated, or a budget for the upcoming budget period was not approved at the time of award.  3. A description of your plans for the conduct of the project during the upcoming budget period, if there are changes from the DOE approved application. |

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| Points of Contact | |
| Description of Use | MANDATORY - The Agreements Officer shall insert an article identifying the POCs w/addresses, phone numbers and email addresses. |
| Sample Language | To promote timely and effective agreement administration, correspondence delivered to the Government under this agreement shall reference the agreement number, title, and subject matter, and shall be subject to the following procedures:  (a) Technical correspondence. Technical correspondence shall be addressed to the Agreement Technical Representative (ATR) for this agreement, and a copy of any such correspondence shall be sent to [insert Agreements Specialist or Agreements Officer]. As used herein, technical correspondence does not include correspondence where patent or rights in data issues are involved, nor which proposes or involves waivers, deviations, or modifications to the requirements, terms or conditions of this agreement.  (b) Other Correspondence.  (1) Correspondence regarding patent or rights in data issues should be sent to the Intellectual Property Counsel. A copy of such correspondence shall be provided to [insert Agreements Specialist or Agreements Officer].  (2) All correspondence, other than technical correspondence and correspondence regarding patent of rights in data, including correspondence regarding waivers, deviations, or modifications to requirements, terms or conditions of the agreement, shall be addressed to the [insert Agreements Specialist or Agreements Officer]. Copies of all such correspondence shall be provided to the ATR.  (c) Information regarding correspondence addresses and contact information is as follows:  (1) Agreements Specialist:  (A) [Insert name of Agreements Specialist]  (B) Telephone number [Insert Agreements Specialist’s ten-digit telephone number]  (C) Address [Insert mailing address of Agreements Specialist]  (D) Email address [Insert email address of Agreements Specialist]  (2) Agreements Officer  (A) [Insert name of Agreements Officer]  (B) Telephone number [Insert Agreements Officer’s ten-digit telephone number]  (C) Address [Insert mailing address of Agreements Officer]  (D) Email address [Insert email address of Agreements Officer]  (3) Agreement Technical Representative  (A) [Insert name of ATR]  (B) Telephone number [Insert ATR’s ten-digit telephone number]  (C) Address [Insert mailing address of ATR]  (D) Email address [Insert email address of ATR]  (4) Intellectual Property Counsel  (A) [If any, insert name of Intellectual Property Counsel]  (B) Telephone number [If any, insert Counsel’s ten-digit telephone number]  (C) Address [If any, insert address of Counsel]  (D) Email address [If any, insert Counsel’s email address]  (5) Awardee POC  (A) Name [Insert name of Awardee POC Administrator]  (B) Telephone number [Insert ten-digit telephone number]  (C) Mailing address [Insert mailing address]  (D) Email address [Insert email address] |

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| Estimated Cost/Price | |
| Description of Use | Mandatory – include language (cost or price) that reflects the total agreed to budget for the award. May be on the award form if used vs a signature page |
| Sample Language | The total estimate cost/price for this award is $xxxxxxxxx |
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| Cost Share | |
| Description of Use | MANDATORY Include if the award is for research, development, demonstration, and commercial activities per EPAct 988 or cost share is otherwise required by statute. The Awardee's cost share for the budget must reflect the overall cost share ratio negotiated by the parties. This ratio must be at least the statutory minimum based on the nature of the project. The cost share should be generally the same for the entire award. However, it may be in the best interest of the project for DOE to provide a greater cost share at the beginning of the award. The risk of the Awardee not meeting the greater financial obligations should be weighed against the risk of the project not starting. |
| Sample Language | Cost Sharing Obligations  By accepting federal funds under this Agreement, the Awardee agrees that it is liable for its percentage of the total allowable project costs as specified below:   |  |  |  | | --- | --- | --- | | Government Share  $/% | Awardee Share  $/% | Total Project Cost | | $/% | $/% | $ |   The Awardee is required to pay the “Cost Share” amount as a percentage of the total project costs in each invoice period for the duration of the period of performance.  If the project is terminated or is otherwise not funded to completion, the Awardee is not required to pay the entire “Cost Share” amount; however, the Awardee is required to pay its share (i.e., percentage) of the total project cost incurred to date as of the termination or end date of the Agreement.  Source of Cost Share  Cost share shall be provided by non-Federal funds unless otherwise authorized by statute. In calculating the amount of the non-Federal contribution:  (1) Base the non-Federal contribution on total project costs, including the cost of work where funds are provided directly to a partner, consortium member or subrecipient, such as a Federally Funded Research and Development Center;  (2) Include the following costs as allowable in accordance with the applicable cost principles:  (i) Cash;  (ii) Personnel costs;  (iii) The value of a service, other resource, or third-party in-kind contribution;  (iv) Indirect costs or facilities and administrative costs; and/or  (v) Any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act);  (3) Exclude the following costs:  (i) Revenues or royalties from the prospective operation of an activity beyond the time considered in the award;  (ii) Proceeds from the prospective sale of an asset of an activity; or  (iii) Other appropriated Federal funds, unless otherwise authorized by statute.  (4) Repayment of the Federal share of a cost-shared activity under Section 988 of the Energy Policy Act of 2005 shall not be a condition of the award.  Cost Share Recordkeeping  The Awardee is required to document and maintain records of project costs paid by DOE and project costs that the Awardee claims as cost sharing, including in-kind contributions. Upon request, the Awardee is required to provide such records to the Agreements Officer.  Inability to Comply with Cost Sharing Obligations  If the Awardee determines that it might be unable to meet its cost sharing obligations, the Awardee is required to notify the Agreements Officer in writing immediately. The notification must include the following information: (i) whether the Awardee intends to continue or phase out the project, and (ii) if the Awardee intends to continue the project, how the Awardee will pay (or secure replacement funding for) the Awardee’s share of the total project cost.  If the Awardee fails to meet its cost sharing obligations, the Agreements Officer may terminate this Agreement or otherwise recover some or all of the financial assistance provided.  Modifying Cost Sharing Contributions  The Awardee must notify and receive written authorization from the Agreements Officer before modifying the amount of cost share contributions. |

