UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION	
Main Case No: 26-90440	Name of Debtor: Ascend Elements, Inc., *et al.*
Witnesses:	
Any witness listed by any other party; and	Judge: Christopher M. Lopez
Any witness used for rebuttal.	Courtroom Deputy: Yesenia Lila
	Hearing Date: May 8, 2026
	Hearing Time: 2:30 p.m.
	Party's Name: RMF Nooter, LLC
	Attorney's Name: T. Josh Judd
	Attorney's Phone: 713-850-4200
	Nature of Proceeding: Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection for the Use of Cash Collateral, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief [Docket No. 18] RMF Nooter, LLC's Supplemental Objection to Motion for Entry of Final Cash Collateral Order [Docket No. 171]

EXHIBITS

Ex. #	Description	Offered	Objection	Admitted/ Not Admitted	Disposition
1.	Mutual Non-Disclosure Agreement				
2.	RMF Nooter, Inc.'s Request for Production of Documents				
3.	April 24, 2026, Email from Ryan E. Manns, confirming receipt of RMF Nooter, Inc.'s Request for Production of Documents				
4.	April 26, 2026, Email from Joseph Trad, requesting access to data room				
5.	April 26, 2026, Email from Joseph Trad, requesting access to data room be restored				
	Any exhibits listed by any other party and/or any exhibits listed for any other hearing set for the same date				

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	Any exhibits necessary for rebuttal, impeachment or refreshing the recollection of witnesses				
	Any additional exhibits used for demonstrative purposes only				

DATED: May 6, 2026

Respectfully submitted,

ANDREWS MYERS, PC

/s/ T. Josh Judd

T. Josh Judd
SBN: 24036866
1885 Saint James Place, 15th Floor
Houston, TX 77056
Tel: 713-850-4200
Fax: 713-850-4211
jjudd@andrewsmyers.com

MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is effective from April 26, 2026 and is made by and between **ASCEND ELEMENTS, INC.**, a company organized and existing under the laws of Delaware having its head office at 133 Flanders Road, Westborough, MA 01581 (hereinafter called "AE"), and **CIC Group, Inc.**, on behalf of **RMF Nooter, LLC**, a corporation organized and existing under the laws of Missouri having its head office at 1509 Ocello Drive, Fenton MO, 63026, (hereinafter called "CIC").

WITNESSETH:

WHEREAS, the Parties believe that it will be mutually beneficial for them to exchange certain Confidential Information as described below in connection with and for the purposes of doing business together or evaluating the possibility of doing business together; and

WHEREAS, the Parties desire to establish certain understandings to protect their respective Confidential Information from unauthorized use or disclosure.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, the Parties agree as follows:

1. As used in this Agreement, the term "Confidential Information" refers to all business, technical, financial, operational, administrative, or legal data or information related to a Party, in whatever form or format, and howsoever disclosed by one Party to the other, and whether or not visibly marked as "confidential" or "proprietary" or with words having a similar meaning, subject to the exclusions set forth in Section 3, hereinbelow.

2. The Party receiving the other's Confidential Information ("Recipient") will, as to the Party disclosing its Confidential Information ("Discloser"):

   (a) hold it in confidence from the date of receipt under this Agreement;

   (b) use it only for the purposes specified above and/or for such other purposes as may be subsequently authorized in writing by Discloser;

   (c) make it available only (i) to its employees who have a need to know in order to carry out their duties in connection with the purposes specified above and who have suitable obligations of confidentiality applicable to such Confidential Information and (ii) to certain other parties as specified in Section 5 below; and

   (d) not otherwise use or disclose it except as expressly authorized in this Agreement or as otherwise authorized in writing by the Discloser.

3. The obligations of Recipient with respect to Discloser's Confidential Information shall not apply to:

   (a) information which, at the time of disclosure is in the public domain;

   (b) information which, after disclosure, becomes part of the public domain through no fault of Recipient;

   (c) information which was rightfully in Recipient's possession at the time of disclosure and which is not subject to prior continuing obligations of confidentiality by recipient to Discloser;

(d) information which is rightfully disclosed to Recipient by a third party having the lawful right to do so;

(e) information which has been or is hereafter released by Discloser to others without restriction; or

(f) information which is independently developed by or for Recipient without use of or reference to Confidential Information received from Discloser pursuant to this Agreement.

4. This Agreement shall apply to Confidential Information disclosed before or after the effective date of this Agreement and expires three (3) years from date of its last signature.

5. Notwithstanding anything above to the contrary but subject to Section 10 below,

(i) Recipient may disclose Discloser's Confidential Information to Recipient's Affiliates having a need to know for the purposes specified above; provided that such Affiliates have first agreed to be bound by the applicable provisions of this Agreement in the same way and to the same extent as Recipient is bound;

(ii) Recipient may disclose Discloser's Confidential Information to legal counsel, insurers and similar third parties to the extent necessary in connection with the use of such Confidential Information for the purposes specified above; provided that such third parties are bound by appropriate obligations of confidentiality; and

(iii) Recipient may disclose Discloser's Confidential Information to vendors and subcontractors to the extent required in connection with the purpose specified above provided that such vendors and subcontractors have undertaken written obligations to protect Discloser's Confidential Information in a manner at least as protective as the provisions of this Agreement or in such other form approved in writing by the Discloser.

For purposes of this Agreement, "Affiliate" means, as to either Party hereto, any other entity that, directly or indirectly, is in control of, is controlled by, or is under common control with, said Party. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means, as applied to any entity, the direct or indirect possession of the power to direct or cause the direction of the management and policies of that entity, whether through ownership of voting securities, by contract, or otherwise.

(b) Notwithstanding anything above to the contrary, Recipient may also disclose Discloser's Confidential Information to the extent required to comply with law or legal process, including but not limited to a court order, administrative subpoena or order, or applicable governmental regulation or statutory requirement which appears to be lawful on its face, provided that Recipient gives Discloser timely notice, where possible, of the contemplated disclosure so as to give Discloser an opportunity to intervene to preserve the confidentiality of the information.

6. In no event shall either Party, its Affiliates, or any of the parties mentioned in Section 5 (a) above, or any of their respective officers, directors or employees be liable for any multiple or punitive damages.

7. All Confidential Information furnished hereunder shall remain the property of the Discloser and any material containing same which may be provided by Discloser to Recipient pursuant to this Agreement shall be returned to Discloser or destroyed promptly at Discloser's request together

with all copies, excerpts, and/or summaries made thereof by Recipient; except that Recipient may retain one (1) copy of such material in limited access files as a record of its obligations hereunder. Upon request, Recipient shall send Discloser a destruction certificate in the case where Recipient has been instructed to destroy such materials.

8. No license under any patents, copyrights, or any other proprietary right is granted or conveyed by Discloser pursuant to this Agreement.

9. This Agreement and any claim, controversy, or dispute arising out of or in connection with this Agreement, shall be governed by the laws of the State of Texas without regard to its conflict of law principles. The Parties shall attempt to amicably resolve any claim, controversy, or dispute arising under or relating to this Agreement. If the Parties reach an impasse, either party may refer the dispute to binding arbitration seated in Houston, Texas under the arbitration rules of the American Arbitration Association (AAA) then in effect before one (1) arbitrator appointed in accordance with said rules. The award decision of the arbitrator, including its assessment of costs, shall be final and binding on both Parties and both Parties waive the right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. The Parties shall each bear their own costs of arbitration, provided, however, that the costs and fees of the arbitral body and the arbitrator shall be shared equally between the Parties. Notwithstanding the foregoing, either Party may seek urgent injunctive relief in a court of competent jurisdiction against improper use or disclosure of Confidential Information or threat thereof. The Parties acknowledge the risk of irreparable harm and that monetary damages may be an insufficient remedy for a breach of this Agreement.

10. Without regard to the duration of its other obligations hereunder, Recipient shall control access to, and use of, information received hereunder from Discloser and the direct product thereof in accordance with all applicable export control laws and regulations, and all applicable data privacy laws and regulations.

11. Any notice under, or in connection with, this Agreement shall be in writing and shall be deemed to have been given when received by the Party to which said communication is directed at its address set forth below or at such other address as such Party may have designated in writing to the other Party. A receipt evidencing delivery by certified or registered mail or by recognized commercial courier service shall constitute evidence of receipt. Any notice requiring prompt action shall be contemporaneously sent by electronic mail.

For purposes of giving notices under this Agreement, the addresses of the parties are as follows:

For Ascend Elements	For RMF Nooter, LLC
Ascend Elements, Inc.	CIC Group, Inc.
	133 Flanders Road 1509
	Ocello Drive
Westborough, MA 01581	Fenton, MO 63026
Attention: General Counsel	Attention: Corp. Counsel
E-Mail Address:	E-Mail Address:
dpowell@ascendelements.com	dkloeckener@cicgroup.com

12. Except as otherwise agreed in separate written agreements between the Parties, neither Party makes any representation or warranty regarding the Confidential Information disclosed by it, whether as to quality, accuracy, completeness, or otherwise, and neither Party shall have any liability arising from the other Party's use of or reliance on Confidential Information received pursuant to this Agreement.

13. By entering into this Agreement: (i) neither Party incurs a duty of exclusivity or makes a commitment to enter into any contract or business relationship with the other Party, and (ii) each

Party agrees that it shall not, during the term of this Agreement or solicit, induce, or offer, directly or indirectly, for any employee of the other Party or its Affiliates to cease being employed by such other Party or Affiliate.

14. Unless otherwise subsequently agreed in writing by the parties, this Agreement supersedes any conflicting provisions of any prior written or oral agreements or understandings between the parties related to the protection of the subject Confidential Information. This Agreement may not be amended or modified except by subsequent agreement in writing executed by a duly authorized officer or representative of each party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

ASCEND ELEMENTS, INC.	**CIC GROUP, INC.** **(*On behalf of RMF NOOTER, LLC*)**
By: _____	By: _____
Name: _____	Name: Daniel B. Kloeckener
Title: _____	Title: Director of Risk & Corp. Counsel
Date: _____	Date: April 26, 2026

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	**Chapter 11**
	§	
ASCEND ELEMENTS, INC., *et al.*[1]	§	**CASE NO. 26-90440 (CML)**
	§	
Debtors.	§	**Jointly Administered**

RMF NOOTER, INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS

To: Ascend Elements, Inc. and Ascend Elements US, LLC, by and through its attorney of record, Ryan Manns, Maria Mokrzycka, Jason Blanchard, Michael Berthiaume, Norton Rose Fulbright US LLP, 1550 Lamar, Suite 2000, Houston, Texas 77010.

RMF Nooter, Inc. ("Nooter") submits this Request for Production to Ascend Elements, Inc., and Ascend Elements US LLC (together, the "Debtors"), pursuant to Bankruptcy Rule(s) 9014 and 7034 and Rule 34 of the Federal Rules of Civil Procedure. The requested documents shall be produced at the offices of Andrews Myers, PC by 5:00 p.m. on May 7, 2026. The Debtors shall supplement all responses and production as required by the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rule 9014.

