

**GENERAL TERMS AND CONDITIONS FOR
DOE SBIR AND STTR PHASE I AND PHASE II GRANTS**

SBIR/STTR-GTC-0001 EXPLANATION

- a. These general terms and conditions do not restate all the provisions of applicable statutes and regulations, nor do they represent an exhaustive listing of all requirements applicable to this Assistance Agreement. Rather, they highlight and are consistent with those requirements which are especially pertinent to research grants in general. They are emphasized by inclusion here because:
 - (1) they are invoked with high frequency; and
 - (2) their violation is a matter of especially serious concern.
- b. In addition to these general terms and conditions, the recipient must comply with all governing requirements, including those identified in block 9 of the Assistance Agreement face page and those included in the “Special Terms and Conditions for Use in SBIR/STTR Awards” attached to this Assistance Agreement package.

SBIR/STTR-GTC-0003 DEFINITIONS

- a. Grants/Agreements Officer. This may be any Contracting Officer of the awarding office. The terms, “the Contracting Officer named on the face page of this award,” “the Contracting Office,” “a DOE Contracting Officer,” “Grants Officer,” and “Agreements Officer” refer to this person as well. The address to be used in corresponding with the Grants/Agreements Officer appears in block 16 of the Assistance Agreement.
- b. Grant Administrator/Assistance Agreement Administrator. The individual named as the DOE Assistance Agreement Administrator on the Continuation Sheet of the Assistance Agreement.
- c. Principal Investigator. As used herein, the scientist or other programmatic expert named in block 14 of the Assistance Agreement, designated by the recipient organization to direct the scientific/technical efforts being supported.
- d. Prior Approval. A written or electronically-transmitted statement from the Grants/Agreements Officer that a cost may be incurred or an action may be taken. The approval may take the form of a letter, e-mail message, or a modification to the Assistance Agreement.
- e. Director, SBIR/STTR Programs Office. The DOE Headquarters manager in charge of the SBIR/STTR programs. The Program Director’s address is:

U.S. Department of Energy
SC-29/Germantown Building
1000 Independence Avenue, SW
Washington, DC 20585-1290

SBIR/STTR-GTC-0004 REVISION OF BUDGET AND PROGRAM PLANS

The Recipient must obtain the Grants/Agreements Officer’s prior approval for the following changes:

- (1) budget revisions as described in 2 CFR 200.308 Revision of Budget and Program Plans to include the transfer of funds among direct cost categories, functions, and activities for awards in which the Federal share of the project exceeds the simplified acquisition threshold (as defined at 48 C.F.R. 2.101), and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by DOE (does not apply to Phase I awards made on a fixed obligation basis).
- (2) change in scope or the objectives of the project,
- (3) the need for additional funding,
- (4) a change in approved principal investigator or other key personnel specified in the application of award document,
- (5) an absence of more than 3 months or a reduction of 25 percent, or more, in the approved Principal Investigator’s time devoted to the project,

- (6) the inclusion of pre-award costs for periods greater than 90 calendar days from the official project start date (not applicable to Phase I awards),
- (7) a “no-cost” extension of the period of performance per SBIR/STTR-GTC-0009 EXTENSIONS,
- (8) any subaward, transfer, or contracting out of substantive program performance under the award, that was not described in the application and funded in the approved award,
- (9) the purchase of real property or equipment, not described in the application and funded in the approved award,

SBIR/STTR-GTC-0005 ALLOWABLE COSTS/APPLICABLE COST PRINCIPLES

- a. In accordance with the applicable cost principles cited below, the allowable costs of this grant shall consist of the actual allowable direct costs incident to performance of the project, plus the allocable portion of the allowable indirect costs, if any, of the organization, less applicable credits. The allowable costs shall not exceed the amount shown on the face page of this Assistance Agreement for the total approved budget for the current budget period (Block 13, Funds Obligated) or as otherwise stipulated in the award Special Terms and Conditions.
- b. The allowability of costs for work performed under this grant and any subsequent subaward will be determined in accordance with the Federal cost principles applicable to the recipient or subrecipient in effect on the date of award or the date of the subaward, except as modified by other provisions of this grant or subaward. The recipient or subrecipient shall specify in any cost-reimbursement contract under the grant or subaward the applicable cost principles cited in this provision that apply to the contractor.
- c. The Federal cost principles applicable to specific types of recipients, subrecipients, and contractors under grants and subawards are stated in 2 CFR 910.352 Cost Principles.