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| Milestone Schedule | |
| Description of Use | MANDATORY – if the award is fixed support and includes milestone payments  Describe the milestone including dates and payment amounts, and language stating (if applicable) that payment is dependent on DOE’s determination that awardee has achieved the milestone. |
| Sample Language | Use info from application and negotiations to develop language to develop the milestones such as:   |  |  |  |  | | --- | --- | --- | --- | | **Milestone No.** | **Milestone Description** | **Amount** | **Due at** | |

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| Audits | |
| Description of Use | MANDATORY – if the award is cost reimbursable or fixed support and includes cost share |
| Sample Language | The Awardee is required to provide any information, documents, site access, or other assistance requested by DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office, Defense Contracting Audit Agency) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Awardee’s records relating to this Agreement. DOE will endeavor to provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable. |

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| Single Audit Acts | |
| Description of Use | MANDATORY – if the award is considered Federal Award, is other than a for-profit entity and expends more than $750000 in Federal funds. |
| Sample Language | The Awardee is required to comply with the requirements of the Single Audit Act in accordance 2 CFR 200 Subpart F. |

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| Reporting Requirements | |
| Description of Use | MANDATORY - Include a list of reporting requirements, where to send and the frequency of each item. |
| Sample Language | a. Report Deliverables  Unless otherwise specified by the Agreements Officer, delivery of reports to be furnished to the DOE under this Agreement shall be delivered electronically. All deliverables in this agreement the Awardee shall provide documents to the Agreements Officer and Agreement Technical Representative unless otherwise indicated.  b. Financial Reporting & Records  As directed by the Agreements Officer, the Awardee shall maintain records in accordance with commercially acceptable business practices to account for all funding under this Agreement and shall maintain records in accordance with commercially acceptable business practices to account for Awardee funding under this Agreement. The Awardee's relevant financial records are subject to examination or audit on behalf of Government and/or the Comptroller General for a period not to exceed three (3) years after final payment of the Agreement. The Agreements Officer or Agreement Technical Representative shall have direct access to complete records and information of the Awardee, to the extent necessary to audit to ensure full accountability for all amounts reimbursed by the Government under this Agreement. Such audit, examination, or access shall be performed during business hours on business days upon at least six weeks prior written notice and shall be subject to the security requirements of the audited Party. |

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| Obligation of Funding | |
| Description of Use | MANDATORY address the dollars obligated to the agreement |
| Sample Language | The maximum obligation of the DOE is limited to *$XXXXXXXXXX*. You are not obligated to continue performance of the project beyond the total amount obligated and your pro rata share of the project costs.  *If not fully funded:* Subject to the availability of additional funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority, DOE anticipates obligating the total estimated amount for the duration of this project. However, future funding is not guaranteed. Incurrence of costs for which funding has not been obligated is at the risk of the awardee. |

