



## **ATTACHMENT A: ARRA SPECIAL TERMS AND CONDITIONS FOR FUNDS PROVIDED THROUGH THE BeSMART (A BETTER BUILDINGS INITIATIVE) PROGRAM**

Recipients of funding awards through the BeSMART (a DOE Better Buildings initiative) Program must comply with the terms and conditions detailed below. For purposes of this document, “Recipient” means the Maryland Department of Housing and Community Development (DHCD) and “Subgrantee” means the specific Entity provided funding through BeSMART, **including contractors and subcontractors receiving funds obtained through a borrower.**

A copy of this document will be attached and provided to eligible contractors for BeSMART activities, and will also be incorporated into loan documents for financing provided through BeSMART. The Recipient agrees that it will provide a copy of these Special Terms and Conditions to all Subgrantees and require the Subgrantee’s full compliance with the applicable provisions.

1. **Recovery Act Information** The American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA or Recovery Act), was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use funds in a manner that maximizes job creation and economic benefit. The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in the Recovery Act itself and as discussed below. The Recipient should begin planning activities for its subgrantees, contractors and subcontractors, including having them obtain a Dun & Bradstreet DUNS number (or updating their existing DUNS record), and registering with the federal government’s Central Contractor Registration (CCR) if applicable. “Non-Federal employer” means any employer with respect to Covered Funds – the contractor, subcontractor, subgrantee or recipient, as the case may be, if the contractor, subcontractor, subgrantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

**None of the funds provided through BeSMART may be expended, directly or indirectly, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.**

The Recipient agrees that with respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery

and Reinvestment Act of 2009, Pub. L. 111- 5,, that the United States Inspector General or any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or the United States Comptroller General is authorized – (1) to examine any records of the Recipient or Subgrantee, or any State or local agency administering such award that pertain to, and involve transactions relating to, the grant; and (2) to interview the Recipient or any officer or employee of its contractors Subgrantee or any State or local agency administering such award, regarding such transactions.

Nothing in this Paragraph shall be interpreted to limit or restrict in any way any existing authority of the United States Comptroller General. The Recipient shall include in all of its agreements with Subgrantees who are performing work funded in whole or in part with ARRA funds pursuant to this award, and shall require all Subgrantees to include with lower tier subcontractors, the language provided in this Paragraph.

- A. **Publication** An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies: Notice of Restriction on Disclosure and Use of Data The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant. Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov) , maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.
- B. **Protecting State and Local Government and Contractor Whistleblowers.** The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to: Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of: - gross management of an agency contract or grant relating to covered funds; - a gross waste of covered funds; - a substantial and specific danger to public health or safety related to the implementation or use of covered funds; - an abuse of authority related to the implementation or use of covered funds; or - as violation of law, rule, or regulation

related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds. Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions: - Order the employer to take affirmative action to abate the reprisal. Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken. - Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction. Non-enforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section. Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

- C. **False Claims Act** The Recipient and any of its Subgrantees shall promptly refer to the United States Department of Energy or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict or interest, bribery, gratuity or similar misconduct involving those funds.

2. **Reporting and Registration Requirements** The Recipient and Subgrantees shall adhere to the following reporting requirements in addition to any other reporting requirements listed herein, in an MOU or any of its attachments, or otherwise made known to the Recipient or Subgrantee. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards or payments. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future award by Federal agencies. Restrictions. Reports submitted to the Recipient 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.

- A. This award requires the Recipient and its subgrantees to complete projects or activities which are funded under the Recovery Act and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

B. The Recipient and its Subgrantees must maintain current registrations in the Federal government's Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active Federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

C. Subgrantees shall report to DHCD (the Recipient) after the completion of each individual job or no later than the fifth (5th) calendar day of each month, for the previous month's reporting data, the following information, as well as any changes, amendments or modifications to such reporting data. Subgrantee's legal name, address and any "doing-business-as" (DBA) name; Subgrantee's congressional district (can be found at <http://www.house.gov/zip/ZIP2Rep.html>); Amount of the Subgrantee's funding from DHCD; Location of project (if different from Subgrantee's legal address); A description of the Subgrantee's services. Total number of job hours funded through BeSMART funding on a per job basis. Specific project information (to be completed for each individual project and for each Subgrantee working on a project) that include, but are not limited to the information outlined in Attachment B: Program Guidelines and Contractor Reporting Responsibilities. Start and end dates for project work.

