

**SPECIAL TERMS AND CONDITIONS
APPLICABLE TO CERTAIN
TEAMER PROGRAM PARTICIPANTS**

A. General Provisions

1. Applicability

(a) These special terms and conditions are applicable to all participants in the U.S. Testing Expertise and Access for Marine Energy Research Program (“**TEAMER Program**”), that are not members of the national laboratory system, including: (i) all members of the United States based network of pre-certified testing facilities operated by universities and other designated members (collectively the “**Non-Lab Members**” and each a “**Non-Lab Member**”); and (ii) all marine renewable energy developers whose applications for access to and use of the research and testing facilities of a Non-Lab Member (each a “**Project**”) have been approved for participation in the TEAMER Program, all of which applicants are termed approved technical support recipients (collectively “**Approved TSRs**” and each an “**Approved TSR**”).

(b) These special terms and conditions supplement and help implement master network facility agreements (each a “**Master Agreement**”) entered into between a Non-Lab Member and Pacific Ocean Energy Trust, an Oregon non-profit corporation and the Network Director of the TEAMER Program (“**POET**”) with respect to the terms and conditions applicable to a Sub Award (as defined below) in connection with the implementation of approved TSR applications for technical support (“**RFTS**”) at a Non-Lab Facility.

(c) All approved RFTS applications are subject to these special terms and conditions.

2. Flow Down Requirements

Members of the Test Facility Network were selected by the Network Director working in collaboration with the DOE Water Power Technologies office staff and the TEAMER Technical Board. Funding of Test Facility Network Members to accomplish the TEAMER Program is accomplished through (1) Annual Operating Plan funding of national labs, and (2) the Network Director’s distribution of competitively awarded federal funds to other Test Facility Network Members (“**Sub Awards**”). A Facility granting access to an Approved TSR will execute an agreement with the Approved TSR governing the terms of that access. Facilities that are national labs, for instance, will execute follow an appropriate DOE approved mechanism for performing program approved RFTS, as dictated by the scope of that work.. Non-Lab Members will enter into testing and research agreements (or their functional equivalent) with Approved TSRs. Non-Lab Members will comply with the terms and conditions of each Sub Award, as applicable, including but not limited to the Intellectual Property Provisions as applicable to all Sub Award sub-recipients (and subcontractors, as appropriate), as required by 2 CFR 200.101, and cause and require their strict compliance therewith. Further, Non-Lab Member will apply the Sub Award terms as required by 2 CFR 200.326 to all Sub Award sub-recipients (and subcontractors, as appropriate), and require their strict compliance therewith.

These Special Terms and Conditions supersede any agreement between Non-Lab Member and POET and any and all agreements between Non-Lab Member and third parties (including but not limited to Approved TSRs) relating to an approved RFTS to the extent there is a conflict. These Special Terms and Conditions may change at any time and without notice in order to comply with DOE Award requirements as those requirements may change from time to time or as otherwise required by law, which changes are effective when posted. (See section 4 below).

3. Compliance with Federal, State, and Municipal Law

Non-Lab Member will comply with, and, to the extent applicable to actions of the Approved TSR, cause each Approved TSR to comply with, all applicable Federal, state, and local laws and regulations for all work performed under the Sub Award. Non-Lab Member will obtain, and cause each Approved TSR to obtain, all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under each Sub Award.

4. Consistency with DOE and CMEI Requirements and Federal Law

Any apparent or actual inconsistency between Federal statutes and regulations and the terms and conditions contained in a Master Agreement between Non-Lab Member and POET must be identified to POET. POET may refer those apparent or actual inconsistencies to the U.S. Department of Energy's ("DOE's") Office of Critical Minerals and Energy Innovation ("CMEI") for guidance.

BY ENTERING INTO AND PARTICIPATING IN THE TEAMER PROGRAM, NON-LAB MEMBERS AND APPROVED TSRS AGREE TO VISIT AND REVIEW THE TEAMER WEBSITE FREQUENTLY IN ORDER TO AT ALL TIMES BE AND BECOME AWARE OF POTENTIAL REVISIONS TO THESE SPECIAL TERMS AND CONDITIONS AS MAY BE REQUIRED FROM TIME TO TIME TO ASSURE CONTINUED COMPLIANCE WITH DOE AWARD AND CMEI SUB-AWARD REQUIREMENTS AND APPLICABLE LAW.