SBIR/STTR-GTC-0006 AUDITS

Recipients that expend \$750,000.00 or more in a year under DOE awards are subject to the audit requirements of 2 CFR 910.501 Audit Requirements and are responsible for compliance with those requirements.

SBIR/STTR-GTC-0007 PRE-AWARD COSTS

Recipients may incur pre-award costs up to ninety (90) calendar days prior to the effective date of an award. Pre-award costs for periods preceding ninety (90) calendar days prior to the effective date of the award are allowable only if approved in writing, prior to incurrence, by a DOE Grants/Agreements Officer. Any pre-award expenditures (including those made after DOE approval) are made at the recipient’s risk and do not impose any obligation on the DOE.

SBIR/STTR-GTC-0009 EXTENSIONS

Recipient requests for extensions of time on the grant must be submitted for approval to the Grants/Agreements Officer at least ten (10) calendar days prior to the end of the period of performance in accordance with 2 CFR 200.308 Revision of Budget).

SBIR/STTR-GTC-0010 MAXIMUM DEPARTMENTAL OBLIGATION

DOE's maximum obligation to the recipient is the amount shown in block 13, Funds Obligated. DOE shall not be obligated to make any additional, supplemental, continuation, renewal or other award for the same or any other purpose.

SBIR/STTR-GTC-0012 PRINCIPAL INVESTIGATOR

- a. The principal investigator is named in Block 14 of the Assistance Agreement.
- b. Because the DOE decision to fund a project is based, to a significant extent, on the qualifications and level of participation of the principal investigator, a change of principal investigator or of the level of effort of the principal investigator is considered a change in the approved project. There shall be only one principal investigator at any one time during the performance of this grant. Department of Energy Grants/Agreements Officer approval must be obtained prior to any change of the principal investigator.
- c. The recipient represents that either it or, if this is a STTR award, the research institution (as defined in the Funding Opportunity Announcement) is the source of primary employment of the principal investigator at the time of the award of this grant, and agrees it or, if this is a STTR award, the research institution, will continue to be such during the project period of the grant.

SBIR/STTR-GTC-0015 RESEARCH EFFORT

For both SBIR and STTR, there are requirements on the amount of the funded research or analytical effort that must be performed by the small business. The funded research or analytical effort is defined as the total requested funding minus the cost of any purchased or leased equipment, materials, or supplies (whether purchased by the recipient or a subcontractor). These requirements are:

- a. **SBIR:**
 - (1) Phase I: A minimum of two-thirds of the funded research or analytical effort must be performed by the recipient; a maximum of one-third of the effort may be performed by consultants or subcontractors.
 - (2) Phase II: A minimum of one-half of the research and analytical effort of Phase II must be performed by the recipient; up to one-half of the research or analytical effort may be performed by consultants or subcontractors.
- b. **STTR:**
 - (1) Phase I: A minimum of 40% of the work must be performed by the small business and at least 30% of the work must be performed by a single non-profit research institution partner
 - (2) Phase II: The same as STTR Phase I.

SBIR/STTR-GTC-0016 FOREIGN TRAVEL

Foreign travel is not authorized except as identified in the approved budget.

SBIR/STTR-GTC-0017 CONSULTANT SERVICES

Costs of consultant services are allowable in accordance with the applicable cost principles. These principles include the requirement that the consultant not be an employee of the recipient organization.

SBIR/STTR-GTC-0021 PUBLIC ACCESS TO INFORMATION

The Freedom of Information Act, as amended, and the DOE implementing regulations (10 CFR 1004), require DOE to release certain documents and records regarding grants to any person who provides a written request. The intended use of the information will not be a criterion for release. These requirements apply to information held by DOE and do not require recipients, their subrecipients, or their contractors to permit public access to their records.