Respectfully submitted,

ANDREWS MYERS P.C.

/s/ T. Josh Judd
T. Josh Judd
SBN: 24036866
1885 Saint James Place, 15th Floor
Houston, TX 77056
Tel: 713-850-4200
Fax: 713-850-4211
jjudd@andrewsmyers.com

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2026, a true and correct copy of the foregoing Request for Production of Documents was served via Email and U.S. first class mail to counsel for the Debtor.

VIA EMAIL & US MAIL

Ryan Manns
Maria Mokrzycka
Jason Blanchard
Michael Berthiaume
Norton Rose Fulbright US LLP
1550 Lamar, Suite 2000
Houston, Texas 77010
Ryan.manns@nortonrosefulbright.com
Maria.mokrzycka@nortonrosefulbright.com

Jason I. Blanchard
Michael Berthiaume
2200 Ross Avenue, Suite 3600
Dallas, Texas 75201
Jason.blanchard@nortonrosefulbright.com
Michael.berthiaume@nortonrosefulbright.com

/s/ T. Josh Judd
T. JOSH JUDD

DEFINITIONS

1. As used herein, the terms "**Ascend**," "**Debtors**," "**You**," and "**Your**" shall mean Ascend Elements, Inc., Ascend Elements US, LLC, including but not limited to all officers, directors, employees, agents, chief restructuring officers, attorneys, representatives, and all other natural persons or business or legal entities acting or purporting to act for or on behalf of Debtor, whether authorized to do so or not.

2. The term "**Bid Procedures Motion**" shall mean the Debtors' Motion for Entry of Order (I)(A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets, (B) Approving the Assumption and Assignment of Certain Contracts, and (C) Granting Related Relief filed at Docket No. 50 in the Debtors' bankruptcy cases.

3. The term the "**Project**" shall mean the large-scale electric battery recycling and manufacturing facility in Hopkinsville, Kentucky.

4. The term the "**Arbitration**" shall mean the AAA Case No. 01-25-0003-3607; Turner-Kokosing Joint Venture v Ascend Elements, Inc. v RMF Nooter LLC.

5. The term "**Counterclaim**" shall mean Ascend Elements, Inc.'s Answering Statement to Nooter's Statement of Facts and Counterclaims.

6. The term "**Declaration**" shall mean the Declaration of Michael O'Hara of Jeffries LLC in Support of the Debtors' the Bid Procedures Motion.

7. The term "**Prepetition Secured Parties**" shall have the meaning ascribed to it in the Declaration.

8. The term "**document**" is used herein in its broadest sense under the Federal Rules of Civil Procedure and includes, but is not limited to, all papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, retrievable data (whether carded, taped, coded, electrostatically or electromagnetically recorded, or any other data or information pursuant to Federal Rule of Civil Procedure 34(a)) and any other data compilation of any kind from which information can be obtained, including (but not limited to) computer hard drives, hard copies of computer information, or computer disks; any notes or non-identical drafts relating to the foregoing; and any other papers or writings of any kind, including but not limited to any information retrieval system or device. In all cases where an original is not available, "document" also means any identical copy of an original document. In all cases where a "document" is in a language other than English, "document" includes any translation and material related thereto. The term "document" also includes desk files, personal contract files, reading files, pencil files, work files, correspondence files, chronological files or the equivalent, maintained, directed to, or received by any person employed by or under the direction and control of Regions Bank, but does not include attorney-client privileged communications.

9. As used herein, the term "**person**" shall mean the plural as well as the singular and includes: natural persons, corporations, firms, associations, partnerships, joint ventures or any other form of legal business entity; and governmental agencies, departments, units or any subdivisions thereof.

10. As used herein, the term "**communicate or communications**" shall mean every manner or means of disclosure, transfer or exchange, and every disclosure or transfer or exchange of information, whether orally or by writings, documents, face to face or by telephone, mail, fax transmissions, electronic mail, text message, instant message, personal delivery or otherwise.

11. "**Including**" means "including but not limited to."

12. "**Concerning**," "**referencing**," or "**relating to**" means referring to, describing, having any relationship to, pertaining to, reflecting, dealing with, comprising, or constituting evidence of in whole or in part.

13. The connect "**and**" and "**or**" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this discovery request all responses that might otherwise be construed to be outside of its scope.

14. "**Identification**" - As used herein, the terms "identify," "identity," or "identification" include but are not limited to the following:

(a) A natural individual - requires you to state his or her full name and residence and business addresses and telephone numbers;

(b) A document - requires you to state the number of pages and the nature of the document (e.g., letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location and custodian;

(c) A communication - requires you, if any of the communication was written, to identify the document or documents which refer to or evidence the communication; and as to the portion that was non-written, to identify the persons participating in the communication and to state the date, manner, place, and substance of the communication; and

(d) Any other entity - requires you to state the name and residence or business addresses and telephone numbers.

INSTRUCTIONS FOR DOCUMENT PRODUCTION

1. This Document Request is a continuing request. You shall promptly produce any and all additional Documents that are received, discovered, or created after the time of initial production.

2. This Document Request applies to all documents in Your possession, custody, or control, and includes Documents, wherever located, within the possession, custody, or control of Your advisors, affiliates, agents, attorneys, accountants, consultants, employees, experts, investigators, investment bankers, predecessors, representatives, subsidiaries, successors-in-interest, and other Persons acting, or who have acted, on behalf of the foregoing, dated from January 1, 2025, to the present, unless otherwise indicated.

3. If You object to any request in part, You shall produce all responsive documents to which the objection does not apply.

4. If any documents are withheld from production on the alleged grounds of privilege or immunity (whether under common law, statute, or otherwise), each such document is to be identified by stating: (a) the identity of each Person who prepared and/or signed the document; (b) the identity of each Person designated as an addressee; (c) the identity of each Person who received any copy of the document; (d) the date of the document; (e) the subject matter of the document; (f) the type of document; and (g) the basis for withholding the document.

5. Pursuant to Bankruptcy Rule 7034 and Rule 34 of the Federal Rules of Civil Procedure, all requests specifically request production of electronically stored information ("ESI"), and all metadata associated with such ESI. Specifications regarding the form of the production of ESI are attached hereto as Exhibit A. If a response to a request includes ESI in the responding party's possession, custody, or control, provide the following:

5.1. If ESI exists in a format not suitable for production in image format, please produce the ESI in its native format. Examples are .xlsx files, .jpeg files, .mpp files, .xer files, auido files, and video files.

5.2 If ESI exists in a format suitable for production in image format, please produce the ESI in the image format described in the attached Exhibit A.

5.3 All ESI production, including that in native format, should follow the specifications in the attached Exhibit A.

5.4 If available through reasonable efforts, please provide a unique alpha-numeric identifier on each responsive item, commonly referred to as a Bates number.

5.5 Should the volume of the data being produced exceed 75GB, please provide the production on an external drive as opposed to providing a download link.

EXHIBIT A

Load File Specifications		
Field Name	Field Description	Data Sample
Begin_Production_Number	Beginning Bates number of the file.	
End_Production_Number	Ending Bates Number of the file.	
Begin_Production_Attach_Number	The first page of a document family.	
End_Production_Attach_Number	The last page of a document family.	
Page_Count	Total number of images exported.	
Native_Location	Full file path to the deliverable native file.	AMPROD001\NATIVE\0001.MSG
Text_Location	Full file path to the deliverable OCR/Text file.	AMPROD001\TEXT\0001.txt
Custodian	Custodian name.	
All_Custodians	All Custodians of document prior to deduplication.	
Type_of_Document	Type of document.	Email, Efile, Attachment
From	Sender of the email.	
To	Recipient(s) of the email.	
CC	Recipient(s) of the email.	
BCC	Recipient(s) of the email.	
Email_Subject	Email subject.	
Attachment_Count	Number of attachments.	
Attachment_List	Populated for parent documents, only. Lists the filenames of documents attached to a parent document, such as an email. Multiple attachment names will be separated by a semicolon.	Project File.doc; Project List.xlsx
Email_Sent_DateTime	Sent Date and Time of the email combined in one field.	1/7/2025 11:13 (MM/DD/YYYY HH:MM)
Email_Date_Sent	Sent Date of email.	1/7/2025 (MM/DD/YYYY)
Email_Sent_Time	Sent Time of email.	11:13:41
Email_Received_DateTime	Received Date and Time of the email combined in one field.	
Email_Received_Date	Received Date of the email.	
Email_Received_Time	Received Time of the email.	

Load File Specifications		
Field Name	Field Description	Data Sample
MD5	MD5 Hash of the file.	
Author	Author of the efile extracted from the file's metadata.	
Application_Name	Native application that created the associated file. This is based on the file's signature.	Outlook MSG
Application_File_Title	Title of the efile extracted from the file's metadata.	
File_Name	Original file name of the file.	XYZ Contract.docx
Extension	Original extension of the file.	msg, docx, xlsx, xer, pdf, etc
Created_DateTime	File system created date and time combined in one field.	1/7/2025 11:13 (MM/DD/YYYY HH:MM)
Created_Date	File system created date.	1/7/2025 (MM/DD/YYYY)
Created_Time	File system created time.	11:13:41
Modified_DateTime	File system last modified date and time combined in one field.	1/7/2025 11:13 (MM/DD/YYYY HH:MM)
Modified_Date	File system last modified date.	1/7/2025 (MM/DD/YYYY)
Modified_Time	File system last modified time.	11:13:41
Folder	Original path of the associated file without the file name.	/Exported Email/Inbox/Project/
Placeholder	Indicates whether document contains placeholder image.	"Y," if document produced in native format. Include File Name and Begin_Production_Number on placeholder image.
Is_Redacted	Indicates whether document contains redactions.	True/False
Confidential	Populated with document's confidentiality endorsement.	Confidential, Highly Confidential or Attorney's Eyes Only, if applicable.
Master_Date	Populated with the family members' parent document date - Email Sent Date, Email Received Date, Last Modified Date, or Created Date.	1/7/2025 (MM/DD/YYYY)

Load File Specifications		
Field Name	Field Description	Data Sample
Master_DateTime	Populated with the family members' parent document date and time combined - Email Sent Date, Email Received Date, Last Modified Date, or Created Date.	1/7/2025 11:13 (MM/DD/YYYY HH:MM)
Volume_Name	The name of the Volume assigned to the file.	AMPROD001

Deliverable Specifications

1.) Concordance DAT delimited file for fielded data (Unicode) and OPT for image import.
2.) Images (Color – JPG, 300 DPI, Lossy Compression; Black/White – TIF, 300 DPI, Group IV Compression).
3.) Document Level OCR/Text.
4.) Natives for documents produced in native format.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

Produce all independent site assessments, including but not limited to the independent site assessment described in paragraph 16, bullet point 3 of the Counterclaim in the Arbitration. A copy of the Counterclaim is attached hereto as **Exhibit B**.