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| Payment | |
| Description of Use | MANDATORY address the payment provisions for cost reimbursable agreements |
| Sample Language | Only the Awardee may submit reimbursement requests to DOE. Subawardees must submit reimbursement requests to the Awardee.  The Awardee is required to submit reimbursement requests electronically through DOE’s Oak Ridge Financial Service Center Vender Inquiry Payment Electronic Reporting System (VIPERS). To access and use VIPERS, the Awardee is required to enroll and login to the VIPERS website (https://vipers.oro.doe.gov/).  DOE will disburse payments under this Agreement through Automated Clearing House (ACH) VIPERS. The Awardee may check the status of its payments at the VIPERS website. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) filed by the Awardee.  The Awardee’s submission of reimbursement requests should coincide with the Awardee’s normal billing pattern.  DOE will approve reimbursement requests within 30 days of receipt, unless the billing is improper, or the Awardee fails to comply with the terms and conditions of this Agreement.  b. Documentation Required  Every reimbursement request submitted by the Awardee must include:  A Standard Form (SF) 270 (“Request for Advance or Reimbursement”);  A “Reimbursement Request Spreadsheet,” which must contain the information shown in [Insert appendix/attachment and number/alphabet] hereto; and  Supporting documentation, which may consist of summary information (e.g., printouts from internal financial systems) or detailed documentation (e.g., invoices on appropriate letterhead, timecards, travel vouchers). The supporting documentation must show the method by which the Awardee calculated the total Federal share and non-Federal cost share.  Upon request by Agreements Technical Representative or Agreements Officer, the Awardee is required to provide DOE with additional supporting documentation to explain or justify particular expenditures for which it is seeking reimbursement. |

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| Payment | |
| Description of Use | MANDATORY address the payment provisions for fixed support agreements |
| Sample Language | Only the Awardee may submit payment requests to DOE. Subawardees must submit reimbursement requests to the Awardee.  The Awardee is required to submit reimbursement requests electronically through DOE’s Oak Ridge Financial Service Center Vender Inquiry Payment Electronic Reporting System (VIPERS). To access and use VIPERS, the Awardee is required to enroll and login to the VIPERS website (https://vipers.oro.doe.gov/).  DOE will disburse payments under this Agreement through Automated Clearing House (ACH) VIPERS. The Awardee may check the status of its payments at the VIPERS website. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) filed by the Awardee.  The Awardee’s submission of payment requests should coincide with the milestone schedule described in this Agreement. |

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| Modifications | |
| Description of Use | MANDATORY – include to identify procedures and the AO’s authority to modify the Agreement |
| Sample Language | As the result of changing circumstances at any point during the term of this agreement, progress or results may indicate that a change to the agreement may be beneficial to program objectives. Recommendations for modifications, including justifications to support those changes, will be documented in writing and submitted by the performer to the Agreements Officer. This documentation will detail the technical, schedule, and financial impact of the proposed modification. The Agreements officer and the awardee shall approve any agreement modification. The DOE is not obligated to pay for additional costs related to modifications until formally agreed to by the Agreements Officer and the awardee.  The Agreements Officer shall be responsible for the review and verification of any recommendations to revise or otherwise modify the agreement.  For minor or administrative modifications (e.g., changes to the paying office or appropriation data) ), awardee approval is not required.  The Agreements Officer is responsible for instituting all modifications to this agreement. |

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| System for Award Management | |
| Description of Use | Mandatory – include for information on awardee, esp. payment info. |
| Sample Language | *Registered in the System for Award Management (SAM)* means that -  (1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 into SAM;  (2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;  (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and  (4) The Government has marked the record “Active”.  *Unique entity identifier* means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [*www.sam.gov*](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.  (b)(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.  (2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in SAM.  (c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at [*www.sam.gov*](http://www.sam.gov) for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:  (1) Company legal business name.  (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.  (3) Company physical street address, city, state, and Zip Code.  (4) Company mailing address, city, state and Zip Code (if separate from physical).  (5) Company telephone number.  (6) Date the company was started.  (7) Number of employees at your location.  (8) Chief executive officer/key manager.  (9) Line of business (industry).  (10) Company headquarters name and address (reporting relationship within your entity). |

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| Closeout | |
| Description of Use | MANDATORY – provide instruction on closing out the award |
| Sample Language | Upon agreement completion, the AO must close out the agreement in accordance with standard DOE procedures including ensuring all deliverables have been accepted, audits completed, final payment made, and excess funds deobligated.  The Awardee agrees to provide DOE all documents requested to closeout this award. |