3. **Statement of Federal Stewardship** DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

4. **Site Visits** DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Recipient must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

#### 5. **Publications**

A. Recipient and Grantees are encouraged to publish or otherwise make publicly available the results of the work conducted under this award.

B. An acknowledgement of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows: Acknowledgement: "This material is based upon work supported by the Department of Energy and the Maryland Department of Housing and Community Development under Award Number DEEE000351/000. 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 or 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.”

**6. Federal, State and Municipal Requirements** The Recipient and Subgrantees must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

**7. Intellectual Property Provisions and Contact Information** The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced on the Agreement Face Page. A list of all intellectual property provisions may be found at [http://www.gc.doe.gov/financial\\_assistance\\_awards.htm](http://www.gc.doe.gov/financial_assistance_awards.htm). Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at:

[http://www.gc.doe.gov/documents/Intellectual\\_Property\\_\(IP\)\\_Service\\_Providers\\_for\\_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf). The IP Service Provider for the Golden Field Office is Julia Moody. She may be reached at [julia.moody@go.doe.gov](mailto:julia.moody@go.doe.gov) or 303-275-4867.

**8. Lobbying Restrictions** By accepting funds, the Recipient and Subgrantees agree that none of the funds obligated 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.

**9. National Environmental Policy Act (NEPA) Requirements** The Recipient and Subgrantees are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share. The Recipient and Subgrantees are prohibited from implementing energy efficiency improvements and renewable energy generation opportunities, including demolition, repair, replacement, installation, construction, disposal, or alteration activities until such time that you comply with the Waste Stream and Historic Preservation clauses. If this project includes construction activities that are not included in the bounded scope of pre-approved activities, the Subgrantees and DHCD must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process. If the Recipient or Subgrantees intend to make changes to the scope or objective of the project, the Recipient is required to contact the DOE Project Officer identified in Block 15 of the Assistance Agreement before proceeding. The Recipient and Subgrantees must receive notification of approval from the DOE Contracting Officer prior to commencing with work beyond that currently approved. DOE has made a NEPA determination for this award. All projects under this award are bounded in compliance with the uploaded and signed Statement of Work/Template for expedited NEPA review. The projects within the scope of the Statement of Work comprise of actions to conserve energy. Any projects that fall outside the

Statement of Work are conditioned pending further NEPA review. DOE has made a final NEPA Determination for this project, which is categorically excluded from further NEPA review.

10. **Historic Preservation** Prior to the expenditure of Federal funds to alter any structure or site, the Recipient and Subgrantees are required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with the United States Department of Energy's (DOE) 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the Recipient and Subgrantees must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>. Section 110(k) of the NHPA applies to DOE funded activities. Recipients and Subgrantees shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106. Recipients and Subgrantees should be aware that the DOE will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to DOE. Recipient will be required to report annually on September 1 the disposition of all historic preservation consultations by category.

11. **Waste Stream** The Recipient assures that it will create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe the Recipient's or Subgrantees' plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. The Recipient and Subgrantees shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. The Recipient shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit).

12. **Decontamination and/or Decommissioning (D&D) Costs** Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient or Subgrantees for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's or Subgrantees' facilities, or (ii) any costs which may be incurred by the Recipient or Subgrantees in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

13. **Advance Understanding Concerning Publicly Financed Energy Improvement Programs** The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the Recipient under this award pertaining to the programs identified herein. By accepting this award, the Recipient agrees to

incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Recipient also agrees, by its acceptance of this award, to require its Subgrantees to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the Subgrantee.

By signing here, I acknowledge that I have read and understood all of the ARRA Special Terms and Conditions for Funds Provided through Be SMART (A Better Buildings Initiative) Program [ATTACHMENT A], and agree to comply with the requirements described in this document.

Name of Company \_\_\_\_\_

Print Contact Name and Title \_\_\_\_\_

Signature and Date \_\_\_\_\_