REQUEST FOR PRODUCTION NO. 2

Produce all notes, reports, and documents created from the "substantial investigation" conducted by Ascend in the Spring of 2025 as indicated in paragraph 18 of the Counterclaim in the Arbitration.

REQUEST FOR PRODUCTION NO. 3

Produce all Department of Energy reports that substantiate Ascend's counterclaims in the Arbitration.

REQUEST FOR PRODUCTION NO. 4

Produce all documents that support the Debtors' contention that the Department of Energy has a lien or an interest in any of the property located at the Project.

REQUEST FOR PRODUCTION N0. 5

Produce all documents relied upon by Michael O'Hara in support of his statements in the Declaration regarding the sale of the Project.

REQUEST FOR PRODUCTION N0. 6

Produce all pre-petition communications between the Debtors and the Prepetition Secured Parties regarding the timeline and milestones for the proposed sale of the Project.

REQUEST FOR PRODUCTION N0. 7

Produce all documents in support of the Debtors' statement in the Bid Procedures Motion that the Debtors' conducted "a pre-petition marketing process (with the assistance of their proposed investment banker, Jefferies LLC) … regarding a potential going concern or other value maximizing transaction" related to the Project.

REQUEST FOR PRODUCTION NO. 8

Produce all documents in support of the Debtors' statement in the Bid Procedures Motion that "the proposed sale timeline provides potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid."

EXHIBIT B

IN THE AMERICAN ARBITRATION ASSOCIATION

TURNER-KOKOSING JOINT VENTURE, Claimant, v. ASCEND ELEMENTS, INC., Respondent, v. RMF NOOTER LLC, Third-Party Respondent.	AAA Case No. 01-25-0003-3607

ASCEND ELEMENTS, INC.'S ANSWERING STATEMENT TO NOOTER'S STATEMENT OF FACTS AND COUNTERCLAIMS

I. INTRODUCTION

1. This dispute arises from the design and construction of a large-scale electric battery recycling and manufacturing facility in Hopkinsville, Kentucky ("Project"), owned by Ascend Elements, Inc. RMF Nooter LLC ("Nooter") entered into a subcontract with Turner-Kokosing Joint Venture ("TKJV") on or about August 18, 2023, to provide labor, materials, and equipment necessary for construction services on the Project.

2. Nooter now seeks approximately $40,400,506.91 from Ascend based on unjust enrichment and quantum meruit theories. Ascend denies these claims and asserts counterclaims against Nooter for fraud, negligent misrepresentation, unjust enrichment, and negligence arising from Nooter's misconduct on the Project.

II. GENERAL DENIAL AND RESPONSES TO NOOTER'S ALLEGATIONS

3. Ascend denies each and every allegation, statement, and claim set forth in Nooter's Statement of Facts and claims, demands strict proof thereof, and requires Nooter prove each and every element under Kentucky law.

4. Ascend specifically denies Nooter is entitled to any of the relief requested, including but not limited to damages, enforcement of mechanic's liens, attorneys' fees, costs, or any other relief whatsoever.

A. <u>Specific Responses to Nooter's Key Allegations</u>

Regarding Nooter's Performance Claims:

5. Nooter alleges it "performed all of its obligations under the Subcontract by furnishing labor, materials, and equipment for the Project." Ascend denies this allegation. As detailed below, Nooter engaged in widespread fraud, overbilling, falsification of records, and negligent performance causing substantial damages to Ascend.

Regarding Project Design Changes:

6. Nooter attempts to blame alleged design changes and scope modifications for cost overruns and delays. Ascend denies any design changes or scope modifications caused or justified Nooter's fraudulent conduct, overbilling, or negligent performance. Any inefficiencies on the Project stemmed from Nooter's mismanagement, waste, fraud, and failure to perform work competently.

Regarding Payment Amounts:

7. Nooter claims it is owed $40,473,015.05 (or alternatively $39,850,480.17 plus interest and costs). Ascend denies these amounts are due and owing. To the contrary, Nooter has been overpaid and has unjustly enriched itself through fraudulent billing practices detailed herein.

III. FACTUAL BACKGROUND: NOOTER'S MISCONDUCT

A. Fraudulent Timekeeping and Labor Billing

8. Nooter falsified timecards, inflated overtime, and billed for work not performed in numerous ways, including:

- Nooter employees, including Amanda Thompson, Jonathan Gilland, and Chad Martino, routinely falsified timecards to reflect hours not actually worked.
- Nooter's project manager, Donny Taylor, reportedly told staff, "there is a barrel full of money here and we are going to spend it," encouraging a culture of overbilling.
- Nooter authorized the building of multiple sheds and unnecessary customization of Nooter's trailers, which Nooter's interim project later instructed be ripped out to conceal the excessive spending.
- Employees were recorded as working more than twelve hours per day and, in some cases, more than twenty hours per day, which was not possible or permitted. Nooter's explanation that the hours were reported on the incorrect day is, on its own, an admission that it failed to monitor and verify the accuracy of its employee timecards.
- Overtime was billed for employees who were not eligible for such compensation, including exempt and non-union staff, resulting in at least $975,460.00 in overbilling for improper overtime alone.
- Nooter staff, including management, reported time and per diem expenses to the Project while offsite or tending to personal business, including one

manager who left the site for weeks to tend to his farm but continued to bill fulltime hours.

- Nooter billed for labor on federal holidays and Sundays when the Project site was closed, resulting in at least $37,093.00 in overbilling for holiday hours and $26,166.00 for Sunday hours.
- Nooter's timesheets show 2,065 instances of employees booking between sixty and seventy hours per week and fifty-one instances of weekly hours exceeding seventy, which is inconsistent with permitted procedures, actual site activity, and Project progress.
- Nooter's project manager, Donny Taylor, billed time for work that had not begun, as evidenced by TKJV's rejection of a Nooter invoice due to insufficient justification for the reported work.
- Nooter implemented an incomprehensible billing system that included multiple cost codes for the same task. After TKJV rejected its invoice, Nooter acknowledged the issue and sent lead controller Angie Schilling onsite to revise the codes, reducing them by more than half.

9. Nooter's responsive positions with respect to timekeeping and billing are simply unsupported and contradicted by evidence uncovered to date.

B. <u>Equipment Overbilling</u>

10. Nooter rented or purchased excessive and duplicative equipment, including:

- Nooter rented large cranes and other equipment in numbers far exceeding the available operators and actual Project needs. For example, in September 2024, Nooter had ten unmanned cranes on site with only four operator

crews, resulting in at least $73,866.00 in unnecessary crane rental charges for that month alone.

- Nooter's subcontractor, Lents Crane, leased twelve to fifteen expensive cranes, with about half sitting idle, and charged at least $1,255,991.00 in questionable project management, travel, and fuel surcharges, including an eight-percent fuel surcharge applied indiscriminately to all charges, even those not involving fuel consumption.
- Nooter continued to rent and bill for equipment, including trucks and UTVs, after being directed to demobilize, resulting in at least $405,196.00 in costs incurred after work stoppage.
- Nooter purchased materials from other subcontractors, such as Murphy Company, at a markup, rather than from TKJV, to inflate costs.
- Nooter rented equipment from companies with personal connections to Nooter's onsite management. One such company was Equipment Share, which had previously sent faulty products to Nooter.
- Nooter's project manager, Donny Taylor, among others, instructed procurement to arbitrarily inflate orders submitted by field supervisors.

11. Nooter's defense that equipment was necessary due to "constantly changing scope of work" and "incomplete Project design" is contradicted by the evidence showing idle equipment, excessive rentals beyond any reasonable Project needs, and continued billing after work stoppage. Moreover, there is no basis to rent equipment for which Nooter had no operators or that could not fit on the construction site.

C. Insurance and Tax Overbilling

12. Nooter double-billed Ascend by including a general liability markup in its labor rate notwithstanding its coverage under the Contractor Controlled Insurance Program, resulting in at least $296,029.00 in overbilling.

13. Nooter billed for unemployment tax and commercial activity tax that it did not pay, resulting in at least $1,243,323.00 and $79,651.00 in overbilling, respectively. Nooter submitted invoices with strange handwritten figures for supposed taxes that had been applied and paid without proof that the taxes were remitted.

14. Nooter's claim that "industry practice and the terms of the subcontract provide for final reconciliation of taxes incurred vs. taxes paid at the conclusion of work" does not excuse billing for taxes never paid or the submission of invoices with fabricated tax figures.

D. Tools and Materials Misconduct

15. Nooter engaged in systematic overbilling and misappropriation of tools and materials:

- Nooter purchased excess tools, equipment and materials for the Project to inflate costs.
- Nooter permitted superintendents to order for their own purposes, resulting in redundancies and an inability to accurately track and manage inventory.
- Tools and equipment purchased for the Project with Ascend's funds, some of which were new and unused, were redirected to Nooter's other projects.
- Nooter double-billed for small tools by charging both a labor rate allowance and direct charges, resulting in at least $1,898,734.00 in overbilling.

- Nooter charged Ascend $196,892.00 for the transportation of tools and equipment purchased for the Project to other Nooter projects and its main office.
- Nooter rented tools as part of a rent-to-own program, meaning that Nooter would own the tools after renting them without crediting Ascend for the tools' remaining value.
- Nooter failed to return tools, small or large, and failed to apply a credit for large tools (those valued over $1,500.00) that it purchased and kept for itself.

E. <u>False Progress Reports</u>

16. Nooter submitted false and misleading progress reports:

- Nooter's progress trackers and reports were intentionally misleading, reporting footage of pipe "laid" as "completed pipe" without regard to whether it had been welded, tested, and inspected, contrary to industry standards.
- Nooter withheld weld counts and other critical data, creating a false sense of progress and justification for its inflated labor costs.
- An independent site assessment found that much of the pipe Nooter reported as completed could not be located or was not actually finished.
- Nooter failed to implement or document a comprehensive quality assessment and testing program for installed piping and other critical systems, as required by contract and industry standards.

- Despite repeated requests, Nooter never produced quality reports related to onsite testing, and its quality manager, David Connelly, did not produce a single quality package for the Project.

F. Inefficiency and Unqualified Personnel

17. There was rampant inefficiency, waste, and use of unqualified personnel on the Project:

- Nooter's project manager, Donny Taylor, hired friends and unqualified personnel for key roles, including procurement and project controls, resulting in inefficiency, rework, and increased costs.
- Nooter's mechanical planner, Chad Martino, was unable to perform his duties, resulting in the hiring of two unnecessary subcontractors to complete his work, which generated at least $107,302.00 in needless charges.
- Nooter failed to efficiently demobilize from the Project site as directed, resulting in continued and unnecessary charges of at least $439,772.00 for labor, equipment, and per diem expenses after the work was ordered to stop.
- Nooter permitted an intoxicated weld inspector to remain onsite and on the clock after he failed a breathalyzer test and later arranged for another employee to drive the weld inspector home while on the clock. Nooter permitted the inspector to work in the prefabrication shop rather than face more serious consequences.
- Nooter hired Lauren Taylor Alexander to oversee procurement, even though her only relevant experience was an apprenticeship with an electrician for a year and her then-most recent employment was in retail.

