UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Houston Division

IN RE: ASCEND ELEMENTS, INC., et al., Debtors.	Chapter 11 Case No. 26-90440 (CML) (Jointly Administered) **Hearing: June 3, 2026 at 1:00 p.m.** **Docket No. 50**

THE UNITED STATES OF AMERICA'S OBJECTION TO SALE OF ASSETS

The United States of America, on behalf of the U.S. Department of Energy ("DOE"), objects to the Debtors' *Emergency Motion for Entry of Orders (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* [Dkt. No. 50] (the "Motion"). As set forth below, DOE objects to the Motion for the foregoing reasons.

INTRODUCTION

1. Through an assistance award, DOE partially funded the Debtors' purchase of various equipment for, and construction of, a sustainable battery precursor production facility in Hopkinsville, Kentucky. Now, the Debtors seek to sell all assets at the Hopkinsville facility. The assistance award and applicable regulations condition the sale of the Funded Property (as defined below) on DOE's consent. Although the Debtors, the winning and backup bidders, and DOE have discussed the contemplated sale transaction, DOE has yet to consent to the transfer of the Funded Property and files this objection out of an abundance of caution. To the extent the Debtors attempt

to sell the Funded Property without DOE's consent or complying with applicable regulations, the Motion must be denied.

FACTUAL BACKGROUND

2. On April 9, 2026 ("Petition Date"), Ascend Elements, Inc. ("Ascend") and Ascend Elements US, LLC (collectively with Ascend, the "Debtors") filed voluntary petitions under Title 11 of the United States Code ("Bankruptcy Code").

3. In 2023, DOE's Office of Manufacturing and Energy Supply Chain awarded Ascend Assistance Agreement DE-MS0000002, as subsequently amended ("Ascend Award"), to construct and commission an integrated sustainable battery precursor production plant in Hopkinsville, Kentucky. The terms and conditions of the Ascend Award are attached hereto as **Exhibit A**. DOE awarded the Ascend Award under the authority of the Energy Policy Act of 2005 and the Infrastructure Investment and Jobs Act of 2021.[1]

4. Ascend was to perform the Ascend Award over two performance periods. Within each performance period, Ascend had to achieve certain milestones.[2] In the first performance period, the Ascend Award contemplated providing Ascend with a maximum of approximately

[1] In October 2023, DOE's Office of Energy Efficiency and Renewable Energy awarded Ascend Assistance Agreement DE-EE0011036 ("EERE Award", and collectively with the Ascend Award, the "DOE Awards"). Like the Ascend Award, the EERE required Ascend to supply a percentage of the project's overall cost as its cost share. DOE's contribution (or federal cost share) under the EERE Award was $2.7 million. The EERE Award is still conditional, and its performance period ended on September 30, 2024. Due to construction and financial issues, as described below, Ascend did not move forward with DOE to finalize the EERE Award.

[2] The terms and conditions of the Ascend Award required Ascend to file a continuation application with DOE during the first performance period so that it could continue participation in the second performance period.

$259 million.[3]

5. The Ascend Award: (1) promotes a federal interest as set forth in the Energy Acts and the project objectives stated in the Ascend Award; (2) commits funds to be disbursed to the recipient for reimbursement of qualifying expenses; and (3) requires Ascend to contribute a designated percentage as its cost share. The Ascend Award also requires Ascend to, *inter alia*: (1) maintain records subject to audit; (2) meet reporting requirements; (3) file a continuation application; and (4) constrain its use of funds and property in accordance with the Ascend Award's terms. Lastly, the Ascend Award incorporates 2 C.F.R. Parts 200 and 910. Parts 200 and 910 of Title 2 of the Code of Federal Regulations define DOE's interests and Ascend's limited interests in the Funded Property (as defined below), Ascend's continued use of the Funded Property and the procedures for disposition of the Funded Property.

6. Using funds from the Ascend Award, Ascend purchased property (the "Funded Property") consisting of improvements, fixtures, personal property, and equipment. DOE funded approximately $206 million as federal cost share in the first performance period. Of the $206 million, DOE provided approximately $23.1 million for equipment as federal cost share; the federal cost share of the facilities and improvements has yet to be estimated and requires information from Ascend to complete the estimation. To evidence DOE's interests in the Funded Property, Ascend filed UCC-1 financing statements in favor of DOE in Delaware[4] and Kentucky.

