

INTELLECTUAL PROPERTY & DATA MANAGEMENT PLAN TEMPLATE

ARPA-E requires every Project Team in which more than one team member will perform research and development work or share technical data, to negotiate and establish an Intellectual Property Management Plan for the management and disposition of intellectual property arising from the project. In addition, ARPA-E requires each Prime Recipient, regardless of whether there are other team members, to submit a Data Management Plan (DMP) that addresses how data generated in the course of the work performed under an ARPA-E award will be preserved and, as appropriate, shared publicly.

ARPA-E has prepared the following suggested template for those Project Teams required to submit an Intellectual Property Management Plan. In addition, this document includes a suggested Data Management Plan template. See Attachment 4, Section I.E.

Use of this template is voluntary – the Project Team is responsible for creating an appropriate Intellectual Property Management Plan and Data Management Plan for its research effort. ARPA-E encourages Project Teams (including consortia) to consult their legal counsel prior to selecting, negotiating, and/or executing their Intellectual Property Management Plans.

Where the Plans are to be prepared by a National Laboratory as the Project Lead, the Laboratory must take into account any special provisions included in the awards to their other team members such as U.S. Competitiveness and authorization to treat first produced data as “protected.”

Though ARPA-E does not mandate the use of this template, all Intellectual Property Management Plans are required to be signed by an authorized representative from each team member and to include the following language (bolded and underlined), as set forth in the model clauses below:

“To the extent that this Plan may conflict in any way with the provisions of the ARPA-E Award, including, in particular, the intellectual property provisions contained therein, the Award provisions take precedence.”

A. Intellectual Property Management Plan Template

I. Preamble

Explanation:

The preamble:

- o *Identifies the parties to the Plan (i.e., the Project Team) and the relevant financial assistance awards and/or work authorizations,*

- o *States the general purpose of the Plan, and*
- o *Sets forth objectives for the Plan.*

Model Language:

1. This Intellectual Property Management Plan (the Plan) is established by *[list Project Team Participants]* to address management of Intellectual Property that may be developed as a result of work performed under *[list applicable ARPA-E financial assistance Award and/or work authorization]*.
2. The general purpose of the Plan is to address the protection and disposition of Intellectual Property developed under the ARPA-E financial assistance award and/or work authorization, within the framework of Federal intellectual property laws, regulations, and policies. **To the extent that this Plan may conflict in any way with the provisions of the ARPA-E Award, in particular, the intellectual property provisions contained therein, the Award provisions take precedence.**
3. The Plan objectives include:
 - a. Promoting the patenting, licensing, and rapid commercialization of Subject Inventions developed under *[list applicable ARPA-E financial assistance award and/or work authorization]*, and
 - b. Promoting the rapid dissemination of scientific data for the public good.

II. Definitions

Explanation:

The definitions section defines key terminology utilized in the Plan, including but not limited to the following terms:

Model Language:

1. **“Award” and “ARPA-E Award”** refers to a grant of financial assistance from ARPA-E to an entity or entities by means of a cooperative agreement, work authorization, Technology Investment Agreement, or other authorized financial assistance instrument, or any subaward or subcontract entered into thereunder.
2. **“Award Work”** means any work or activity performed by a Participant pursuant to and funded by an ARPA-E Award.

3. **“Background Technical Data”** means information, in hard copy or in electronic form, including, without limitation, documents, drawings, models, designs, data memoranda, tapes, records, and databases developed before or independent of performance under the Award that is necessary for the performance of Award Work.
4. **“Intellectual Property”** means legally protectable technical information, Inventions, developments, discoveries, know-how, methods, techniques, formulae, algorithms, data, processes and other proprietary ideas (whether or not patentable or copyrightable). Intellectual Property also includes patent applications, patents, copyrights, trademarks, mask works, trade secrets, and any other legally protectable information, including computer software.
5. **“Invention”** means any discovery or a new device, method, or process developed from study and experimentation that 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.).
6. **“Owner”** means a party, public or private, holding legal title to Intellectual Property, consistent with Federal laws and regulations.
7. **“Participant”** means an individual or entity who is a party to an Award.
8. **“Project Intellectual Property”** means and includes all Intellectual Property first conceived, discovered, developed, reduced to practice and/or generated in the performance of the Award.
9. **“Project Team”** refers to a collective of Participants working in a collaborative manner to execute an ARPA-E funded project.
10. **“Project Technical Data”** means information (in hard copy or in electronic form) including, without limitation: documents, drawings, models, designs, data, memoranda, taps, records, and databases developed during the performance of Award Work.
11. **“Subject Invention”** means any Invention of a Participant that is conceived or first actually reduced to practice in the performance of work under an ARPA-E Award, provided that in the case of a variety of plant, the date of determination (the date a new plant is discovered/developed or the date a new plant is asexually reproduced, see the Plant Variety Protection Act, 7 U.S.C. 2401(a)(2)) must also occur during the period of award performance.