- Nooter retained a nonunion employee, Amanda Thompson, in an administrative capacity with an apparent personal connection to Taylor, despite her criminal record for identity theft and a subsequent arrest on the Project for drug-related offense.
- Nooter incurred unnecessary costs from certain subcontractors, such as "project management" fees charged by Lents Crane because of its inept management.

G. Investigation

18. Nooter claims it was unaware of Ascend's investigation until it learned of the allegations in Ascend's Counterclaim and that "no Nooter personnel were interviewed." Ascend conducted a substantial investigation based on allegations presented to Ascend in the spring of 2025. Ascend welcomes the opportunity to conduct additional discovery into Nooter's operations and billings on the Project in order to determine whether Nooter committed additional fraud, waste, and/or other wrongdoing that further damaged Ascend.

IV. COUNTERCLAIMS AGAINST NOOTER

COUNT ONE: FRAUD

A. Jurisdiction and Applicable Law

19. This claim arises under Kentucky common law. Kentucky law governs the substantive issues in this dispute.

B. Parties

20. Ascend Elements, Inc. is a Delaware corporation with its principal place of business at 133 Flanders Road, Westborough, Massachusetts, and is the owner and developer of the Project.

21. RMF Nooter LLC is a Limited Liability Company organized under the laws of the State of Missouri, with its principal place of business located at 915 Matzinger Road, Toledo, OH 43612, and performed construction services on the Project.

C. Factual Allegations

22. Nooter, by and through its agents and with superior knowledge of the facts and circumstances surrounding its performance, submitted or caused to be submitted false and inflated claims for payment, including claims for work not performed, excessive equipment rentals, and labor hours not actually worked. Nooter knew such claims would be submitted to and relied upon by Ascend (through TKJV) and by the Department of Energy, which provided federal funding for the Project.

23. Nooter knowingly or with reckless disregard for the truth concealed or misrepresented material facts regarding Project progress, costs, and the extent of inefficiencies, delays, and overbilling. Nooter failed to disclose its fraudulent billing practices, falsification of timecards, misappropriation of tools and equipment, and submission of false progress reports.

D. Elements of Fraud

24. Nooter's conduct constitutes fraud under Kentucky law, as it involved:

a. **Material Misrepresentations**: Nooter made material misrepresentations through falsified timecards, inflated billing for labor and equipment, false progress reports, and fraudulent tax and insurance charges.

b. **Knowledge of Falsity**: Nooter's project manager, Donny Taylor, reportedly told staff, "there is a barrel full of money here and we are going to spend it," demonstrating Nooter's knowing participation in fraudulent overbilling. Nooter's intentionally misleading progress reports and withholding of critical data demonstrate knowledge of the falsity of its representations.

c. **Intent to Induce Reliance**: Nooter submitted payment applications and progress reports with the intent that Ascend (through TKJV) would rely on them in approving payments and continuing the Project.

d. **Reasonable Reliance**: Ascend reasonably relied on Nooter's representations because Ascend had no direct contractual relationship with Nooter and relied on TKJV's oversight and Nooter's submissions through TKJV.

e. **Damages**: As a direct and proximate result of Nooter's fraud, Ascend has suffered damages including: inflated labor hours ($1,375,788); excessive equipment rentals ($1,279,885); excessive supervisory personnel ($2,880,153); double-billing for tools ($1,898,734); mismanagement leading to inefficiencies ($5,727,142); unnecessary subcontractors ($107,302); failure to demobilize ($439,772); improper taxes and insurance charges ($1,243,323 and $296,029); improper charges from Lents Crane ($1,255,991); and improper transportation and retention of tools ($196,982).

25. Ascend has also suffered damages including repayments to the DOE for work not performed or improperly billed, and costs and attorneys' fees incurred in responding to the federal investigation and third-party claims. Ascend's

damages are ongoing and may increase as further investigation and discovery continues and subject to potential DOE actions and investigations.

E. Prayer for Relief

WHEREFORE, Ascend respectfully requests that this Tribunal:

a. Award Ascend all direct and compensatory damages suffered as a result of Nooter's fraudulent conduct, in an amount to be determined at hearing, but not less than $16,701,100.00;

b. Award Ascend punitive or exemplary damages as permitted by law for Nooter's fraudulent and intentional misconduct;

c. Award Ascend all costs, expenses, and reasonable attorneys' fees incurred in connection with these proceedings;

d. Award Ascend pre-award and post-award interest at the maximum rate permitted by law; and

e. Grant such other and further relief as the Tribunal deems just and proper.

COUNT TWO: FRAUD BY OMISSION

A. Incorporation of Prior Allegations

26. Ascend incorporates by reference all allegations in the preceding paragraphs.

B. Duty to Disclose

27. Nooter had a duty to disclose material facts to Ascend regarding the status, quality control, and costs of the Project, based on its superior knowledge, position as a subcontractor performing work on Ascend's property, and the commercial relationship between the parties.

28. Although Nooter had no direct contractual relationship with Ascend, Nooter owed a duty to disclose material facts to Ascend because:

- **Superior Knowledge:** Nooter possessed superior knowledge regarding its own billing practices, timekeeping systems, equipment usage, labor costs, progress on the Project, and quality control measures that were not accessible to Ascend.
- **Position of Trust:** As a subcontractor performing work on Ascend's property and submitting billing information that would ultimately be charged to Ascend (through TKJV), Nooter occupied a position requiring disclosure of material facts affecting the Project's cost, schedule, and quality.
- **Federal Funding Obligations:** Due to the Project receiving federal funding via the DOE grant, accurate information regarding expenses, staffing, and quality control was required to be provided to both Ascend and the DOE. Nooter knew or should have known its billing and progress information would be submitted to the DOE and false or misleading information could subject Ascend to federal liability.
- **Partial Disclosure Creating Duty:** Where a party partially discloses material facts but gives the false impression of full disclosure, a duty to disclose the complete truth arises. Nooter submitted payment applications, progress reports, and other documentation that created the impression of complete and accurate disclosure while omitting material facts.

C. <u>Specific Failures to Disclose</u>

29. Nooter failed to disclose the following material facts to Ascend:

30. **Timekeeping and Labor Fraud:** Nooter failed to disclose: (a) employees Amanda Thompson, Jonathan Gilland, and Chad Martino routinely falsified timecards; (b) project manager Donny Taylor told staff "there is a barrel full of money here and we are going to spend it," encouraging overbilling; (c) employees were recorded as working more than twelve or even twenty hours per day, which was not possible or permitted; (d) overtime was billed for exempt and non-union staff ineligible for such compensation, resulting in at least $975,460.00 in overbilling; (e) staff reported time and per diem while offsite or tending to personal business, including one manager who left for weeks to tend to his farm while billing fulltime hours; (f) Nooter billed for labor on federal holidays and Sundays when the Project site was closed, resulting in at least $37,093.00 in holiday overbilling and $26,166.00 for Sunday hours; (g) timesheets showed 2,065 instances of employees booking 60-70 hours per week and 51 instances exceeding 70 hours, inconsistent with permitted procedures and actual site activity.

31. While Nooter claims face scanners were installed in March 2024 and an "internal review" showed the data was "highly accurate," Nooter failed to provide this data to Ascend proactively or disclose the timecard fraud that occurred before March 2024. Nooter acknowledges there were "isolated instances where time from multiple days was billed on a single day" but characterizes these as "simple administrative error[s]" without disclosing the extent or pattern of such errors to Ascend.

32. **Equipment Overbilling and Idle Equipment:** Nooter failed to disclose: (a) it was renting large cranes far exceeding available operators and actual needs, with ten unmanned cranes and only four operator crews in

September 2024, resulting in at least $73,866.00 in unnecessary crane rental charges for that month alone; (b) Nooter's subcontractor Lents Crane leased 12-15 expensive cranes with about half sitting idle and charged at least $1,255,991.00 in questionable project management, travel, and fuel surcharges, including an eight-percent fuel surcharge applied indiscriminately even to non-fuel charges; (c) Nooter continued to rent and bill for equipment including trucks and UTVs after being directed to demobilize, resulting in at least $405,196.00 in costs after work stoppage.

33. While Nooter claims equipment was "included in various budgets and submittals provided to TKJV and/or Ascend," Nooter failed to disclose much of this equipment sat idle, it had more cranes than operators, or it continued billing for equipment after work stoppage.

34. **Tools and Materials Misappropriation:** Nooter failed to disclose: (a) it was double-billing for small tools by charging both a labor rate allowance and direct charges, resulting in at least $1,898,734.00 in overbilling; (b) it was charging Ascend $196,892.00 for transporting tools and equipment purchased for the Project to other Nooter projects and its main office; (c) it was renting tools as part of rent-to-own programs without crediting Ascend for remaining value; (d) it was failing to return tools and apply credits for large tools valued over $1,500.00 Nooter purchased and kept; (e) tools and equipment purchased for the Project with Ascend's funds, some new and unused, were being redirected to Nooter's other projects.

35. **Tax and Insurance Billing Practices:** Nooter failed to disclose: (a) it was billing for unemployment tax and commercial activity tax it had not actually

paid, resulting in at least $1,243,323.00 and $79,651.00 in overbilling, respectively; (b) it was submitting invoices with handwritten figures for supposed taxes applied and paid without proof the taxes were remitted.

36. Nooter failed to disclose it was double-billing Ascend by including a general liability markup in its labor rate notwithstanding its coverage under the Contractor Controlled Insurance Program, resulting in at least $296,029.00 in overbilling.

37. While Nooter claims "industry practice and the terms of the subcontract provide for final reconciliation of taxes incurred vs. taxes paid at the conclusion of work," Nooter failed to disclose this billing practice to Ascend or explain it was billing for taxes not yet paid and might never pay.

38. **False Progress Reports and Quality Control Failures:** Nooter failed to disclose: (a) its progress trackers were intentionally reporting footage of pipe "laid" as "completed pipe" without regard to whether it had been welded, tested, and inspected, contrary to industry standards; (b) it was withholding weld counts and other critical data, creating a false sense of progress and justification for inflated labor costs; (c) much of the pipe Nooter reported as completed could not be located or was not actually finished; (d) it was failing to implement or document a comprehensive quality assessment and testing program for installed piping and other critical systems as required; (e) despite repeated requests, Nooter never produced quality reports related to onsite testing, and its quality manager David Connelly did not produce a single quality package for the Project.

39. **Inefficiency, Waste, and Unqualified Personnel:** Nooter failed to disclose: (a) project manager Donny Taylor was hiring friends and unqualified

personnel for key roles including procurement and project controls, resulting in inefficiency, rework, and increased costs; (b) mechanical planner Chad Martino was unable to perform his duties, resulting in hiring of two unnecessary subcontractors to complete his work, generating at least $107,302.00 in needless charges; (c) Nooter was failing to efficiently demobilize from the Project site as directed, resulting in continued and unnecessary charges of at least $439,772.00 for labor, equipment, and per diem expenses after work was ordered to stop.