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| Performance of Work in the United States | | | |
| Description of Use | MANDATORY - Agreements Officer and Agreement Technical Representative should include percentage negotiated between the parties minimum of 50% otherwise must be 100%. | | |
| Sample Language | All work under this Agreement must be performed in the United States (i.e., the Awardee must expend 100% of the total project cost in the United States), unless the Awardee receives advance written authorization from the Agreements Officer to perform certain work overseas. | | |
| Lobbying Restrictions | | |
| Description of Use | MANDATORY per 18 U.S.C. 1913 | |
| Required Language | LOBBYING RESTRICTIONS By accepting funds under this agreement., you agree that none of the funds obligated on the agreement 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. | |
| Suspension and Debarment | | |
| Description of Use | MANDATORY per Executive Orders 12549 and 12689 | |
| Required Language | In accordance with Executive Orders 12549 and 12689, the regulations at 2 CFR part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) are applicable to this agreement. | |
| Access to Records | |
| Description of Use | MANDATORY per 42 USC 7137 |
| Required Language | In accordance with 42 USC 7137, the Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of any awardees of Federal funds or assistance under this agreement, including subagreements. |
| Nondisclosure and Confidentiality Agreements Assurances | |
| Description of Use | MANDATORY per recent appropriations acts – see Section 743, Titles VII, General Provisions – Government-Wide, of the Consolidated Appropriations Act, 2023 |
| Required Language | (1) By entering into this agreement, the awardee 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 contactors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.  (2) The undersigned further attests that awardee does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:  a. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.  b. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.  c. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law. |
| Corporate Felony Conviction and Federal Tax Liability Assurances | |
| Description of Use | MANDATORY per recent appropriations acts – see Sections 744 and 745, Titles VII, General Provisions – Government-Wide, of the Consolidated Appropriations Act, 2023 |
| Sample Language | By entering into this agreement, the undersigned attests that [insert corporation name] has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.  The undersigned further attests that [insert corporation name] does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.  For purposes of these assurances, the following definitions apply: A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations. |
| Insolvency, Bankruptcy or Receivership | |
| Description of Use | MANDATORY |
| Sample Language | a. You shall immediately notify the DOE of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.  b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this agreement.  c. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of your agreement to determine your compliance with the required elements of the agreement (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines that there are significant deficiencies or concerns with your performance under the agreement, DOE reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.  d. Failure of the Awardee to comply with this term may be considered a material noncompliance of this agreement. |
| Disputes and Appeals | | | |
| Description of Use | MANDATORY – AOs will use a disputes clause. | | |
| Sample Language | ***(a)Informal dispute resolution.*** Whenever practicable, DOE will attempt to resolve informally any dispute over the administration of Federal financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, will be preferred over formal procedures, to the extent practicable. Disputes will be raised by the awardee to the Agreement officer or by the Agreements Officer to the awardee point of contact.  (b) ***Final determination.*** Whenever a dispute is not resolved informally, DOE will mail (by certified mail) a brief written determination signed by an Agreement Officer, setting forth DOE's final disposition of such dispute. Such determination will contain the following information:  (1) A summary of the dispute, including a statement of the issues and of the positions taken by DOE and the party or parties to the dispute; and  (2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.  (c) ***Right of appeal.*** Except as provided in paragraph (e) of this section, the final determination under paragraph (b) of this section may be appealed to the cognizant Senior Procurement Executive (SPE) for either DOE or the National Nuclear Security Administration (NNSA). The appeal must be received by DOE within 90 days of the receipt of the final determination. The mailing address for the DOE SPE is Office of Acquisition Management, 1000 Independence Ave., SW., Washington, DC 20585. The mailing address for the NNSA SPE is Office of Partnership and Acquisition Services, National Nuclear Security Administration (NNSA), 1000 Independence Ave. SW., Washington, DC 20585.  (d) ***Effect of appeal.*** The filing of an appeal with the SPE will not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the SPE, or to preserve its ability to provide relief in the event the SPE decides in favor of the appellant.  (e) ***Review on appeal.***  (1) The SPE will have no jurisdiction to review:  (i) DOE denial of a request for an Exception;  (ii) DOE denial of a request for a budget revision or other change in the approved project under another term or condition of the award;  (iii) Any DOE decision about an action requiring prior DOE approval under another term or condition of the award;  (2) In addition to any right of appeal established by applicable law, the SPE will have jurisdiction to review:  (i) A DOE determination that the awardee has failed to comply with the applicable program statute or rules, or other terms and conditions of the award; and  (ii) Termination of an award, in whole or in part;  (3) In reviewing disputes authorized under [paragraph (e)(2)](https://www.ecfr.gov/current/title-2/section-910.128#p-910.128(f)(2)) of this section, the SPE will be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.  (4) The decision of the SPE will be the final agency decision of DOE. | | |
| Termination | | | |
| Description of Use | MANDATORY - include a termination clause that outlines the rights of DOE and the awardee | | |
| Sample Language | (1) An award may be terminated in whole or in part by the AO, if the awardee materially fails to comply with the terms and conditions of the award.  (2) An award may be terminated in whole or in part by mutual agreement of the parties by providing at least 30 days advance written notice to the other party, provided such notice is preceded by consultation between the parties. The two parties will negotiate the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. If either party determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purpose for which the award was made, the award may be terminated in its entirety.  (3) An award may be terminated in whole or in part by either party if the agreement includes an article with the terms and procedures for termination. | | |
| Fraud, Waste and Abuse | | | |
| Description of Use | Mandatory | | |
| Sample Language | The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE’s programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit  https://www.energy.gov/ig/ig‐hotline.  The non‐Federal entity must disclose, in a timely manner, in writing to DOE all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award. | | |
| Indemnification | | | |
| Description of Use | Mandatory for high-risk awards with other than State and institutions of higher education | | |
| Sample Language | The Awardee will indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions. | | |