7. In late 2024, the Debtors encountered problems with their subcontractors for the Hopkinsville facility. Consequently, construction halted. The Debtors and their subcontractors

[3] This is the federal cost share portion of the Ascend Award.

[4] Ascend is incorporated in Delaware. Dkt. No. 11, p. 12.

subsequently initiated arbitration proceedings to resolve their dispute. That arbitration is still ongoing. The arbitration and contractor dispute, among other factors, caused significant delay in the Debtors meeting their project milestones and performing under the DOE Awards.

8. The Ascend Award's terms and conditions required DOE to determine whether Ascend would continue with the project at the end of the first performance period. Due to the delay in construction and project performance, DOE elected to forgo continued performance of the Ascend Award. DOE terminated the Ascend Award in February 2025. Ascend and DOE are currently performing the required award closeout.

9. The Debtors also identified to DOE that certain billings by subcontractors were not allowed under the terms and conditions of the Ascend Award. Consequently, the United States initiated an investigation under the False Claims Act (the "FCA Claim"). The disallowed billing may also result in an overpayment determination upon completion of the closeout of the Ascend Award. The United States and Ascend are currently negotiating a resolution of the FCA Claim and the final project closeout.

10. On April 10, 2026, the Debtors filed the Motion, seeking to sell substantially all of the estates' assets. On May 7, 2026, the Debtors filed a motion to designate Bluegrass Infrastructure Partners Holdings, LLC and Kinterra Capital Corp. as the stalking horse bidder, with an exhibit asset purchase agreement.

11. On May 19, 2026, the Debtors bifurcated the Motion to conduct a sale of the Debtors' intellectual property and Polish assets separately from the other assets. On May 22, this Court approved the sale of the intellectual property and Polish assets. An auction for the remaining assets, including the uncompleted facility and equipment in Hopkinsville, was held on May 26, 2026. On May 27, 2026, the Debtors filed a notice identifying TKJV as the winning

bidder and American Battery Technology Company ("ABTC") as the backup bidder. Neither the TKJV nor the ABTC asset purchase agreements for the Hopkinsville assets have been filed.

DISCUSSION

12. To the extent the Motion seeks to sell the Funded Property without DOE consent or without complying with applicable regulations, it must be denied for five reasons. First, the Debtors cannot sell the Funded Property because it is not property of the Debtors' estate. Second, even if the Funded Property constitutes property of the Debtors' estates, federal law prohibits Ascend from selling the Funded Property. Third, even if the Funded Property constitutes property of the Debtors' estates, the Debtors cannot sell it free and clear of DOE's interests, and Ascend cannot adequately protect DOE's interests in the Funded Property. Fourth, the buyer cannot qualify as a good faith purchaser under 11 U.S.C. § 363(m). Fifth, this Court cannot approve the Motion to the extent that it impermissibly seeks to determine DOE's interest in the Funded Property and the extent of that interest, a determination that requires an adversary proceeding.

I. Debtors Can Sell Only Property of the Estate.

13. The Funded Property and DOE Awards cannot be sold or transferred through Section 363 of the Bankruptcy Code because they are not property of the Debtors' estate and are held in express trust for DOE. Federal law also strictly prohibits the Debtors from selling the Funded Property.

A. The Funded Property and the DOE Awards are Not Estate Property.

14. DOE's comprehensive control over its financial assistance awards renders the Funded Property and DOE Awards outside of the Debtors' estates. *See In re Joliet-Will County Community Action Agency*, 847 F.2d 430 (7th Cir. 1988) (Posner, J.) (holding property that was purchased under a federal grant was not property of the estate). In *Joliet-Will*, the Seventh Circuit

concluded that a grant's terms render grant funds and property acquired with grant funds outside the estate. *Id.* at 431. In so concluding, the Seventh Circuit held that the trustee did not hold beneficial title to grant funds or grant-funded property based on the following factors: (1) the minute controls imposed by the grant; (2) the agency relationship effectuated by the grant; (3) Congressional limitations on unauthorized expenditure of federal funds; (4) jurisprudence holding that federal funds held by a grantee remain property of the government; and (5) jurisprudence holding that thefts of federal grant money constitute thefts from the federal government. *Id.* at 432-33.