5. Federal Stewardship

CMEI will exercise normal Federal stewardship in overseeing the Project activities performed under (a) the Award to POET and (b) each Sub Award, Master Agreement, and approved RFTS application. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address deficiencies that develop during the Project; assuring compliance with terms and conditions; and reviewing technical performance after Project completion to ensure that the Project objectives have been accomplished.

6. Substantial Involvement of CMEI

(a) *General Statement of Roles and Responsibilities.*

As Network Director, POET is responsible for the overall TEAMER Project, including execution, technical and Project management, reporting, financial and administrative matters. “**Substantial Involvement**” shall include CMEI collaboration with POET regarding the management, control, direction, and performance of the TEAMER Project, including Approved TSR performance. Non-Lab Member will at all times cooperate, and, in Non-Lab Member’s agreements with Approved TSRs in connection with a Project, cause any Approved TSR to cooperate, with POET and CMEI.

(b) *Statement of Substantial Involvement.*

(i) Upon request by CMEI, Non-Lab Member will not, and will cause any Approved TSR to not, unreasonably restrict EERE’s authorized representative from communications, interactions with, or access to Non-Lab Member’s or TSR’s sub-recipients, contractors, or sub-contractors.

(ii) CMEI may engage authorized representatives to assist in assessing the progress of all Sub Award Project objectives and provide timely and accurate reports to CMEI and/or to verify major facility modifications or equipment purchases under the scope of the Sub Award. Non-Lab Member will ensure, and cause the TSR to ensure, that all of EERE’s authorized representatives have access to any and all relevant documentation sufficient to allow each EERE’s authorized representative to provide independent evaluations to CMEI on the progress of the Project and/or Approved TSR Activities.

(c) *Notices to POET.*

In addition to the notice requirements stated elsewhere in the Sub Award, Non-Lab Member will provide, and cause the Approved TSR to provide, POET with notice (within five (5) calendar days of first learning of those issues) in the following situations for dissemination to CMEI:

(i) Non-Lab Member or the Approved TSR becomes aware of any critical business issues or litigation that may have material adverse effect on the Project.

(ii) Non-Lab Member or the Approved TSR becomes aware of any significant Conflict of Interest (“**COI**”) issues that arise.

(iii) Non-Lab Member or the Approved TSR becomes aware of any significant Export Control issues.

(iv) Non-Lab Member or the Approved TSR becomes aware of any action or information that does not conform to the current NEPA determination.

(v) There is any change to Non-Lab Member’s or the Approved TSR’s Principal Investigator.

7. Federal Involvement

(a) *Site Visits*

EERE's authorized representatives have the right to make site visits to Project test site locations at reasonable times to review Project accomplishments and management control systems and to provide technical assistance, if required. Non-Lab Member and the Approved TSR must provide reasonable access to its respective 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.

(b) *CMEI Access*

Non-Lab Member and the Approved TSR must provide any information, documents, site access, or other assistance requested by CMEI for the purpose of its Federal stewardship or substantial involvement. Non-Lab Member and Approved TSRs will not unreasonably restrict EERE's site access to its testing or research sites.

8. NEPA Requirements

(a) Non-Lab Member acknowledges that DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds.

(i) Subject to the conditions listed below, Non-Lab Member and the Approved TSR is authorized to proceed with Projects approved by a NEPA review. For all work conducted at DOE laboratories, those Project activities may be subject to additional NEPA review by the cognizant NEPA Compliance Officer for the individual laboratory. Those Project activities will be required to meet the laboratory's health and safety requirements.

(ii) Certain activities may require additional NEPA review. Non-Lab Member will, and will cause the Approved TSR to, first inform POET if the following activities are requested:

1. new activities/locations; or
2. modifications to activities/locations.

Any NEPA authorization excludes any activities that are otherwise subject to a restriction as set forth in the NEPA authorization.

(b) *Prohibited Activities*

Should Non-Lab Member or the Approved TSR elect to undertake activities or change locations prior to written authorization from POET, Non-Lab Member acknowledges and agrees (and will so advise Approved TSR) that any such activity will be at the risk of not receiving Federal funding for those activities, and such costs may not be recognized as allowable cost share.