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| Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment | |
| Description of Use | MANDATORY – when the award may require any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system per Section 889 of the of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232) |
| Sample Language | (a) Definitions. As used in this clauseCovered foreign country means The People's Republic of China. Covered telecommunications equipment or services means(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation [or any subsidiary or affiliate of such entities); (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes. video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of investigation, reasonably believes to be an entity owned or conlrolled by, or otherwise connected to, the government of a covered foreign country. Critical technology means(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 77 4 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled[i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or (ii) For reasons relating to regional stability or surreptitious listening; (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 u.s.c. 4817). Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service. (b) Prohibition. Section 889(a)(l)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (cl of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104. (cl Exceptions. This clause does not prohibit contractors from providing(1) A service that connects to Lhe facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles. (d) Reporting requirement. (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at https:1/ dibnet.dod.mil. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https:/1 dibnet.dod.mil. (2) The Contractor shall report the following information pursuant to paragraph (d)(l) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph ( d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (el, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items. |

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| Acquired Real Property | |
| Description of Use | Include if 1 or 2 applies  Use FY23 appropriations authority for vesting unconditional title  DOE funds property under conditional title |
| Sample Language | Alt (1) FY23 appropriations language if approved by Secretary or designee  Title to real property acquired or improved under a Federal award will vest upon acquisition with the non-Federal entity. The Awardee will use the property for its original authorized purpose during the term of the award. The Awardee will maintain appropriate records of the property acquisition and maintain adequate insurance on the property.  Alt (2) all other purchases of real property  Title to real property acquired or improved under a Federal award will vest conditionally upon acquisition. The Awardee cannot encumber this property without prior written approval from the AO. 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 the Federal awarding agency.  The Awardee will use the property for its original authorized purpose during the term of the award. The Awardee will maintain appropriate records of the property acquisition and maintain adequate insurance on the property.  (See Continued Use clause in PF2022-43 and 2 CFR for additional information.) |

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| Foreign National Participation | |
| Description of Use | MANDATORY |
| Sample Language | If the Awardee (including any of its subawardees and contractors) anticipates involving foreign nationals in the performance of the Award, the Awardee must, upon DOE’s request, provide DOE with specific information about each foreign national to ensure compliance with the requirements for participation and access approval. The volume and type of information required may depend on various factors associated with the Award.  The DOE AO will notify the Awardee if this information is required.  DOE may elect to deny a foreign national’s participation in the Award. Likewise, DOE may elect to deny a foreign national’s access to a DOE sites, information, technologies, equipment, programs, or personnel. |

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| Intellectual Property | |
| Description of Use | MANDATORY – if IP rights are required |
| Sample Language | Work with local IP Counsel to develop the rights applicable to the award such as Data Rights, Rights in Inventions and U.S. Competitiveness (See Section 3.2.13) |

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| US Competitiveness | |
| Description of Use | MANDATORY - Insert when IP rights for inventions are included in the OT agreement and with cognizant IP counsel to review the terms. |
| Sample Language | The Awardee agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Awardee can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Awardee agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. Should the Awardee or other such entity receiving rights in the invention(s): (1) undergo a change in ownership amounting to a controlling interest, or (2) sell, assign, or otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. The Awardee and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Awardee will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.  The requirements, rights and administration of the above paragraph are further clarified as follows:  1. Waivers. The Awardee (or any entity subject to [[INSERT REFERENCE TO US COMPETITIVENESS PARAGRAPH]]) may request a waiver or modification of [[INSERT REFERENCE TO US COMPETITIVENESS PARAGRAPH]]. Such waivers or modifications may be granted when DOE determines that (1) the Awardee (or any entity subject to [[INSERT REFERENCE TO US COMPETITIVENESS PARAGRAPH]]) has demonstrated, with quantifiable data, that manufacturing in the United States is not commercially feasible and (2) a waiver or modification would best serve the interests of the United States and the general public.  2. Final determination of breach of [[INSERT REFERENCE TO US COMPETITIVENESS PARAGRAPH]]. If DOE determines the Awardee is in breach of [[INSERT REFERENCE TO US COMPETITIVENESS PARAGRAPH]], the Department may issue a final written determination of such breach. If such determination includes a demand for title to the subject inventions under the award, the demand for title will cause an immediate conveyance and assignment of all rights to all subject inventions under the award to the United States Government, including all pending patent applications and all patents that cover any subject invention, without compensation. Any such final determination shall be signed by the cognizant DOE Contracting Officer with the concurrence of the Assistant General Counsel for Technology Transfer & Intellectual Property. Advanced notice will be provided for comment to the Awardee before any final written determination by DOE is issued.  3. For clarity, if DOE determines that the Awardee is in breach of [[INSERT REFERENCE TO US COMPETITIVENESS PARAGRAPH]], the Awardee shall not be entitled to any compensation, or to the license to the subject invention including the reserved license in 37 C.F.R. 401.14(e)(1) unless DOE re-grants a license through a separately agreed upon licensing agreement. |