SBIR/STTR-GTC-0022 SUSPENSION AND TERMINATION

Under the provisions of 2 CFR 200.338, Remedies for Non-Compliance and 2 CFR 200.339 Termination, DOE may suspend or terminate the award, in whole or in part:

- (1) when the recipient has failed to comply with the terms and conditions of the award;
- (2) for cause; or
- (3) for any reason by mutual agreement between DOE and the recipient upon the request of either party.

SBIR/STTR-GTC-0023 INTEREST

The requirements of this paragraph are not applicable when the Grants/Agreements Officer affirmatively determines that its inclusion would not be in the best interests of the Government.

- a. Notwithstanding any other term or condition of the grant, all amounts that become payable by the recipient to the Government under the grant shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury (Secretary) as provided in Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), 2 CFR 200.345 Collection of Amounts Due, which is applicable to the period in which the amount becomes due, as provided in paragraph b. below, and then at the rate applicable for each 3-month period as fixed by the Secretary until the amount is paid.
- b. Amounts shall be due at the earliest of the following dates:
 - (1) The date fixed under the grant.
 - (2) The date of mailing or hand-delivery of the first written demand for payment consistent with the grant, including any demand resulting from a termination.
 - (3) The date the Government transmits to the recipient a proposed agreement to confirm completed negotiations establishing the amount of debt.
- c. The interest charge made under this provision may be reduced in accordance with the procedures prescribed in 4 CFR 102.13 Interest, Penalties, and Administrative Costs or in accordance with agency regulations in effect on the date of original award of the grant.

SBIR/STTR-GTC-0024 PATENT RIGHTS

a. Definitions

“Invention” means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

“Made” when used in relation to any invention means the conception or first actual reduction to practice of such invention.

“Nonprofit organization” is defined in 2 CFR 200.70.

“Practical application” means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

“Small business firm” means a small business concern as defined at section 2 of Public Law 85-536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12, respectively, will be used.

“Subject invention” means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of award performance.

b. Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

c. Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

- (1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.
- (2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.
- (4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of DOE, be granted.

d. Conditions When the Government May Obtain Title

The Recipient will convey to DOE, upon written request, title to any subject invention:

- (1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this patent rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;
- (2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or
- (3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to Recipient and Protection of the Recipient Right to File

- (1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope of the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

- (2) The Recipient's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Recipient Action to Protect Government's Interest

- (1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:
 - (i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and
 - (ii) Convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.
- (2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- (4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention."

g. Subaward/Contract

- (1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.
- (2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by 2 CFR 910.362(c).

- (3) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipient/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause.

h. Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

i. Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in-Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the Agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

- (1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

k. Special Provisions for Awards With Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;
- (2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

- (3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

l. Communications

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel..

m. Electronic Filing

Unless otherwise specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

SBIR/STTR-GTC-0025 RIGHTS IN DATA - SBIR/STTR PROGRAM

(a) Definitions.

- (1) Computer Software. Computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer Software does not include Computer Databases or Computer Software Documentation.
- (2) Data. All recorded information, regardless of the form or method of recording or the media on which it may be recorded. The term does not include information incidental to contract or grant administration, such as financial, administrative, cost or pricing or management information.
- (3) Form, Fit, and Function Data. Data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For Computer Software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.
- (4) *Reserved*
- (5) Operations, Maintenance, Installation, or Training Purposes (OMIT) Data. Data that is necessary for operation, maintenance, installation, or training purposes (but not including detailed manufacturing or process data).
- (6) SBIR/STTR Computer Software Rights. The Federal Government's rights during the SBIR/STTR Protection Period in specific types of SBIR/STTR Data that are Computer Software.
 - (A) The Federal Government may use, modify, reproduce, release, perform, display, or disclose SBIR/STTR Data that are Computer Software within the Government. The Federal Government may exercise SBIR/STTR Computer Software Rights within the Government for:
 - (1) Use in Federal Government computers;
 - (2) Modification, adaptation, or combination with other Computer Software, provided that

the Data incorporated into any derivative software are subject to the SBIR/STTR Computer Software Rights described herein and that the derivative software is marked as containing SBIR/ STTR Data;