40. **Failure to Disclose Investigation Results:** When Ascend conducted an investigation following a whistleblower complaint, Nooter failed to cooperate or provide information that would have clarified the allegations. Nooter was not aware an investigation had even been conducted until it learned of the allegations in Ascend's Counterclaim, and no Nooter personnel were interviewed. However, Nooter possessed information that was material to the investigation, including face scanner data, equipment usage records, tax reconciliation documentation, and quality control records, which it failed to disclose proactively.

41. **Misleading Statements Regarding Lien Filing:** On September 24, 2024, Nooter filed a preliminary lien and explicitly stated in a letter to Ascend that the filing "is not an indication of any current disputes regarding payment to Nooter for work performed on the project nor that Nooter is concerned that such payments will not be made in accordance with the subcontract in the future." This statement created a false impression there were no payment disputes or concerns, when in fact Nooter knew or should have known about the fraudulent billing practices, overbilling, and other misconduct detailed above.

D. Partial Disclosure Creating False Impression

42. Nooter partially disclosed material facts to Ascend (through TKJV) but gave the false impression of full disclosure. Specifically:

a. Nooter submitted payment applications totaling approximately $40,400,506.91 without disclosing approximately $16,701,100.00 of these billings were fraudulent or otherwise improper.

b. Nooter submitted progress reports showing work completed without disclosing the progress metrics were misleading and quality control measures had not been implemented.

c. Nooter submitted staff rates in the Subcontract "clearly delineated exempt vs. non-exempt positions," which were "submitted to and approved by TKJV (and presumably, Ascend)," but failed to disclose it was billing overtime for ineligible employees.

d. Nooter claims equipment "was included in various budgets and submittals provided to TKJV and/or Ascend," but failed to disclose much of this equipment was sitting idle or it had more equipment than it could operate.

E. Inducement and Reliance

43. Nooter's failure to disclose material facts induced Ascend to continue the Project with Nooter's participation (through TKJV), approve payment applications (through TKJV), and refrain from terminating Nooter.

44. Specifically, had Ascend known of Nooter's fraudulent billing practices, falsification of timecards, misappropriation of tools and equipment, false progress reports, and failure to implement quality control measures, Ascend would have:

- Demanded Nooter's immediate removal from the Project;
- Refused to approve payment applications containing fraudulent charges;
- Conducted an immediate investigation and audit of all Nooter charges;
- Taken steps to protect the DOE grant funding and avoid federal liability;
- Implemented enhanced oversight and verification procedures; and
- Pursued immediate legal remedies against Nooter and TKJV.

F. Reasonable Reliance

45. Ascend's reliance on Nooter's omissions was reasonable because:

- Ascend had no direct contractual relationship with Nooter and relied on TKJV's oversight and Nooter's submissions through TKJV;
- Ascend had no independent means of verifying the accuracy of Nooter's timecards, equipment usage, progress reports, or quality control measures;
- Nooter represented in its subcontract with TKJV it had "completed and submitted to Turner-Kokosing Joint Venture a prequalification questionnaire, that all statements therein were true, accurate and complete, and remain true, accurate and complete, and that Turner-Kokosing Joint Venture has relied on truthfulness, accuracy and completeness of such statements," creating a reasonable expectation Nooter would provide truthful and complete information;
- The Project involved federal funding, creating a reasonable expectation all parties would provide accurate information to avoid federal liability;

- Nooter's September 24, 2024 letter explicitly stated there were no payment disputes or concerns, reinforcing Ascend's reasonable belief Nooter was performing properly and billing accurately.

G. Damages

46. As a direct and proximate result of Nooter's omissions, Ascend has suffered damages including, but not limited to:

- Inflated labor hours: $1,375,788
- Excessive equipment rentals: $1,279,885
- Excessive supervisory personnel: $2,880,153
- Double-billing for tools: $1,898,734
- Mismanagement leading to inefficiencies: $5,727,142
- Unnecessary subcontractors: $107,302
- Failure to demobilize: $439,772
- Improper unemployment tax charges: $1,243,323
- Improper commercial activity tax charges: $79,651
- Improper insurance charges: $296,029
- Improper charges from Lents Crane: $1,255,991
- Improper transportation and retention of tools: $196,982

47. Ascend has also suffered damages including: repayments to the DOE for work not performed or improperly billed and costs and attorneys' fees incurred in responding to the federal investigation and third-party claims.

48. Ascend's damages are ongoing and may increase as further investigation and discovery continues and subject to potential DOE actions and investigations.

H. Prayer for Relief

WHEREFORE, Ascend respectfully requests that this Tribunal:

a. Award Ascend all direct and compensatory damages suffered as a result of Nooter's fraud by omission, in an amount to be determined at hearing, but not less than $16,701,100.00;

b. Award Ascend punitive or exemplary damages as permitted by law for Nooter's fraudulent and intentional misconduct;

c. Award Ascend all costs, expenses, and reasonable attorneys' fees incurred in connection with these proceedings;

d. Award Ascend pre-award and post-award interest at the maximum rate permitted by law; and

e. Grant such other and further relief as the Tribunal deems just and proper.

COUNT THREE: NEGLIGENT MISREPRESENTATION

A. Incorporation of Prior Allegations

49. Ascend incorporates by reference all allegations in the preceding paragraphs.

B. Factual Allegations

50. In the alternative to fraud, Ascend asserts Nooter made negligent misrepresentations to Ascend.

C. Elements of Negligent Misrepresentation

51. **Duty**: Nooter owed a duty to Ascend, as the Project owner, to provide accurate information regarding its work, progress, costs, and billing. This duty arose from Nooter's position as a subcontractor performing work on Ascend's property and submitting billing information that would ultimately be charged to Ascend.

52. **Breach**: Nooter breached this duty by submitting false and inflated claims for payment, falsified timecards, false progress reports, and fraudulent tax and insurance charges, either knowingly or with reckless disregard for the truth.

53. **Justifiable Reliance**: Ascend justifiably relied on Nooter's representations regarding work performed, progress achieved, and costs incurred, as Ascend had no independent means of verifying this information and relied on TKJV's oversight and Nooter's submissions.

54. **Damages**: As a direct and proximate result of Nooter's negligent misrepresentations, Ascend has suffered the damages detailed in Count One.

D. Prayer for Relief

WHEREFORE, Ascend respectfully requests that this Tribunal award the same relief as requested in Count One.

COUNT FOUR: UNJUST ENRICHMENT

A. Incorporation of Prior Allegations

55. Ascend incorporates by reference all allegations in the preceding paragraphs.

B. Factual Allegations

56. Nooter has issued payment applications totaling approximately $40,400,506.91 and claims it has not been paid in full. However, Ascend's investigation revealed approximately $16,701,100.00 of Nooter's billings are fraudulent or otherwise improper.

C. Elements of Unjust Enrichment

57. **Benefit Conferred**: To the extent Nooter received payment for fraudulent or improper charges, Ascend conferred a benefit on Nooter.

58. **Appreciation of Benefit:** Nooter appreciated and retained these payments.

59. **Inequitable Retention:** It would be inequitable for Nooter to retain payments obtained through falsified timecards, inflated billing, false progress reports, double-billing for insurance and tools, billing for unpaid taxes, misappropriation of tools and equipment, and other fraudulent conduct.

60. **Damages:** Ascend is entitled to recover the amounts by which Nooter has been unjustly enriched, which is not less than $16,701,100.00.

D. Prayer for Relief

WHEREFORE, Ascend respectfully requests that this Tribunal:

a. Award Ascend all amounts by which Nooter has been unjustly enriched, in an amount to be determined at hearing, but not less than $16,701,100.00;

b. Award Ascend all costs, expenses, and reasonable attorneys' fees incurred in connection with these proceedings;

c. Award Ascend pre-award and post-award interest at the maximum rate permitted by law; and

d. Grant such other and further relief as the Tribunal deems just and proper.

COUNT FIVE: NEGLIGENCE

A. Incorporation of Prior Allegations

61. Ascend incorporates by reference all allegations in the preceding paragraphs.

B. Factual Allegations

62. Nooter owed duties to Ascend, as the Project owner, to perform its work in a competent and workmanlike manner, to provide accurate information, and to avoid causing damage to Ascend's property and interests.

C. Elements of Negligence

63. **Duty**: Nooter owed Ascend a duty to:

- Perform work in accordance with industry standards and in a competent and workmanlike manner;
- Provide accurate information regarding work performed, progress, and costs;
- Implement and document comprehensive quality assessment and testing programs;
- Properly supervise and manage its workforce;
- Avoid waste, inefficiency, and mismanagement;
- Properly demobilize when directed.

64. **Breach**: Nooter breached these duties by: submitting false and misleading progress reports; failing to implement or document a comprehensive quality assessment and testing program; hiring unqualified personnel for key roles; engaging in rampant inefficiency and waste; and failing to efficiently demobilize from the Project site as directed.

65. **Causation**: Nooter's negligent conduct was the direct and proximate cause of Ascend's damages.

66. **Damages**: As a direct and proximate result of Nooter's negligence, Ascend has suffered damages including: excessive supervisory personnel costs

($2,880,153); mismanagement leading to inefficiencies ($5,727,142); unnecessary subcontractors ($107,302); failure to demobilize ($439,772); and other damages to be determined at hearing.

D. Prayer for Relief

WHEREFORE, Ascend respectfully requests that this Tribunal:

a. Award Ascend all direct and compensatory damages suffered as a result of Nooter's negligence, in an amount to be determined at hearing, but not less than the amounts set forth above;

b. Award Ascend all costs, expenses, and reasonable attorneys' fees incurred in connection with these proceedings;

c. Award Ascend pre-award and post-award interest at the maximum rate permitted by law; and

d. Grant such other and further relief as the Tribunal deems just and proper.

COUNT SIX: BREACH OF CONTRACT: THIRD-PARTY BENEFICIARY (IN THE ALTERNATIVE)

A. Incorporation of Prior Allegations

67. Ascend incorporates by reference all allegations in the preceding paragraphs.

B. Factual Allegations

68. Ascend is a third-party beneficiary of the Subcontract between TKJV and Nooter executed by Nooter on August 18, 2023 (the "Subcontract").

69. The Subcontract is attached hereto as Exhibit A.

70. The Subcontract expressly identifies Ascend as a third-party beneficiary through multiple provisions repeatedly identifies "Contractor and the Owner" together as parties to be protected and benefited by Nooter's obligations,

including in indemnification provisions, tax provisions, insurance provisions, and compliance provisions.

71. Ascend Elements Federal Supplement attached as A.1 to the Subcontract (the "Federal Supplement") imputes TKJV's obligations to Owner from the prime contract to Nooter.