9. Performance of Work in United States

(a) *Requirement*

All work to be performed under the Sub Award must be performed in the United States unless POET obtains a waiver from CMEI. This requirement does not apply to the purchase of supplies and equipment; however, Non-Lab Member shall make, and cause the Approved TSR to make, every effort to purchase supplies and equipment within the United States. Non-Lab Member will, and will cause the Approved TSR to, flow down this requirement in each case to its sub-recipients.

(b) *Failure to Comply*

If Non-Lab Member or the Approved TSR fails to comply with the Performance of Work in the United States requirement, POET may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable cost share regardless if the work is performed by Non-Lab Member and the Approved TSR, its sub-recipients, its contractors, sub-contractors, or other Project partners.

(c) *Waiver for Work outside the U.S.*

POET may approve Non-Lab Member and the Approved TSR to perform a portion of the work outside the United States under limited circumstances. Non-Lab Member and the Approved TSR must obtain a waiver from POET prior to conducting any work outside the U.S. To request a waiver, Non-Lab Member and the Approved TSR must submit a written waiver request to POET, which includes the following information:

- (i) The rationale for performing the work outside the U.S.;
 - (ii) A description of the work proposed to be performed outside the U.S.;
 - (iii) The total estimated cost proposed for the work to be performed;
- and
- (iv) The countries in which the work is proposed to be performed.

As the rationale for its or their request, Non-Lab Member and the Approved TSR must demonstrate to the satisfaction of POET that the performance of work outside the United States would further the purposes of the Sub Award and is in the economic interests of the United States. POET may require additional information before considering or approving any such request.

10. American-Made Equipment and Products – Sense of Congress

Non-Lab Member acknowledges that it is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under the

Sub Award should be American-made.

11. Reporting Requirements

(a) *Dissemination of scientific/technical reports*

Scientific/technical reports submitted under the Sub Award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data or Small Business Innovation Research (“SBIR”) or Small Business Technology Transfer (“STTR”) data. Citations for journal articles produced under the Award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

(b) *Restrictions*

Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (“PII”), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

12. Lobbying

None of the funds obligated on a Sub Award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

13. Publicity and Publication

CMEI encourages Non-Lab Member and the Approved TSR to publish or otherwise make publicly available the results of work performed under the Sub Award.

(a) *Acknowledgement and Disclaimer*

Non-Lab Member is required to include, and to cause the Approved TSR to include, the following acknowledgement in publications arising out of, or relating to, work performed under a Sub Award, whether copyrighted or not:

- *Acknowledgment:* “This material is based upon work supported by the U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy (CMEI) under the Water Power Technologies Office Award Number DE-EE0008895.”
- *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.”

14. No-Cost Extension

If determined to be appropriate, POET may grant a no-cost extension of a Sub Award. Any no-cost extension will not alter the Project scope, milestones, deliverables, or budget of a Sub Award.

15. Property, Equipment, Insurance, and Supplies

All property of a Non-Lab Member test site shall comply with the following provisions:

(a) *Property Standards*

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

(b) *Real Property*

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber the property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from CMEI via POET. The instructions must provide for one of the following alternatives: (1) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (2) sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (3) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

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

(c) *Property Trust Relationship*

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the Project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

(d) *Insurance Coverage*

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

(e) *Equipment*

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

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

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

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

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from CMEI via POET.

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

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR 910.360 for additional requirements for equipment for For-Profit recipients. See also 2 CFR 200.439 Equipment and other capital expenditures.

(f) *Supplies*

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

16. Record Retention

Consistent with 2 CFR 200.333 through 200.337, Non-Lab Member shall retain and cause the Approved TSR to retain records relating to each Sub Award to Non-Lab Member.

17. Audits

(a) *Government-Initiated Audits*

The Non-Lab Member will provide, and cause the Approved TSR to provide, any information, documents, site access, or other assistance requested by CMEI, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Non-Lab Member's records and Approved TSR's records relating to each Sub Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Non-Lab Member's and Approved TSR's financial records or administrative records relating to each Sub Award at any time. Government-initiated audits are generally paid for by DOE.

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

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

(b) *Annual Compliance Audits*

The Non-Lab Member will provide, and cause the Approved TSR to provide, any information or documentation to support the Project's annual compliance audit. Compliance audit requirements are detailed in 2 CFR 200.500 through 521 for institutions of higher education, nonprofit organizations and state and local governments, and 2 CFR 910.500 through 521 for for-profit entities.