- (3) Archive or backup; or
 - (4) Distribution of a computer program to another Federal agency, without further permission of the Awardee, if the Awardee is notified of the distribution and the identity of the recipient prior to the distribution, and a copy of the SBIR/STTR Computer Software Rights included in the Funding Agreement is provided to the recipient.
- (B) The Federal Government shall not release, disclose, or permit access to SBIR/STTR Data that is Computer Software for commercial, manufacturing, or procurement purposes without the written permission of the Awardee. The Federal Government shall not release, disclose, or permit access to SBIR/STTR Data outside the Government without the written permission of the Awardee unless:
- (i) The non-Governmental entity has entered into a non-disclosure agreement with the Government that complies with the terms for such agreements outlined in § 8 of the SBIR/STTR Policy Directive; and
 - (ii) The release or disclosure is—
 - (I) To a Federal Government support service contractor or their subcontractor for purposes of supporting Government internal use or activities, including evaluation, diagnosis and correction of deficiencies, and adaptation, combination, or integration with other Computer Software provided that SBIR/ STTR Data incorporated into any derivative software are subject to the SBIR/STTR Computer Software Rights described herein; or
 - (II) Necessary to support certain narrowly-tailored essential Government activities for which law or regulation permits access of a non-Government entity to a contractors' data developed exclusively at private expense, non- SBIR/STTR Data, such as for emergency repair and overhaul.
- (7) SBIR/STTR Data. All Data developed or generated in the performance of an SBIR or STTR award, including Technical Data and Computer Software developed or generated in the performance of an SBIR or STTR award. The term does not include information incidental to contract or grant administration, such as financial, administrative, cost or pricing or management information.
- (8) SBIR/STTR Data Rights. The Federal Government's license rights in properly marked SBIR/STTR Data during the SBIR/STTR Protection Period are as follows: SBIR/STTR Technical Data Rights in SBIR/STTR Data that are Technical Data or any other type of Data other than Computer Software; and SBIR/STTR Computer Software Rights in SBIR/STTR Data that is Computer Software. Upon expiration of the protection period for SBIR/STTR Data, the Federal Government shall have Unlimited Rights and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. The Federal Government receives Unlimited Rights in Form Fit, and Function Data, OMIT Data, and all unmarked SBIR/STTR Data.
- (9) SBIR/STTR Protection Period. The period of time during which the Federal Government is obligated to protect SBIR/STTR Data against unauthorized use and disclosure in accordance with SBIR/STTR Data Rights. The SBIR/STTR Protection Period begins at award of an SBIR/STTR Funding Agreement and ends twenty years from that date.
- (10) SBIR/STTR Technical Data Rights. The Federal Government's rights during the SBIR/STTR Protection Period in SBIR/STTR Data that are Technical Data or any other type of Data other than Computer Software.
- (A) The Federal Government may, use, modify, reproduce, perform, display, release, or disclose SBIR/STTR Data that are Technical Data within the Government; however, the Government

shall not use, release, or disclose the data for procurement, manufacturing, or commercial purposes; or release or disclose the SBIR/STTR Data outside the Government except as permitted by paragraph (B) below or by written permission of the Awardee.