III. Title to Subject Inventions and Other Project Intellectual Property

Explanation:

Title to Project Intellectual Property may be retained by one Participant or, if jointly invented by multiple Participants (or their employees/agents), by such multiple Participants. Project Teams may establish who will pay related ownership fees and may define the ownership interest that will be retained by Participant-Owners of jointly-owned Project Intellectual Property.

Model Language:

1. Each Participant shall retain title to Subject Inventions and other Project Intellectual Property developed solely by its employees and agents.
2. Unless agreed otherwise, the Participant filing a patent application shall pay all preparation and filing expenses, prosecution fees, issuance fees, post issuance fees, patent maintenance fees, annuities, interference expenses, and attorneys' fees for that patent application and any resulting patent(s).
3. Participants shall be joint Owners of Project Intellectual Property that is developed jointly by those Participants. Each Owner shall have an undivided interest in the jointly owned Project Intellectual Property. The jointly developed Project Intellectual Property shall be protected with joint patent applications in which the joint Owners are co-applicants.

IV. Intellectual Property Licensing

Explanation:

Participants who retain title to a Subject Invention may grant exclusive and non-exclusive licenses for Intellectual Property developed under the Award. Such licenses are subject to certain Government Intellectual Property rights and requirements, such as a Government license, march-in rights and U.S. competitiveness.

An Owner should consider, in any license it may grant, reserving the option to permit private or public educational institutions to use the Project Intellectual Property on a royalty-free basis for research and education, but not for commercial purposes, subject to confidentiality requirements.

Model Language:

1. If a Participant does not retain title to a Subject Invention but is instead granted an exclusive license to use that Subject Invention, then Participant shall be

responsible for all expenses and fees, past and future, in connection with the preparation, filing, prosecution, and maintenance of any patent applications and patents claiming exclusively-licensed Subject Inventions. If such Participant is granted a non-exclusive license, then the Participant shall be responsible for a pro-rated share, divided equally among all licensees, of expenses and fees for the non-exclusively licensed Subject Inventions.

2. Participants who retain title to Project Intellectual Property may grant exclusive and non-exclusive licenses for use of technologies arising out of the Project Intellectual Property. Joint Owners of Project Intellectual Property shall share equally in paying licensing expenses, and any benefits from licensing (i.e. royalties and equity) received shall be distributed equally between joint Owners. Any such license that an Owner may grant shall be subject to a reservation of certain rights to the Federal Government under the provisions of 35 U.S.C. § 201 et seq, which include march-in rights and U.S. Competitiveness.
3. Any licensing of Project Intellectual Property shall be conducted pursuant to and in accordance with the terms of the Award under which the Project Intellectual Property was developed. Licensing of Project Intellectual Property shall not inhibit performance of Award Work.

V. Ownership of Technical Data

Explanation:

To facilitate collaboration, Participants may wish to share Background Technical Data and Project Technical Data. Project Teams may establish parameters for the use of Participants' Limited Rights Data and Protected Data, as defined in the Award.

VI. Dispute Resolution

Explanation:

Participants may wish to incorporate procedures for the resolution of disputes involving Intellectual Property rights.

Model Language:

1. Any dispute between Participants relating to the management of Project Intellectual Property, as provided for in this Plan, or to the interpretation of this Plan, shall be referred to the Participants' respective officers, as designated below. Through the designated officers, Participants' agree to first attempt informal

resolution of disputes, within a reasonable period of time and in a fair and equitable manner, taking into consideration the objectives of the Award and any laws, statutes, rules, regulations or guidelines to which the involved Participants are subject.