# **Optional Articles**

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| Purpose | |
| Description of Use | OPTIONAL - This article will briefly describe the purpose of the OT agreement |
| Sample Language | The purposes of this Agreement are to:  1) Provide funding to (insert awardee name) support Research, Development, Demonstration & Deployment of innovative technologies;  2) Leverage use of small, disadvantaged businesses; and  3) *add as desired.* |

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| Cybersecurity Plan | |
| Description of Use | OPTIONAL: Insert if project includes Information Technology or as otherwise designated by CESER |
| Sample Language | The Awardee must meet the stated objectives and milestones set forth in its Cybersecurity Plan, which is incorporated into the Award as Attachment X. A report on the Awardee’s progress towards meeting the objectives and milestones set forth in the Cybersecurity Plan must be included in the continuation application.  Any DOE and/or Laboratory review comments or feedback provided to Awardees does not constitute an endorsement or approval of any specific elements within the cybersecurity plan or the proposed security approach. Therefore, such feedback should not be referenced or used in marketing or promotional materials. |
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| Site Visits | |
| Description of Use | Optional – Include if DOE will need to visit the Awardees facilities |
| Sample Language | DOE’s authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees 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. |

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| Pre-award | |
| Description of Use | MANDATORY - Choose one option  No pre-award costs allowed  Pre-award costs with prior approval  Pre-award costs at own risk |
| Sample Language | You are entitled to reimbursement for costs incurred on or after [MonthDayYear], as authorized by the pre-award costs letter dated [Date of Approval Letter], if such costs are allowable under this agreement.  If the Awardee elects to undertake activities that are not authorized for Federal funding by the Agreement Officer in advance of DOE completing the NEPA review, the Awardee is doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share. Nothing contained in the pre-award cost reimbursement regulations or any pre-award costs approval letter from the Agreement Officer override these NEPA requirements to obtain the written authorization from the Agreement Officer prior to taking any action that may have an adverse effect on the environment or limit the choice of reasonable alternatives. |

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| National Policy Assurances | |
| Description of Use | OPTIONAL |
| Sample Language | The Awardee acknowledges that it is subject to all relevant U.S. Laws and implementing regulations/Executive Orders, in particular:  1. Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d and 2000e, respectively, (prohibiting discrimination based on race, color, religion, sex, and national origin)  2. The Age Discrimination in Employment Act of 1967, 29 USC § 621 et. seq. (prohibits employment discrimination against persons 40 years of age or older)  3. The Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq. (prohibits unjustified discrimination based on disability)  4. The Clean Water Act, 33 U.S.C. § 1251 et. seq.  5. The Clean Air Act, 42 U.S.C. § 7401 et. seq.  6. The Occupational Safety and Health Act of 1970, 29 USC § 651 et. seq. (promotes safe and healthful working conditions)  7. Executive Order No. 13224, Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, 66 FR 49079  8. The National Environmental Policy Act, 42 U.S.C. §4321 et. seq. |

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| Conference Spending | |
| Description of Use | OPTIONAL |
| Sample Language | The awardee will not expend any funds on a conference not directly and programmatically related to the purpose for which the 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. |

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| Publications | |
| Description of Use | OPTIONAL – include if there is the possibility for publications acknowledgement and disclaimer to be included in publications. |
| Sample Language | An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:  Acknowledgment: "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [Add Other Agencies] under Award Number(s) [Enter the award number(s)]."  Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof." |

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| Inspection and Acceptance | |
| Description of Use | OPTIONAL |
| Sample Language | The AO or the duly authorized representative will perform inspection and acceptance of materials and services to be provided under this agreement. The Company will only tender for acceptance deliverables that substantially conform to the requirements of the agreement. The Government reserves the right to inspect deliverables that have been tendered for acceptance for a period of thirty (30) days. The Government may require resubmittal of nonconforming deliverables, after the Company consults with the Government regarding deliverables reasonably determined by the Government, in writing, to be nonconforming, at no increase in agreement price. The Government must exercise its resubmittal rights and deliver a detailed written description of any nonconformance to Company within thirty (30) days after any defect was discovered or should have been discovered, per the Notice requirements of this agreement.  Inspection and acceptance will be performed by (fill-in AO, ATR, or other), at: (fill-in address) |