B. Financial Provisions

1. Cost Sharing

(a) *Obligations*

The Non-Lab Member shall be responsible for the Cost Share Commitment prescribed in the Sub Award, if any.

(b) *Obligations if Sub Award is Terminated or Discontinued*

If the Sub Award is terminated or is otherwise not funded to completion, Non-Lab Member must provide its share (if any) of the total Project cost reimbursed as of the date of the termination or discontinuation.

(c) *Source of Cost Share*

Non-Lab Member may not use Federal funds to meet its cost sharing obligations (if any), unless otherwise allowed by Federal law.

(d) *Inability to Comply with Cost Share Obligations*

If the Non-Lab Member determines that it is unable to meet its cost sharing obligations, if any, the Non-Lab Member must notify POET immediately. The notification must include the following information: (1) whether the Non-Lab Member intends to continue or phase out the Project, and (2) if the Non-Lab Member intends to continue the Project, how the Non-Lab Member will pay (or secure replacement funding for) the Non-Lab Member's share of the total Project cost. If the Non-Lab Member fails to meet its cost sharing obligations, POET may recover some or all of the financial assistance provided under each Sub Award. The amount POET would seek to recover under this Term would be predicated on POET's analysis of the Non-Lab Member's compliance with their cost sharing obligation under the Sub Award.

2. Refund Obligation

The Non-Lab Member must refund any excess payments received from POET, including any costs determined to be unallowable. Upon the end of the Project period (or the termination of the Sub Award, if applicable), the Non-Lab Member must refund to POET the difference between (1) the total payments received from POET, and (2) the Federal share of the costs incurred.

3. Allowable Costs

The allowability of costs is described through reference to 2 CFR part 200 as amended by 2 CFR part 910. All Project costs must be allowable, allocable, and reasonable. Non-Lab Member must document and maintain, and cause the Approved TSR to document, and maintain records of all Project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its sub-recipients and Project costs that Non-Lab Member and the Approved TSR claims as cost sharing, including in-kind contributions. Non-Lab Member is responsible for maintaining, and causing the Approved TSR to maintain, records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, Non-Lab Member is required to provide, and to cause the

Approved TSR to provide, such records to POET. Such records are subject to audit. Failure to provide POET adequate supporting documentation may result in a determination that those costs are unallowable.

Non-Lab Member is required to obtain, and to cause the Approved TSR to obtain, the prior written approval of POET for any foreign travel costs.

4. Indirect Costs

Non-Lab Member must ensure, and cause the Approved TSR to ensure, its indirect costs are appropriately managed, allowable and otherwise comply with the requirements of each Sub Award and 2 CFR part 200 as amended by 2 CFR part 910.

5. Payment Procedures

(a) *Reimbursement*

Payments will be made to Non-Lab Member on a reimbursement basis.

(b) *Invoices*

Invoices should be submitted by Non-Lab Member to POET, generally on a monthly basis. All submitted invoices shall have an accompanying POET Invoice Supporting Document which contains the following information:

- (i) Date of invoice;
- (ii) Period covered by invoice;
- (iii) Current total amounts requested by category;
- (iv) Current Federal dollars requested (and Cost Share if applicable) provided by category;
- (v) Cumulative total amounts received and requested by category;
- (vi) Cumulative Federal dollars received and requested (and Cost Share if applicable) provided by category;
- (vii) Narrative Discussion of costs; and
- (viii) Attachment of any receipts, invoices, or other supporting documentation POET may request additional information before submitting the invoice for reimbursement.

6. Budget Changes

(a) *Budget Changes Generally*

Any increase in the total Project cost, whether DOE share or Cost Share (if any) must be approved in advance and in writing by POET.

Any budget change that alters the Project scope, milestones or deliverables requires the prior written approval of POET. POET may deny reimbursement for any failure to comply with the requirements of this provision.

(b) *Transfers of Funds Among Direct Cost Categories*

Non-Lab Member is required to obtain, and to cause the Approved TSR to obtain, the prior written approval of POET for any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total Project cost.

Non-Lab Member is required to notify, and to cause the Approved TSR to notify, POET of any transfer of funds among direct cost categories where the cumulative amount of such transfers is equal to or below 10 percent (10%) of the total Project cost.