The designated officers are as follows:

For Entity A: _____

For Entity B: _____

For Entity C: _____

For Entity D: _____

2. If the designated officers are unable to resolve the issues presented before them, and if the dispute cannot be settled through negotiation, the Participants agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution. If within 30 days after service of a written demand for mediation, the mediation does not result in settlement of the dispute, then any unresolved issues shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

B. Data Management Plan Template

Instructions: All ARPA-E Project Teams must select one of the two Data Management Plan (DMP) options provided below. To promote rapid commercial application of the results of ARPA-E projects, it is anticipated that a majority of ARPA-E Project Teams will request that ARPA-E not publicly disclose any data generated under the project and will assert that generated data is “Protected Data” or “SBIR-STTR Data” for their DMP under Option 1 below. Although university, nonprofit, and DOE National Laboratory that are Prime Recipients or project leads are not normally provided with the right to treat generated data as “Protected Data” they may request that such a right be provided in their DMP under Option 1. If such a right is provided to any awardee, ARPA-E/DOE will negotiate a mutually agreed upon list of data that cannot be treated as “Protected Data” or “SBIR-STTR Data”.

For more information on the DMP requirement, awardees are strongly encouraged to read [Appendix A below](#).

Project Teams may select the appropriate DMP option below and delete the remaining information.

Select One:

- ☐ **Option 1 (Non - SBIR-STTR Awards):** It is anticipated that all digital data generated will be protected as “Protected Data” and, therefore, will not be publicly shared during the applicable “Protected Data” five (5) year protection period. Because any digital data will be at least five (5) years old when it is no longer considered “Protected Data”, the effort to release such data will exceed any potential impact or value of the actual release. If any data generated under this award is published, an effort will be made to also release any related digital data that is not “Protected Data” to the public at the time of publication.
- ☐ **Option 1 (SBIR-STTR Awards):** It is anticipated that all digital data generated will be protected as “SBIR-STTR Data” and, therefore, will not be publicly shared during the applicable or “SBIR-STTR Data” twenty (20) year protection period. Because any digital data will be at least or twenty (20) years old when it is no longer considered “SBIR-STTR Data”, the effort to release such data will exceed any potential impact or value of the actual release. If any data generated under this award is published, an effort will be made to also release any related digital data that is not “SBIR-STTR Data” to the public at the time of publication.
- ☐ **Option 2 (All Awards):** Use this option if the Project Team plans to publicly disclose technical data or data during the data protection period and/or expects that some data generated in the course of the project will not be asserted as “Protected Data” or “SBIR-STTR Data” by any Team Member. Project Teams that select this option must submit below a DMP that meets the minimum requirements specified in [Appendix A below](#).

[Paste Option 2 Data Management Plan Here]

IN WITNESS THEREOF, the parties hereto have executed or approved this Intellectual Property Management Plan on the dates below their signatures.

Entity A

Signature

:

Signature

:

Name:

Name:

Title:

Title:

Date:

Date

Entity B

Signature

:

Signature

:

Name:

Name:

Title:

Title:

Date:

Date

Appendix A:

Intellectual Property and Data Management Plan Requirements

ARPA-E requires every Project Team in which more than one team member will perform research and development work or share technical data, to negotiate and establish an Intellectual Property Management Plan for the management and disposition of intellectual property arising from the project. In addition, ARPA-E requires each Prime Recipient, regardless of whether there are other team members, to submit a Data Management Plan (DMP) that addresses how data generated in the course of the work performed under an ARPA-E award will be preserved and, as appropriate, shared publicly. A DMP should be submitted by the Prime Recipient as part of the Project Team's Intellectual Property Management Plan. DOE National Laboratories which already have a DOE-approved DMP in place may, but are not required to develop a new DMP to satisfy this requirement.

The Prime Recipient must submit a completed and signed Intellectual Property and/or a DMP to ARPA-E within six weeks of the effective date of the ARPA-E funding agreement. All Intellectual Property and DMPs are subject to the terms and conditions of the ARPA-E funding agreement and its intellectual property provisions, and applicable Federal laws, regulations, and policies, all of which take precedence over the terms of Intellectual Property and DMPs. DMPs will be reviewed by ARPA-E as part of the overall review process for Intellectual Property Management Plans in ARPA-E's ePIC System.