72. Under the Federal Supplement, Nooter "assume[d] toward Turner, Owner, and the U.S. Government and/or the Contracting Officer all of the obligations that Turner assumes toward Owner and the U.S. Government and/or the Contracting Officer in the General Contract with respect to the Work to be performed by Subcontractor under the Agreement."

73. The Subcontract imposes extensive government reporting and compliance obligations on Nooter, including compliance with Federal Acquisition Regulation ("FAR"), that directly benefit Ascend as the recipient of federal funding and the party ultimately responsible to the Department of Energy.

74. Nooter breached its obligations under the Subcontract in numerous ways, including its failure to maintain accurate payrolls and basic records for all laborers; the submission of fraudulent certified payroll reports; noncompliance with OSHA safety standards incorporated by reference in FAR clauses; delivery of work that does not meet specifications or quality standards required under FAR Part 46; failure to meet milestones or provide required progress reports; submitting inaccurate cost data; failing to adhere to procurement standards; and engaging in improper business practices and conflicts of interest.

75. The breaches injured Nooter in the following ways:

a. **Overpayments:** Ascend paid for fraudulent labor charges ($1,375,788), excessive equipment rentals ($1,279,885), excessive supervisory personnel ($2,880,153), double-billing for tools ($1,898,734), improper taxes ($1,243,323 and $79,651), improper insurance charges ($296,029), and other fraudulent charges, totaling not less than $16,701,100.00.

b. **DOE Repayment Obligations:** Ascend faces potential repayment obligations to the Department of Energy for work not performed or improperly billed, as federal funds cannot be used to pay for fraudulent charges or work that does not comply with Davis-Bacon Act requirements.

c. **Federal Investigation Costs:** Ascend has incurred costs and attorneys' fees in responding to federal investigation and inquiries arising from Nooter's misconduct.

d. **Ongoing Compliance Costs:** Ascend has incurred and continues to incur costs to ensure compliance with federal requirements and to remediate the effects of Nooter's non-compliance.

C. <u>Prayer for Relief</u>

WHEREFORE, Ascend respectfully requests that this Tribunal:

a. Award Ascend all direct and compensatory damages suffered as a result of Nooter's breach, including costs incurred by Ascend to cure non-compliance, respond to federal inquiries, and the loss of federal funds, in an amount to be determined at hearing, but not less than the amounts set forth above;

b. Award Ascend all costs, expenses, and reasonable attorneys' fees incurred in connection with these proceedings;

c. Award Ascend pre-award and post-award interest at the maximum rate permitted by law; and

d. Grant such other and further relief as the Tribunal deems just and proper.

V. AFFIRMATIVE DEFENSES TO NOOTER'S CLAIMS

Without assuming any burden of proof not otherwise imposed by law, and without waiving any other defenses, Ascend asserts the following affirmative and other defenses to Nooter's claims:

FIRST DEFENSE: Failure to State a Claim

Nooter's claims fail to state a claim upon which relief can be granted.

SECOND DEFENSE: Fraud and Unclean Hands

Nooter's claims are barred by the doctrine of unclean hands due to Nooter's own fraudulent conduct, including falsification of timecards, inflated billing, false progress reports, misappropriation of tools and equipment, and other misconduct detailed herein.

THIRD DEFENSE: No Unjust Enrichment

To the extent Nooter claims unjust enrichment, Nooter has been overpaid by approximately $16,701,100.00 through fraudulent billing practices. Ascend has not been unjustly enriched; rather, Nooter has been unjustly enriched at Ascend's expense.

FOURTH DEFENSE: Setoff and Recoupment

To the extent Nooter is entitled to any recovery (which is denied), such recovery must be offset or reduced by amounts owed to Ascend, including

overpayments resulting from Nooter's fraudulent billing and damages caused by Nooter's misconduct.

FIFTH DEFENSE: Failure of Consideration

Nooter's claims fail because Nooter did not provide the work, quality, or value for which it seeks payment.

SIXTH DEFENSE: No Causation or Damages

Nooter cannot establish that any alleged design changes or scope modifications caused its damages. Any inefficiencies on the Project stemmed from Nooter's own mismanagement, fraud, and failure to perform work competently.

SEVENTH DEFENSE: Nooter's Own Misconduct

Any damages claimed by Nooter were caused by Nooter's own acts or omissions, including fraud, negligence, mismanagement, and failure to perform work in accordance with industry standards.

EIGHTH DEFENSE: Reservation of Additional Defenses

Ascend reserves the right to assert additional affirmative defenses as may be revealed through discovery or further proceedings in this matter.

VI. PRAYER FOR RELIEF

WHEREFORE, Ascend Elements, Inc. respectfully requests that this Tribunal:

a. Deny all relief requested by Nooter in its claims;

b. Dismiss Nooter's claims in their entirety, with prejudice;

c. Award Ascend all direct and compensatory damages suffered as a result of Nooter's fraud, negligent misrepresentation, and negligence, in an amount to be determined at hearing, but not less than $16,701,100.00;

d. Award Ascend all amounts by which Nooter has been unjustly enriched;

e. Award Ascend punitive or exemplary damages as permitted by law for Nooter's fraudulent and intentional misconduct;

f. Award Ascend all costs, expenses, and reasonable attorneys' fees incurred in connection with these proceedings;

g. Award Ascend pre-award and post-award interest at the maximum rate permitted by law;

h. Award Ascend a reasoned award and allocation; and

i. Grant such other and further relief as the Tribunal deems just and proper.

DATED: November 5, 2025

Respectfully Submitted,

/s/ Sasha D. Riedisser

NORTON ROSE FULBRIGHT US LLP
Luke Maher
Sasha Riedisser
Luke.maher@nortonrosefulbright.com
Sasha.riedisser@nortonrosefulbright.com
7676 Forsyth Blvd, Suite 2230
St. Louis, Missouri 63105
314 505 8871

From: Ryan E. Manns <ryan.manns@nortonrosefulbright.com>
Sent: Friday, April 24, 2026 4:33 PM
To: Josh Judd; Jason Blanchard
Cc: Samantha Ray; Luke Maher; Trad, Joseph J.; Madison Gaona; Maria Mokrzycka
Subject: RE: Ascend - Nooter M&M Claim Resolution Per Bid Procedures Order / Conference

Categories: Filed to ND

You don't often get email from ryan.manns@nortonrosefulbright.com. Learn why this is important

Confirming receipt, Josh.

Ryan E. Manns | Co-Head of Restructuring, United States
Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 8304 | Fax +1 214 855 8200
ryan.manns@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

From: Josh Judd <JJudd@andrewsmyers.com>
Sent: Thursday, April 23, 2026 11:57 AM
To: Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Jason Blanchard <jason.blanchard@nortonrosefulbright.com>
Cc: Samantha Ray <SRay@andrewsmyers.com>; Luke Maher <luke.maher@nortonrosefulbright.com>; Trad, Joseph J. <JTrad@lewisrice.com>
Subject: RE: Ascend - Nooter M&M Claim Resolution Per Bid Procedures Order / Conference

Ryan

Thank you again for your time yesterday and for your candor in explaining the current status of the sales process. After conferring with our client, it is clear that the size of Nooter's claim is too significant to forgo discovery and simply rely on the outcome of the auction. Nooter may, in fact, be the largest individual creditor in this matter. Accordingly, we have prepared a set of narrowly tailored requests for production of documents related to the claim resolution process identified in the bid procedures order, as well as certain requests pertaining to the sales process. There are a total of eight requests for production. In light of the expedited deadlines set forth in the bid procedures and the sale objection deadlines, we are requesting production by May 7, 2026, as detailed in the attached. Of course, if rolling production can be made in advance of that deadline, it would be greatly appreciated.

To the extent that any responsive documents regarding the sale are located in the data room, Nooter is prepared to execute an NDA to obtain access. Separately, Nooter requests access to the data room for its own analysis and consideration of potential credit bid opportunities. If your team or Jefferies can provide the NDA, we will promptly review and return it to the appropriate party.

Thank you for your attention to this matter.

T. Josh Judd
Shareholder

Andrews Myers | Attorneys at Law

TEL: 713-850-8218
EMAIL: jjudd@andrewsmyers.com
WEB: www.andrewsmyers.com

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From: Ryan E. Manns <ryan.manns@nortonrosefulbright.com>
Sent: Wednesday, April 22, 2026 4:19 PM
To: Josh Judd <JJudd@andrewsmyers.com>; Jason Blanchard <jason.blanchard@nortonrosefulbright.com>; Trad, Joseph J. <JTrad@lewisrice.com>
Cc: Wilkes, J. Laurens <JLWilkes@winston.com>; Samantha Ray <SRay@andrewsmyers.com>; Ganninger, Patrick F. <pganninger@lewisrice.com>; Luke Maher <luke.maher@nortonrosefulbright.com>
Subject: RE: Ascend - Nooter M&M Claim Resolution Per Bid Procedures Order / Conference

Thanks, Josh. That still works. Talk to you then.

Ryan E. Manns | Co-Head of Restructuring, United States
Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 8304 | Fax +1 214 855 8200
ryan.manns@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

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nortonrosefulbright.com

From: Josh Judd <JJudd@andrewsmyers.com>
Sent: Wednesday, April 22, 2026 3:54 PM
To: Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Jason Blanchard <jason.blanchard@nortonrosefulbright.com>; Trad, Joseph J. <JTrad@lewisrice.com>
Cc: Wilkes, J. Laurens <JLWilkes@winston.com>; Samantha Ray <SRay@andrewsmyers.com>; Ganninger, Patrick F. <pganninger@lewisrice.com>; Luke Maher <luke.maher@nortonrosefulbright.com>
Subject: RE: Ascend - Nooter M&M Claim Resolution Per Bid Procedures Order / Conference

Ryan

Does 5 pm still work for you all? I'm glad to circulate a dial-in / invite for 5 is that still works.

From: Ryan E. Manns <ryan.manns@nortonrosefulbright.com>
Sent: Wednesday, April 22, 2026 11:32 AM
To: Josh Judd <JJudd@andrewsmyers.com>; Jason Blanchard <jason.blanchard@nortonrosefulbright.com>; Trad, Joseph J. <JTrad@lewisrice.com>
Cc: Wilkes, J. Laurens <JLWilkes@winston.com>; Samantha Ray <SRay@andrewsmyers.com>; Ganninger, Patrick F. <pganninger@lewisrice.com>; Luke Maher <luke.maher@nortonrosefulbright.com>
Subject: RE: Ascend - Nooter M&M Claim Resolution Per Bid Procedures Order / Conference

Thanks, Josh. 5 CT or later works.

Best,
Ryan

Ryan E. Manns | Co-Head of Restructuring, United States
Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 8304 | Fax +1 214 855 8200
ryan.manns@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

From: Josh Judd <JJudd@andrewsmyers.com>
Sent: Wednesday, April 22, 2026 11:31 AM
To: Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Jason Blanchard <jason.blanchard@nortonrosefulbright.com>; Trad, Joseph J. <JTrad@lewisrice.com>
Cc: Wilkes, J. Laurens <JLWilkes@winston.com>; Samantha Ray <SRay@andrewsmyers.com>; Ganninger, Patrick F. <pganninger@lewisrice.com>; Luke Maher <luke.maher@nortonrosefulbright.com>
Subject: RE: Ascend - Nooter M&M Claim Resolution Per Bid Procedures Order / Conference

Ryan

Anytime after 4 today would work for me if that works for your team?