(c) *Transfer of Funds Between Direct and Indirect Categories*

Non-Lab Member is required to obtain, and to cause the Approved TSR to obtain, the prior written approval of POET for any transfer of funds between direct and indirect cost categories.

C. Miscellaneous Provisions

1. Corporate Felony Conviction and Federal Tax Liability Assurances

This term applies to Non-Lab Member and Approved TSRs that are organized as corporations. A corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States, but not foreign corporations. It includes both for-profit and non-profit organizations. By entering into a Sub Award, Non-Lab Member attests, and will cause the Approved TSR to attest, that its organization has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature. Non-Lab Member further attests, and will cause the Approved TSR to further attest, that its organization 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.

2. Insolvency, Bankruptcy or Receivership

(a) *Notification to POET*

Non-Lab Member shall immediately notify, and as appropriate cause the Approved TSR to notify, POET of the occurrence of any of the following events: (1) Non-Lab Member or Non-Lab Member parent's (or as applicable Approved TSR or Approved TSR's parent's) filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (2) Non-Lab Member's (or as applicable Approved TSR's) consent to the institution of an involuntary case under the Bankruptcy Act against Non-Lab Member or Non-Lab Member's parent (or as applicable Approved TSR or Approved TSR's parent); (3) the filing of any similar proceeding for or against Non-Lab Member or Non-Lab Member's parent (or as applicable Approved TSR or Approved TSR's parent), or Non-Lab Member's consent (or as applicable Approved TSR's consent) to the dissolution, winding-up or readjustment of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over Non-Lab Member (or as applicable the Approved TSR), under any other applicable state or Federal law; or (4) Non-Lab Member's (or as applicable the Approved TSR's) insolvency due to its inability to pay debts generally as they become due.

(b) *Notification in Writing*

Such notification shall be in writing and shall: (1) specifically set out the details of the occurrence of an event referenced in paragraph 2(a); (2) provide the facts surrounding that event; and (3) provide the impact such event will have on the Project being funded by each Sub Award.

(c) *Right to Compliance Review*

Upon the occurrence of any of the four events described in paragraph 2(a) of this term, POET reserves the right to conduct a review of the Sub Award to determine Non-Lab Member's and the Approved TSR's compliance with the required elements of the Sub Award (including such items as cost share, progress towards technical Project objectives, and submission of required reports). If the POET review determines that there are significant deficiencies or concerns with Non-Lab Member's and the Approved TSR's performance under the Sub Award, POET reserves the right to impose additional requirements, as needed, including (1) change of payment method; or (2) institute payment controls.

(d) *Reporting Sub Awards and Executive Compensation Reporting Sub Awards*

Non-Lab Member must report, and cause the Approved TSR to report, to POET each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

(e) *Executive Compensation*

POET may request certain Non-Lab Member (and the Approved TSR) executive compensation information to comply with Federal reporting requirements.

3. Requirement for Data Universal Numbering System (“DUNS”) Numbers

- Non-Lab Member and the Approved TSR must have a DUNS number to receive (or be benefitted by) Sub Award funds.
- If Non-Lab Member has its own sub-recipients, then those sub-recipients must have a DUNS number to receive Sub Award funds.
- A DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (“**D&B**”) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

4. Nondisclosure and Confidentiality Agreements Assurances

(a) By entering into a Master Agreement, Non-Lab Member attests, and will cause the Approved TSR to attest, that it does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) Non-Lab Member further attests, and will cause the Approved TSR to attest, that it does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

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

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

(iii) Notwithstanding provision listed in paragraph 4(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.

5. National Security: Classifiable Results Originating Under an Award

(a) The Sub Award is intended for unclassified, publicly releasable research. Neither Non-Lab Member nor the Approved TSR will be granted access to classified information. POET 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. CMEI may review research work generated under each Sub Award at any time to determine if it requires classification.

(b) Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to the national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If Non-Lab Member or Approved TSR originates information during the course of each Sub Award that Non-Lab Member or the Approved TSR believes requires classification, Non-Lab Member must, and as appropriate cause the Approved TSR to, promptly:

(i) Notify POET;

(ii) 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.