Note: For SBIR/STTR awards, ARPA-E requires each Project Team to negotiate and establish an Intellectual Property Management Plan which is the equivalent of an "Intellectual Property and Commercialization Rights Agreement" which is typically required by other DOE SBIR-STTR Programs.

a. Intellectual Property Management Plan

ARPA-E has developed a template Intellectual Property Management & Data Plan (<https://arpa-e.energy.gov/technologies/project-guidance/post-award-guidance/project-management-reporting-requirements>) to facilitate and expedite negotiations between Project Team members. ARPA-E does not mandate the use of this template. ARPA-E and DOE do not make any warranty (express or implied) or assume any liability or responsibility for the accuracy, completeness, or usefulness of the template. ARPA-E strongly encourages Project Teams to consult their own legal counsel before using the template.

Data Management Plan

All ARPA-E Project Teams must select one of the two DMP options provided in this section. To promote rapid commercial application of the results of ARPA-E projects, it is anticipated that a majority of ARPA-E Project Teams will request that ARPA-E not publicly disclose any data generated under the project and will assert that generated data is "Protected Data" or "SBIR-STTR Data" for their DMP under Option 1 below. Although university, nonprofit, and DOE National Laboratory that are Prime Recipients or project leads are not normally provided with the right to treat generated data as "Protected Data" they may request that such a right be provided in their DMP under Option 1. If such a right is provided to any

awardee, ARPA-E/DOE will negotiate a mutually agreed upon list of data that cannot be treated as “Protected Data” or “SBIRSTTR Data”.

The Prime Recipient is responsible for proposing an appropriate DMP and adhering to the final, agreed DMP as part of the overall research project to the best of their ability. If a DMP is not submitted by the Prime Recipient, Option 1 will be assumed by ARPA-E. Project Teams that intend to publicly disclose any data generated under the project must provide a DMP under Option 2.

i. DMP Options

Option 1: It is anticipated that all digital data generated will be protected as “Protected Data” and, therefore, will not be publicly shared during the applicable “Protected Data” five (5) year protection period [or “SBIR-STTR Data” twenty (20) year protection period]. Because any digital data will be at least five (5) [or twenty (20) years old when it is no longer considered “Protected Data” or “SBIR-STTR Data”, the effort to release such data will exceed any potential impact or value of the actual release. If any data generated under this award is published, an effort will be made to also release any related digital data that is not “Protected Data” or “SBIR-STTR Data” to the public at the time of publication.

Option 2: The Project Team plans to publicly disclose technical data or data during the data protection period and/or expects that some data generated in the course of the project will not be asserted as “Protected Data” or “SBIR-STTR Data” by any Team Member. Project Teams that select this option must submit a DMP that meets the minimum requirements specified below.

ii. Minimum Requirements for Option 2 DMPs

Project Teams that choose to develop a DMP under Option 2 are encouraged to propose DMPs that reflect relevant community standards and best practices for data and metadata, and make use of community accepted repositories and publicly accessible databases whenever practicable. Project Teams should also consult the applicable FOA under which they were selected for award negotiations for any FOA-specific requirements that must be addressed in the DMP for the project. Project Teams that select Option 2 must submit a DMP that includes the following:

1. A description of whether and how data generated in the course of the project - that is necessary to validate research findings or results - will be shared and Page 22 of 39 AR-236-03.16 preserved. If such data will not be shared or preserved, the DMP should address the costs and benefits of not sharing or preserving data. At a minimum, the DMP must describe how any planned data sharing and preservation will enable validation of research findings or results, or how findings/results could be validated if data is not shared or preserved.
2. A plan for making all research data displayed in publications open, machine readable, and digitally accessible to the public at the time of publication. This includes any underlying digital research data used to generate charts, figures, images, etc. in publications. The DMP must also address how the Project Team will ensure that publications include instructions on how data can be accessed.
3. An overview of the data management resources to be used in the course of the proposed research. DMPs that explicitly or implicitly commit to using data management resources at a

facility that is conventionally only made available to approved users should include a written approval from the facility.

4. As appropriate and necessary, a plan to protect confidentiality, personal privacy, Personally Identifiable Information, and U.S. national, homeland, and economic security; recognize proprietary interests, business confidential information, and intellectual property rights; and avoid significant negative impact on innovation, and U.S. competitiveness; and be otherwise consistent with applicable laws, regulations, and DOE orders and policies