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| National Security: Classifiable Results Originating Under an Award | |
| Description of Use | OPTIONAL – consider if R&D could lead to classifiable results or other information that needs to be protected. |
| Sample Language | This award is intended for unclassified, publicly releasable research. You will not be granted access to classified information. DOE does not expect that the results of the research project will involve classified information. Under certain circumstances, however, a classification review of information originated under the award may be required. The Department may review research work generated under this award at any time to determine if it requires classification.  a. Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to the national security will not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If you originate information during the course of this award that you believe requires classification, you must promptly:  1. Notify the AO and ATR;  2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P.O. Box A; Germantown, MD 20875-0963, for classification review.  3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 30 days after receipt by the Director, Office of Classification and Information Control.  b. If you originate information concerning the production or utilization of special nuclear material (i.e., plutonium, uranium enriched in the isotope 233 or 235, and any other material so determined under section 51 of the Atomic Energy Act) or nuclear energy, you must:  1. Notify the AO and ATR;  2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P. O. Box A; Germantown, MD 20875-0963 for classification review within 180 days of the date the recipient first discovers or first has reason to believe that the information is useful in such production or utilization; and  3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 90 days after receipt by the Director, Office of Classification and Information Control.  c. If DOE determines any of the information requires classification, you agree that the Government may terminate the award with consent of the recipient and award to a contract. All material deemed to be classified must be forwarded to the DOE, in a manner specified by DOE. |

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| Export Control | |
| Description of Use | OPTIONAL |
| Sample Language | The U.S. government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as “Export Controls.” All awardees and subawardees are responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under a resulting award.  The Awardee must immediately report to DOE any export control violations related to the project funded under this award, at the awardee or subawardee level, and provide the corrective action(s) to prevent future violations. |

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| Human Subjects Research 1 | |
| Description of Use | OPTIONAL |
| Sample Language | Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (DOE) funding is subject to the requirements of DOE Order 443.1C, *Protection of Human Research Subjects*, 45 CFR Part 46, *Protection of Human Subjects* (*subpart A which is referred to as the “Common Rule”),* and10 CFR Part 745, *Protection of Human Subjects*.  Federal regulation and the DOE Order require review by an Institutional Review Board (IRB) of all proposed human subjects research projects. The IRB is an interdisciplinary ethics board responsible for ensuring that the proposed research is sound and justifies the use of human subjects or their data; the potential risks to human subjects have been minimized; participation is voluntary; and clear and accurate information about the study, the benefits and risks of participating, and how individuals’ data/specimens will be protected/used, is provided to potential participants for their use in determining whether or not to participate.  The Awardee will provide the Federal Wide Assurance number identified in item 1 below and the certification identified in item 2 below to DOE prior to initiation of any project that will involve interactions with humans in some way (e.g., through surveys); analysis of their identifiable data (e.g., demographic data and energy use over time); asking individuals to test devices, products, or materials developed through research; and/or testing of commercially available devices in buildings/homes in which humans will be present. *Note:* This list of examples is illustrative and not all inclusive.  No DOE funded research activity involving human subjects, biospecimens, or identifiable private information will be conducted without:  A registration and a Federal Wide Assurance of compliance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services; and  Certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance.  IRB review may be accomplished by the awardee’s institutional IRB; by the Central DOE IRB; or if collaborating with one of the DOE national laboratories, by the DOE national laboratory IRB.  The Awardee is responsible for ensuring all subawardees comply and for reporting information on the project annually to the DOE Human Subjects Research Database (HSRD) at <https://science.osti.gov/HumanSubjects/Human-Subjects-Database/home>. *Note:* If a DOE IRB is used, no end of year reporting will be needed.  Additional information on the DOE Human Subjects Research Program can be found at: <https://science.osti.gov/ber/human-subjects> |