From: Ryan E. Manns <ryan.manns@nortonrosefulbright.com>
Sent: Tuesday, April 21, 2026 9:52 PM
To: Josh Judd <JJudd@andrewsmyers.com>; Jason Blanchard <jason.blanchard@nortonrosefulbright.com>; Trad, Joseph J. <JTrad@lewisrice.com>
Cc: Wilkes, J. Laurens <JLWilkes@winston.com>; Samantha Ray <SRay@andrewsmyers.com>; Ganninger, Patrick F. <pganninger@lewisrice.com>; Luke Maher <luke.maher@nortonrosefulbright.com>
Subject: RE: Ascend - Nooter M&M Claim Resolution Per Bid Procedures Order / Conference

Josh – please let us know if there a good time to catch up tomorrow.

Thanks

Ryan E. Manns | Co-Head of Restructuring, United States
Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 8304 | Fax +1 214 855 8200

EXHIBIT 3
3 of 5

ryan.manns@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

From: Josh Judd <JJudd@andrewsmyers.com>
Sent: Tuesday, April 21, 2026 10:30 AM
To: Jason Blanchard <jason.blanchard@nortonrosefulbright.com>; Trad, Joseph J. <JTrad@lewisrice.com>
Cc: Michael Berthiaume <michael.berthiaume@nortonrosefulbright.com>; Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Maria Mokrzycka <maria.mokrzycka@nortonrosefulbright.com>; Wilkes, J. Laurens <JLWilkes@winston.com>; Samantha Ray <SRay@andrewsmyers.com>; Ganninger, Patrick F. <pganninger@lewisrice.com>
Subject: RE: Ascend - Nooter M&M Claim Resolution Per Bid Procedures Order / Conference

Jason

Pursuant to Paragraph 31 of the Bid Procedures Order, we have a limited window—through April 27, 2026—to work cooperatively to resolve the issues related to the amount of the M&M liens. Nooter has filed a copy of its M&M lien with the court.

In furtherance of a resolution, we have conferred with counsel for Turner-Kokosing (TKJV) regarding the Nooter claim and the amounts disputed by the debtor in the underlying arbitration. The debtor's objections generally focus on three assertions. TKJV has confirmed that they do not possess the documents referenced by the debtor in the arbitration. As further detailed in the attached proposed discovery requests, the documents at issue include:

- Independent site assessments, including but not limited to the assessment described in paragraph 16, bullet point 3 of the Counterclaim in the Arbitration;
- Notes, reports, and documents generated from the "substantial investigation" conducted by Ascend in the spring of 2025, as referenced in paragraph 18 of the Counterclaim in the Arbitration;
- Department of Energy reports that purportedly substantiate Ascend's counterclaims in the Arbitration.

Are you available for a conference this afternoon to discuss a path forward regarding potential resolution of the Nooter M&M lien claim, production of the relevant documents, and cooperation in resolving the dispute over the claim amount?
Thank you for your attention to this matter.

Regards,

T. Josh Judd
Shareholder
Andrews Myers | Attorneys at Law

TEL: 713-850-8218
EMAIL: jjudd@andrewsmyers.com
WEB: www.andrewsmyers.com

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please contact the sender immediately. Any disclosure, copying, distribution or the taking of any action concerning the contents of this communication by anyone other than the named recipient(s) is strictly prohibited.

From: Jason Blanchard <jason.blanchard@nortonrosefulbright.com>
Sent: Thursday, April 16, 2026 7:48 PM
To: Josh Judd <JJudd@andrewsmyers.com>; Trad, Joseph J. <JTrad@lewisrice.com>
Cc: Michael Berthiaume <michael.berthiaume@nortonrosefulbright.com>; Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Maria Mokrzycka <maria.mokrzycka@nortonrosefulbright.com>
Subject: Ascend - revised bidding procedures order

Subject to FRE 408

[redacted]

[redacted]

Best regards,

Jason

Jason Blanchard | Senior Counsel
Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 8117 | Fax +1 214 855 8200
jason.blanchard@nortonrosefulbright.com

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From: Trad, Joseph J. <JTrad@lewisrice.com>
Sent: Sunday, April 26, 2026 2:03 PM
To: Alex Lu; Josh Judd
Cc: Ryan E. Manns; Brummond, Jeremy P.; Project.Ember.Jef; Paul Shin; Ananth Shankar; Michael O'Hara
Subject: RE: Ascend Elements / Bid Procedures Order - RKM Nooter
Attachments: Confidentiality.Mutual Non Disclosure.20250815_CIC Signed.pdf

Alex,

Attached is the NDA signed by our client. Please provide access information ASAP.

Joe Trad
314-614-7691

From: Alex Lu <alu1@jefferies.com>
Sent: Saturday, April 25, 2026 11:11 PM
To: Josh Judd <JJudd@andrewsmyers.com>
Cc: Trad, Joseph J. <JTrad@lewisrice.com>; Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Brummond, Jeremy P. <JBrummond@lewisrice.com>; Project.Ember.Jef <Project.Ember.Jef@jefferies.com>; Paul Shin <pshin@jefferies.com>; Ananth Shankar <ashankar@jefferies.com>; Michael O'Hara <Michael.OHara@jefferies.com>
Subject: [EXTERNAL] RE: Ascend Elements / Bid Procedures Order - RKM Nooter

Josh,

As you may be aware, the Company filed for Chapter 11 on April 9th without debtor in possession financing in place. This structure provides limited runway to conduct a sale process. The rules of engagement for that process are outlined in the attached bidding procedures order, which specify key dates and requirements.

As a next step, the Jefferies Team would like to schedule a call to further discuss the opportunity. While not necessary for our call, we've attached an NDA to help speed up the process of getting you into our fulsome dataroom.

We've attached the current bidding procedures order for your reference, outlined below as well.

Key Dates

- **May 1**:
  Indications of Interest (IOI) deadline
- **May 6**:
  The Company must designate a Stalking Horse bidder. The Stalking Horse sets a floor for the auction and, in exchange for the time and effort required to submit a bid, receives expense reimbursement and a breakup fee
- **May 9**:
  Deadline to submit a qualified bid. Only bidders deemed qualified will be permitted to participate in the auction

EXHIBIT 4
1 of 7

- **May 12**:
  The Auction will be held either (i) at the office of Norton Rose Fulbright US LLP, 1550 Lamar Street, Suite 2000, Houston, Texas or (ii) at such later date and time or other location, as selected by the Debtors
- **May 17**:
  Sale Hearing to consider approval of sale transaction and related relief

Best,

Alex Lu
Jefferies LLC | Investment Banking
520 Madison Avenue
New York, NY 10022
Mobile: +1 (917) 488-8551
Email: alu1@jefferies.com

From: Josh Judd <JJudd@andrewsmyers.com>
Sent: Friday, April 24, 2026 4:21 PM
To: Project.Ember.Jef <Project.Ember.Jef@jefferies.com>; Paul Shin <pshin@jefferies.com>; Ananth Shankar <ashankar@jefferies.com>; Michael O'Hara <Michael.OHara@jefferies.com>
Cc: Trad, Joseph J. <JTrad@lewisrice.com>; Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Brummond, Jeremy P. <jbrummond@lewisrice.com>
Subject: Ascend Elements / Bid Procedures Order

[External Message]

Mr. O'Hara

We represent RKM Nooter in the Ascend Elements bankruptcy case and want to pursue our credit bid rights per the terms of the bid procedures order. Accordingly, we need access to the data room. Please send us the NDA so that we can sign and return in order to access the data room to submit a bid.

T. Josh Judd
Shareholder
Andrews Myers | Attorneys at Law
TEL: 713-850-8218
EMAIL: jjudd@andrewsmyers.com
WEB: www.andrewsmyers.com
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MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is effective from April 26, 2026 and is made by and between **ASCEND ELEMENTS, INC.**, a company organized and existing under the laws of Delaware having its head office at 133 Flanders Road, Westborough, MA 01581 (hereinafter called "AE"), and **CIC Group, Inc.**, on behalf of **RMF Nooter, LLC**, a corporation organized and existing under the laws of Missouri having its head office at 1509 Ocello Drive, Fenton MO, 63026, (hereinafter called "CIC").

WITNESSETH:

WHEREAS, the Parties believe that it will be mutually beneficial for them to exchange certain Confidential Information as described below in connection with and for the purposes of doing business together or evaluating the possibility of doing business together; and

WHEREAS, the Parties desire to establish certain understandings to protect their respective Confidential Information from unauthorized use or disclosure.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, the Parties agree as follows:

1. As used in this Agreement, the term "Confidential Information" refers to all business, technical, financial, operational, administrative, or legal data or information related to a Party, in whatever form or format, and howsoever disclosed by one Party to the other, and whether or not visibly marked as "confidential" or "proprietary" or with words having a similar meaning, subject to the exclusions set forth in Section 3, hereinbelow.

2. The Party receiving the other's Confidential Information ("Recipient") will, as to the Party disclosing its Confidential Information ("Discloser"):

   (a) hold it in confidence from the date of receipt under this Agreement;

   (b) use it only for the purposes specified above and/or for such other purposes as may be subsequently authorized in writing by Discloser;

   (c) make it available only (i) to its employees who have a need to know in order to carry out their duties in connection with the purposes specified above and who have suitable obligations of confidentiality applicable to such Confidential Information and (ii) to certain other parties as specified in Section 5 below; and

   (d) not otherwise use or disclose it except as expressly authorized in this Agreement or as otherwise authorized in writing by the Discloser.

3. The obligations of Recipient with respect to Discloser's Confidential Information shall not apply to:

   (a) information which, at the time of disclosure is in the public domain;

   (b) information which, after disclosure, becomes part of the public domain through no fault of Recipient;

   (c) information which was rightfully in Recipient's possession at the time of disclosure and which is not subject to prior continuing obligations of confidentiality by recipient to Discloser;

(d) information which is rightfully disclosed to Recipient by a third party having the lawful right to do so;

(e) information which has been or is hereafter released by Discloser to others without restriction; or

(f) information which is independently developed by or for Recipient without use of or reference to Confidential Information received from Discloser pursuant to this Agreement.

4. This Agreement shall apply to Confidential Information disclosed before or after the effective date of this Agreement and expires three (3) years from date of its last signature.