- (B) SBIR/STTR Data that are Technical Data may be released outside the Federal Government without any additional written permission of the Awardee only if the non-Governmental entity or foreign government has entered into a non-disclosure agreement with the Federal Government that complies with the terms for such agreements outlined in § 8 of the SBIR/STTR Policy Directive and the release is:
- (i) Necessary to support certain narrowly-tailored essential Government activities for which law or regulation permits access of a non-Government entity to a contractors' data developed exclusively at private expense, non- SBIR/STTR Data, such as for emergency repair and overhaul;
 - (ii) To a Government support services contractor in the performance of a Government support services contract for internal Government use or activities, including evaluation, diagnosis or modification, provided that SBIR/STTR Technical Data incorporated into any derivative Data are subject to the SBIR/STTR Technical Data Rights, and the release is not for commercial purposes or manufacture;
 - (iii) To a foreign government for purposes of information and evaluation if required to serve the interests of the U.S. Government; or
 - (iv) To non-Government entities or individuals for purposes of evaluation.
- (11) Technical Data. Recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including Computer Software Documentation and Computer Databases). The term does not include Computer Software or financial, administrative, cost or pricing, or management information, or other data incidental to contract or grant administration. The term includes recorded Data of a scientific or technical nature that is included in Computer Databases.
- (12) Unlimited Rights. The Government's rights to access, use, modify, prepare derivative works, reproduce, release, perform, display, disclose, or distribute Data in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.
- (b) Allocation of SBIR/STTR Data Rights.
- (1) The Awardee retains ownership of all SBIR/STTR Data it develops or generates in the performance of an SBIR/STTR award. The Awardee retains all rights in SBIR/STTR Data that are not granted to the Federal Government in accordance with the SBIR/STTR Policy Directive. These rights of the Awardee do not expire.
 - (2) During the SBIR/STTR Protection Period, the Federal Government receives SBIR/STTR Technical Data Rights in appropriately marked SBIR/STTR Data that is Technical Data or any other type of Data other than Computer Software; and SBIR/STTR Computer Software Rights in appropriately marked SBIR/ STTR Data that is Computer Software.
 - (3) After the protection period, the Federal Government shall have Unlimited Rights.
 - (4) The Federal Government receives Unlimited Rights in Form Fit, and Function Data, OMIT Data, and all unmarked SBIR/STTR Data.
- (c) Identification and Delivery of SBIR/STTR Data. Any SBIR/STTR Data delivered by the Awardee, and in which the Awardee intends to limit the Federal Government's rights to SBIR/STTR Data Rights, must be delivered with restrictive markings. The Federal Government assumes no liability for the access, use, modification, reproduction, release, performance, display, disclosure, or distribution of SBIR/STTR Data without markings or data submitted with an identified distribution other than SBIR/STTR Data. The Awardee or its subcontractors or suppliers shall conspicuously and legibly mark all such SBIR/STTR Data with the appropriate legend and appropriately identify in all submissions to the Federal Government including proper identification as "20 YEAR SBIR/STTR

DATA RIGHTS (2019)” in all submissions to Office of Scientific and Technical Information (OSTI).

- (1) The authorized legend shall be placed on the first page or cover page of the document containing SBIR/STTR Data. Subsequent pages shall also include the authorized legend or simply “SBIR/STTR Protected Data”. If only portions of a page are subject to the asserted restrictions, the SBIR/STTR Awardee shall identify the restricted portions (e.g., by circling or underscoring with a note or other appropriate identifier). With respect to SBIR/STTR Data embodied in Computer Software, the legend shall be placed on:
 1. The printed material or media containing the Computer Software; or
 2. the transmittal document or storage container.

The legend shall read as follows:

20 YEAR SBIR/STTR DATA RIGHTS (2019)

Funding Agreement No _____ (e.g. DE-SC000nnnn)
Award Date _____ (Block 27 on the Assistance Agreement)
SBIR/STTR Protection Period: Twenty years from Award Date
SBIR/STTR Awardee _____

This report contains SBIR/STTR Data to which the Federal Government has received SBIR/STTR Technical Data Rights or SBIR/STTR Computer Software Rights during the SBIR/STTR Protection Period and Unlimited Rights afterwards, as defined in the Funding Agreement. Any reproductions of SBIR/STTR Data must include this legend.

(End of Legend)

- (2) Data submitted without correct or appropriate markings may be corrected within 6 months from the date the data is delivered.
- (d) Relation to patents. Nothing regarding SBIR/STTR Data Rights in this clause shall imply a license to or imply a requirement to license to the Federal Government any patent to a Subject Invention (as defined under the Bayh-Dole Act implemented at 37 CFR 401) made under an SBIR/STTR award.
(End of Clause)

(e) Copyright.