(iii) Restrict access to the information to the maximum extent possible until Non-Lab Member (or as applicable the Approved TSR) is informed that the information is not classified, but no longer than thirty (30) days after receipt by the Director, Office of Classification and Information Control

(c) If Non-Lab Member or the Approved TSR originates 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, the Non-Lab Member must, and cause the Approved TSR to:

(i) Notify POET;

(ii) 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 Non-Lab Member and the Approved TSR first discovers or first has reason to believe that the information is useful in such production or utilization; and

(iii) Restrict access to the information to the maximum extent possible until Non-Lab Member (or as appropriate the Approved TSR) is informed that the information is not classified, but no longer than ninety (90) days after receipt by the Director, Office of Classification and Information Control.

(d) If CMEI determines any of the information requires classification, Non-Lab Member agrees, and will cause the Approved TSR to agree, that the Government may terminate the Sub Award with consent of Non-Lab Member (and as applicable of the Approved TSR) in accordance with 2 CFR 200.339(a)(3). All material deemed to be classified must be forwarded to CMEI, in a manner specified by CMEI.

- If CMEI does not respond within the specified time periods, neither Non-Lab Member nor the Approved TSR is under any further obligation to restrict access to the information.

6. Export Control

(a) Non-Lab Member must comply, and cause the Approved TSR to comply, with U.S. export control laws and regulations in the performance of work under each Sub Award. Access to the technology developed under each Sub Award by foreign firms, institutions or individuals shall be controlled by Non-Lab Member (or the Approved TSR as applicable) under applicable U.S. export control laws and regulations. Non-Lab Member's (or as appropriate the Approved TSR's) responsibility to comply with all Applicable Laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, this term.

(b) Non-Lab Member must have, and cause the Approved TSR to have, adequate oversight measures in place to ensure their sub-recipients and contractors comply with U.S. export control laws and regulations in the performance of work under each Sub Award.

(c) Non-Lab Member must apply, and cause the Approved TSR to apply, the requirements of this Term to its sub-recipients and contractors.

7. TSR Change Notification

Except for sub-recipients specifically proposed as part of Non-Lab Member's Application for a Sub Award, the Non-Lab Member must notify the Contracting Officer and Project Manager (with a copy to POET) in writing 30 days prior to the execution of new or modified sub-recipient agreements, including naming any To Be Determined sub-recipients. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR part 200 as amended by 2 CFR part 910, nor does it relieve the Non-Lab Member from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, the Non-Lab Member documentation must, as a minimum, include the following:

- A description of the research to be performed, the service to be provided, or the equipment to be purchased;
- Cost share commitment letter if the sub-recipient is providing cost share to the Award;
- An assurance that the process undertaken by the sub-recipient to solicit complies with their written procurement procedures as outlined in 2 CFR 200.317 through 200.329;
- An assurance that no planned, actual or apparent conflict of interest exists between the sub-recipient and the selected TSR and that the sub-recipient's written standards of conduct were followed¹;
- A completed Environmental Questionnaire, if applicable;
- An assurance that sub-recipient is not a debarred or suspended entity; and
- An assurance that all required award provisions will be flowed down in the resulting sub-recipient Agreement.

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

Should the Non-Lab Member not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the sub-recipient documentation stipulated above, Non-Lab Member may proceed to award or modify the proposed sub-recipient agreement.

8. Conference Spending

Non-Lab Member and the Approved TSR shall not expend any funds on a conference not directly and programmatically related to the purpose for which the Sub Award was granted 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.

9. Recipient Integrity and Performance Matters

¹ It is DOE's position that the existence of a "covered relationship" as defined in 5 CFR 2635.502(a)&(b) between a member of the Recipient's owners or senior management and a member of a sub-recipient's owners or senior management creates at a minimum an apparent conflict of interest that would require the Recipient to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the sub-recipient agreement does not create an actual conflict of interest. The Recipient must also notify the Contracting Officer of any new sub-recipient agreement with: (1) an entity that is owned or otherwise controlled by the Recipient; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient, as it is DOE's position that these situations also create at a minimum an apparent conflict of interest.

(a) *General Reporting Requirement*

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

(b) *Proceedings About Which Non-Lab Member Must Report*

Non-Lab Member agrees to submit the information required about each proceeding that:

- (i) Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- (ii) Reached its final disposition during the most recent five (5) year period; and
- (iii) Is one of the following:
 - 1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
 - 2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - 3. An administrative proceeding, as defined in paragraph E of this term, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - 4. Any other criminal, civil, or administrative proceeding if:
 - a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
 - b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

c. The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.