5. Notwithstanding anything above to the contrary but subject to Section 10 below,

(i) Recipient may disclose Discloser's Confidential Information to Recipient's Affiliates having a need to know for the purposes specified above; provided that such Affiliates have first agreed to be bound by the applicable provisions of this Agreement in the same way and to the same extent as Recipient is bound;

(ii) Recipient may disclose Discloser's Confidential Information to legal counsel, insurers and similar third parties to the extent necessary in connection with the use of such Confidential Information for the purposes specified above; provided that such third parties are bound by appropriate obligations of confidentiality; and

(iii) Recipient may disclose Discloser's Confidential Information to vendors and subcontractors to the extent required in connection with the purpose specified above provided that such vendors and subcontractors have undertaken written obligations to protect Discloser's Confidential Information in a manner at least as protective as the provisions of this Agreement or in such other form approved in writing by the Discloser.

For purposes of this Agreement, "Affiliate" means, as to either Party hereto, any other entity that, directly or indirectly, is in control of, is controlled by, or is under common control with, said Party. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means, as applied to any entity, the direct or indirect possession of the power to direct or cause the direction of the management and policies of that entity, whether through ownership of voting securities, by contract, or otherwise.

(b) Notwithstanding anything above to the contrary, Recipient may also disclose Discloser's Confidential Information to the extent required to comply with law or legal process, including but not limited to a court order, administrative subpoena or order, or applicable governmental regulation or statutory requirement which appears to be lawful on its face, provided that Recipient gives Discloser timely notice, where possible, of the contemplated disclosure so as to give Discloser an opportunity to intervene to preserve the confidentiality of the information.

6. In no event shall either Party, its Affiliates, or any of the parties mentioned in Section 5 (a) above, or any of their respective officers, directors or employees be liable for any multiple or punitive damages.

7. All Confidential Information furnished hereunder shall remain the property of the Discloser and any material containing same which may be provided by Discloser to Recipient pursuant to this Agreement shall be returned to Discloser or destroyed promptly at Discloser's request together

with all copies, excerpts, and/or summaries made thereof by Recipient; except that Recipient may retain one (1) copy of such material in limited access files as a record of its obligations hereunder. Upon request, Recipient shall send Discloser a destruction certificate in the case where Recipient has been instructed to destroy such materials.

8. No license under any patents, copyrights, or any other proprietary right is granted or conveyed by Discloser pursuant to this Agreement.

9. This Agreement and any claim, controversy, or dispute arising out of or in connection with this Agreement, shall be governed by the laws of the State of Texas without regard to its conflict of law principles. The Parties shall attempt to amicably resolve any claim, controversy, or dispute arising under or relating to this Agreement. If the Parties reach an impasse, either party may refer the dispute to binding arbitration seated in Houston, Texas under the arbitration rules of the American Arbitration Association (AAA) then in effect before one (1) arbitrator appointed in accordance with said rules. The award decision of the arbitrator, including its assessment of costs, shall be final and binding on both Parties and both Parties waive the right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. The Parties shall each bear their own costs of arbitration, provided, however, that the costs and fees of the arbitral body and the arbitrator shall be shared equally between the Parties. Notwithstanding the foregoing, either Party may seek urgent injunctive relief in a court of competent jurisdiction against improper use or disclosure of Confidential Information or threat thereof. The Parties acknowledge the risk of irreparable harm and that monetary damages may be an insufficient remedy for a breach of this Agreement.

10. Without regard to the duration of its other obligations hereunder, Recipient shall control access to, and use of, information received hereunder from Discloser and the direct product thereof in accordance with all applicable export control laws and regulations, and all applicable data privacy laws and regulations.

11. Any notice under, or in connection with, this Agreement shall be in writing and shall be deemed to have been given when received by the Party to which said communication is directed at its address set forth below or at such other address as such Party may have designated in writing to the other Party. A receipt evidencing delivery by certified or registered mail or by recognized commercial courier service shall constitute evidence of receipt. Any notice requiring prompt action shall be contemporaneously sent by electronic mail.

For purposes of giving notices under this Agreement, the addresses of the parties are as follows:

For Ascend Elements	For RMF Nooter, LLC
Ascend Elements, Inc.	CIC Group, Inc.
	133 Flanders Road 1509
	Ocello Drive
Westborough, MA 01581	Fenton, MO 63026
Attention: General Counsel	Attention: Corp. Counsel
E-Mail Address:	E-Mail Address:
dpowell@ascendelements.com	dkloeckener@cicgroup.com

12. Except as otherwise agreed in separate written agreements between the Parties, neither Party makes any representation or warranty regarding the Confidential Information disclosed by it, whether as to quality, accuracy, completeness, or otherwise, and neither Party shall have any liability arising from the other Party's use of or reliance on Confidential Information received pursuant to this Agreement.

13. By entering into this Agreement: (i) neither Party incurs a duty of exclusivity or makes a commitment to enter into any contract or business relationship with the other Party, and (ii) each

Party agrees that it shall not, during the term of this Agreement or solicit, induce, or offer, directly or indirectly, for any employee of the other Party or its Affiliates to cease being employed by such other Party or Affiliate.

14. Unless otherwise subsequently agreed in writing by the parties, this Agreement supersedes any conflicting provisions of any prior written or oral agreements or understandings between the parties related to the protection of the subject Confidential Information. This Agreement may not be amended or modified except by subsequent agreement in writing executed by a duly authorized officer or representative of each party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

ASCEND ELEMENTS, INC.	**CIC GROUP, INC.** ***(On behalf of RMF NOOTER, LLC)***
By: _____	By: _____
Name: _____	Name: Daniel B. Kloeckener
Title: _____	Title: Director of Risk & Corp. Counsel
Date: _____	Date: April 26, 2026

From: Trad, Joseph J. <JTrad@lewisrice.com>
Sent: Sunday, April 26, 2026 5:08 PM
To: Ryan E. Manns; Alex Lu; Josh Judd
Cc: Brummond, Jeremy P.; Project.Ember.Jef; Paul Shin; Ananth Shankar; Michael O'Hara
Subject: RE: Ascend Elements / Bid Procedures Order - RKM Nooter

Ryan,

I will confer with our client on Monday. In the meanwhile, please restore my access to the data room.

Many thanks.

Joe 314-614-7691

From: Ryan E. Manns <ryan.manns@nortonrosefulbright.com>
Sent: Sunday, April 26, 2026 5:10 PM
To: Trad, Joseph J. <JTrad@lewisrice.com>; Alex Lu <alu1@jefferies.com>; Josh Judd <JJudd@andrewsmyers.com>
Cc: Brummond, Jeremy P. <JBrummond@lewisrice.com>; Project.Ember.Jef <Project.Ember.Jef@jefferies.com>; Paul Shin <pshin@jefferies.com>; Ananth Shankar <ashankar@jefferies.com>; Michael O'Hara <Michael.OHara@jefferies.com>
Subject: [EXTERNAL] RE: Ascend Elements / Bid Procedures Order - RKM Nooter

Joe – we noticed that Nooter was just appointed to the UCC. Please confirm whether or not Nooter still intends to pursue a credit bid. Thanks

Ryan E. Manns | Co-Head of Restructuring, United States
Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 8304 | Fax +1 214 855 8200
ryan.manns@nortonrosefulbright.com

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From: Trad, Joseph J. <JTrad@lewisrice.com>
Sent: Sunday, April 26, 2026 2:03 PM
To: Alex Lu <alu1@jefferies.com>; Josh Judd <JJudd@andrewsmyers.com>
Cc: Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Brummond, Jeremy P. <JBrummond@lewisrice.com>; Project.Ember.Jef <Project.Ember.Jef@jefferies.com>; Paul Shin <pshin@jefferies.com>; Ananth Shankar <ashankar@jefferies.com>; Michael O'Hara <Michael.OHara@jefferies.com>
Subject: RE: Ascend Elements / Bid Procedures Order - RKM Nooter

Alex,

Attached is the NDA signed by our client. Please provide access information ASAP.

EXHIBIT 5
1 of 4

Joe Trad
314-614-7691

From: Alex Lu <alu1@jefferies.com>
Sent: Saturday, April 25, 2026 11:11 PM
To: Josh Judd <JJudd@andrewsmyers.com>
Cc: Trad, Joseph J. <JTrad@lewisrice.com>; Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Brummond, Jeremy P. <JBrummond@lewisrice.com>; Project.Ember.Jef <Project.Ember.Jef@jefferies.com>; Paul Shin <pshin@jefferies.com>; Ananth Shankar <ashankar@jefferies.com>; Michael O'Hara <Michael.OHara@jefferies.com>
Subject: [EXTERNAL] RE: Ascend Elements / Bid Procedures Order - RKM Nooter

Josh,

As you may be aware, the Company filed for Chapter 11 on April 9th without debtor in possession financing in place. This structure provides limited runway to conduct a sale process. The rules of engagement for that process are outlined in the attached bidding procedures order, which specify key dates and requirements.

As a next step, the Jefferies Team would like to schedule a call to further discuss the opportunity. While not necessary for our call, we've attached an NDA to help speed up the process of getting you into our fulsome dataroom.

We've attached the current bidding procedures order for your reference, outlined below as well.

Key Dates

- **May 1**:
  Indications of Interest (IOI) deadline
- **May 6**:
  The Company must designate a Stalking Horse bidder. The Stalking Horse sets a floor for the auction and, in exchange for the time and effort required to submit a bid, receives expense reimbursement and a breakup fee
- **May 9**:
  Deadline to submit a qualified bid. Only bidders deemed qualified will be permitted to participate in the auction
- **May 12**:
  The Auction will be held either (i) at the office of Norton Rose Fulbright US LLP, 1550 Lamar Street, Suite 2000, Houston, Texas or (ii) at such later date and time or other location, as selected by the Debtors
- **May 17**:
  Sale Hearing to consider approval of sale transaction and related relief

Best,

Alex Lu
Jefferies LLC | Investment Banking
520 Madison Avenue
New York, NY 10022
Mobile: +1 (917) 488-8551
Email: alu1@jefferies.com

From: Josh Judd <JJudd@andrewsmyers.com>
Sent: Friday, April 24, 2026 4:21 PM

EXHIBIT 5
2 of 4

To: Project.Ember.Jef <Project.Ember.Jef@jefferies.com>; Paul Shin <pshin@jefferies.com>; Ananth Shankar <ashankar@jefferies.com>; Michael O'Hara <Michael.OHara@jefferies.com>
Cc: Trad, Joseph J. <JTrad@lewisrice.com>; Ryan E. Manns <ryan.manns@nortonrosefulbright.com>; Brummond, Jeremy P. <jbrummond@lewisrice.com>
Subject: Ascend Elements / Bid Procedures Order

[External Message]

Mr. O'Hara

We represent RKM Nooter in the Ascend Elements bankruptcy case and want to pursue our credit bid rights per the terms of the bid procedures order. Accordingly, we need access to the data room. Please send us the NDA so that we can sign and return in order to access the data room to submit a bid.

T. Josh Judd
Shareholder
Andrews Myers | Attorneys at Law
TEL: 713-850-8218
EMAIL: jjudd@andrewsmyers.com
WEB: www.andrewsmyers.com
BOARD CERTIFIED | BUSINESS BANKRUPTCY LAW | TEXAS BOARD OF LEGAL SPECIALIZATION

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