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| Human Subjects Research 2 | |
| Description of Use | OPTIONAL - Use for agreements when research will involve use of human subjects and the Institutional Review Board (IRB) approval has not been granted prior to award. |
| Sample Language | The research to be performed under this award will involve the use of human subjects. Research involving human subjects conducted with DOE funding is subject to the requirements 10 CFR Part 745, Protection of Human Subjects, and 45 CFR Part 46, Protection of Human Subjects. In Particular, no research activity involving human subjects will be conducted with DOE funding without 1) a registration and a Federal Wide Assurance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services and 2) certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance and will be subject to continuing review by the IRB, in accordance with 10 CFR Section 745.103. The recipient will provide the assurance number identified in item 1 and the certification identified in item 2 to DOE prior to initiation of any research involving human subjects as defined in 10 CFR Section 745.102. Violation of these requirements is a material violation of the terms and conditions of the award, and subject to DOE enforcement, up to and including termination, in accordance with 10 CFR Section 745.123. The recipient will apply this provision to subrecipients in accordance with 10 CFR Section 745.101.  Additional information on the DOE Human Subjects Research Program at <https://science.osti.gov/HumanSubjects/Human-Subjects-Database/home>. |
| National Environmental Policy Act (NEPA) Requirements | |
| Description of Use | Optional only if a NEPA clearance is not required. |
| Sample Language | You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE/NNSA providing either a NEPA clearance or a final NEPA decision regarding this project. Prohibited actions include: [Activities that cannot be performed before the NEPA clearance or decision is completed].  This restriction does not preclude you from activities that can be performed before the NEPA clearance or decision is completed].  If you move forward with activities that are not authorized for federal funding by the DOE Agreements Officer in advance of the final NEPA decision, you are doing so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.  If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE/NNSA initiating the NEPA process. |

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| Foreign Collaboration Considerations | |
| Description of Use | OPTIONAL – include if it is anticipated that foreign organizations may collaborate on the award. |
| Sample Language | Consideration of new collaborations with foreign organizations and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign organizations or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.  Existing collaborations with foreign organizations and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.  Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences, use of the Recipient’s services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Recipient’s standard policies and procedures. |

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| Buy American Requirement for Infrastructure Projects | |
| Description of Use | *OPTIONAL - This term must be included in awards that the program office has determined, or the applicant has stated, contain infrastructure projects or activities. This term should not be included in prime awards made to For-Profit Entities unless the For-Profit Entity, through its proposal or negotiation, has agreed to the Buy America Requirement.* |
| Sample Language | **A. Definitions**  **Components** are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).  **Construction Materials** are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.  **Domestic Content Procurement Preference Requirement**- means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—  (A) all iron and steel used in the project are produced in the United States;  (B) the manufactured products used in the project are produced in the United States; or  (C) the construction materials used in the project are produced in the United States.  Also referred to as the **Buy America Requirement**.  **Infrastructure** includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy -including electric vehicle (EV) charging.  The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.  **Manufactured Products** are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.  **Primarily of iron or steel** means greater than 50% iron or steel, measured by cost.  **Project** means the construction, alteration, maintenance, or repair of infrastructure in the United States.  **Public** The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.  **B. Buy America Requirement**  None of the funds provided under this award (includes federal share and Awardee cost-share) may be used for a project for infrastructure unless:  All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;  All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and  All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.  The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.  Awardees are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The awardee must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subawardees comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.  **C. Certification of Compliance**  The Awardee must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.  The Awardee must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the Awardee. The Awardee must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.  **D. Waivers**  When necessary, the Awardee may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the AO. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.  Waivers must be based on one of the following justifications:  1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;  2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or  3. Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.  Requests to waive the Buy America Requirement must include the following:  • Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);  • Awardee name and Unique Entity Identifier (UEI);  • Award information (Federal Award Identification Number, Assistance Listing number);  • A brief description of the project, its location, and the specific infrastructure involved;  • Total estimated project cost, with estimated federal share and awardee cost share breakdowns;  • Total estimated infrastructure costs, with estimated federal share and awardee cost share breakdowns;  • List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the awardee seeks to waive from the Buy America Requirement, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;  • A detailed justification as to how the non-domestic item(s) is/are essential to the project;  • A certification that the awardee made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;  • A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the awardee to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and  • Anticipated impact to the project if no waiver is issued.  The Awardee should consider using the following principles as minimum requirements contained in their waiver request:  • Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Awardee should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).  • Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.  • Conditional: The Awardee may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.  DOE may request, and the awardee must provide, additional information for consideration of this wavier. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOEs final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process. |

## **Suggested Articles**

## Conflict of Interest

## Cost Principles

## Direct Funding of FFRDCs

## Statement of Federal Stewardship

## Rebudgeting of costs

## Use of Program Income

## Federal, State, and Municipal Requirements

## Insurance Coverage

## Federally Owned and Exempt Property

## Personal Property – Equipment and Supplies

## Conditional Availability of Funds

## Historic Preservation

## Decontamination and/or Decommissioning

## Animal Welfare

## Subawards to DOE National Laboratories

## Organization Conflicts of Interest

## Personal Conflicts of Interest

## Reporting Executive Compensation and First-Tier Subcontract Awards

## Change of Ownership/Change of Control

## Nuclear Hazards Indemnification

## Limitation of Damages

## Order if Precedence

## Execution

## Non-assignability