- (1) Data first produced in the performance of this contract.
 - (i) Except as otherwise specifically provided in this contract, the Awardee may assert copyright subsisting in any data first produced in the performance of this contract.
 - (ii) When asserting copyright, the Awardee shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and an acknowledgment of Government sponsorship (including award number).
 - (iii) For data other than computer software, the Awardee grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Awardee grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.
- (2) Data not first produced in the performance of this contract. The Awardee shall not, without prior written permission of the Contracting Officer, incorporate in any data that are not first produced in the performance of this award unless the Awardee (i) identifies such data and (ii) grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.
- (3) Removal of copyright notices. The Government will not remove any copyright notices placed on

data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(f) Protection of limited rights data and restricted computer software.

The Awardee may withhold from delivery qualifying limited rights data and restricted computer software that are not identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Awardee shall identify the data being withheld, and furnish form, fit, and function data instead.

(g) Subcontracting. The Awardee shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subawardee refuses to accept terms affording the Government those rights, the Awardee shall promptly notify the Contracting Officer of the refusal and not proceed with the subaward award without further authorization in writing from the Contracting Officer. SBIR/STTR rights apply to all SBIR/STTR awards, including subawards to such awards, that fall within the statutory definition of Phase I, II, or III of the SBIR/STTR Program, as described in the SBIR/STTR Policy Directive.

(h) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

SBIR/STTR-GTC-0029 FEE

SBIR/STTR recipients may be paid a fee or profit as stated in the approved budget.

GENERAL TERMS AND CONDITIONS APPLICABLE TO PHASE I ONLY

SBIR/STTR-GTC-0032 PHASE I OBLIGATIONS

If this award is less than or equal to \$250,000.00, then this is a fixed amount award in accordance with 2 CFR 200.201 Use of Grant Agreements (Including Fixed Amount Awards), Cooperative Agreements, and Contracts. Awards greater than \$250,000.00 are not fixed amount awards.

The unobligated balance of Federal funds at the end of the Phase I project period shall not be applied to any Phase II effort-and shall be de-obligated by DOE.

SBIR/STTR-GTC-0033 PRE-AWARD COSTS FOR PHASE I AWARDS

Notwithstanding clauses SBIR/STTR-GTC-0007 PRE-AWARD COSTS and SBIR/STTR-GTC-0004 REVISION OF BUDGET AND PROGRAM PLANS, Grants/Agreements Officer approval of Phase I pre-award expenditures is not required per 2 CFR 200.308 Revision of budget and program plans.

GENERAL TERMS AND CONDITIONS APPLICABLE TO PHASE II ONLY

SBIR/STTR-GTC-0034 PHASE II OBLIGATIONS

The unobligated balance of Federal funds at the end of the Phase II project period shall not be applied to any follow-on Phase IIA or Phase IIB Sequential efforts-and shall be de-obligated by DOE.

SBIR/STTR-GTC-0035 REPORTING NON-FEDERAL SUPPORT

The recipient agrees to provide the SBIR/STTR Program Manager an annual report during Phase II and for five years after completion of this project detailing the sources and amounts of non-Federal funding used to continue support or commercialization of the research funded under this award.

GENERAL TERMS AND CONDITIONS APPLICABLE TO FAST-TRACK ONLY

SBIR/STTR-GTC-0036 FAST-TRACK AWARDS

The purpose of a Fast Track award is to expedite funding for scientifically meritorious projects that have a high potential for commercialization. Special Terms and Conditions FA-TC-0001C Award Project Period and Budget Periods provides distinct budget periods for Phase I and Phase II of the Fast Track project. Funding for the start of the Phase II project is contingent upon the following:

- a. Recipient meeting the size and eligibility requirements of 13 CFR Part 121 Small Business Size Regulations applicable to SBIR and/or STTR programs at the start of Phase I budget period and at the start of the Phase II budget period.
- b. Recipient submitting a continuation application 60 days prior to the end of Phase I.

In addition to requirements stated in other Terms and Conditions of this award, funding for the first and second years of Phase II is contingent upon:

- Substantial progress towards meeting the objectives identified in the approved application related to Phase I;
- Substantial progress towards meeting the objectives identified in the application related to Phase II; and
- Availability of funds appropriated by the Congress of the United States for the purpose of this program and future year budget authority.