15. The court in *Joliet-Will* relied on *Henry v. First Nat'l Bank of Clarksdale*, a Fifth Circuit decision that held that "the United States retains a reversionary interest in all grant funds and in all property purchased with such funds" because of the "extensive and detailed regulations" governing the grant funds' use. *Henry v. First Nat'l Bank of Clarksdale*, 595 F.2d 291, 308-09 (5th Cir. 1979) (court held that creditors could not attach a grant recipient's grant funded property due to the United States' continuing interest in the funds and property); *see also Neukirchen v. Wood County Head Start, Inc.*, 53 F.3d 809 (7th Cir. 1995) (court held that property purchased with federal grant funds was federal property and not subject to execution by a judgment creditor); *Matter of Universal Sec. and Protection Serv., Inc.*, 223 B.R. 88, 93 (Bankr. E.D.La. 1998) (bankruptcy court applied *Joliet-Will* and *Henry* to determine that the debtor could not garnish a grant recipient's bank accounts as they were grant funds unreachable by creditors).

16. The Third Circuit also considered whether funds or property obtained under federal grants are property of the estate. Adopting the holding in *Joliet-Will*, the Third Circuit in *Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233 (3d Cir. 2001), held that:

> the supervisory controls imposed on a grant relationship by the substantive provisions of the [federal] grant program can be sufficiently pervasive, strict, and minute so as to make manifest the federal agency's strong interest in overseeing the administration of that grant program. *It is that weighty federal interest*, and not the bare fact of regulation itself, *that can keep a bankruptcy debtor's interest in the grant relationship outside of § 541's property definition*.

Westmoreland Human Opportunities, Inc. v. Walsh, 246 F.3d 233, 253 (3d Cir. 2001) (emphasis added). Applying that rationale, the *Westmoreland* Court held that the debtor's interest in a U.S. Department of Housing and Urban Development (HUD) grant was not property of the debtor's estate, relying on the substantial restrictions that HUD regulations placed on the use and disposition of grant funds. *See id.* at 247-48; *see also In re LAN Tamers, Inc*., 329 F.3d 204 (1st Cir. 2003) (holding that federal grant funds in the hands of a trustee were not part of the bankruptcy estate).

17. This is consistent with the general bankruptcy concept that Ascend's bankruptcy estate only includes the "legal and equitable interests *of the debtor*." 11 U.S.C. § 541(a)(1) (emphasis added); *see Begier v. I.R.S.*, 496 U.S. 53, 59, 110 S. Ct. 2258, 2263, 110 L. Ed. 2d 46 (1990) (*"*Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of the estate.'").

18. Section 541(d) provides that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section *only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest* in such property that the debtor does not hold." 11 U.S.C. § 541(d) (emphasis added). Nothing in the Bankruptcy Code expands Ascend's property interest beyond the limited rights it enjoyed pre-petition. *See Claybrook v.*

Consol. Foods, Inc. (In re Bake-Line Group, LLC), 359 B.R. 566, 570 (D. Del. 2007) (observing that "[a] debtor may not increase its rights to property by filing a bankruptcy petition" and citing 5 Collier on Bankruptcy § 541.04 (15th ed. 2006)).

19. District and bankruptcy courts have consistently applied *Joliet-Will*'s analysis to conclude that a debtor's bankruptcy estate excludes federal grant funds and grant-funded property. *See, e.g., Affiniti Colorado, LLC v. All.*, 184 F. Supp. 3d 992, 997-98 (D. Colo. 2016) (Department of Commerce retained "beneficial title and interest in the grant-funded equipment and property"); *Liberty Nat'l Bank v. Tri-Cty. Cmty. Action Comm'n for Champaign, Logan, & Shelby Ctys.*, No. 15-CV-549, 2016 WL 1161965, at *7 (S.D. Ohio Mar. 24, 2016) (real property purchased with federal funds remained property of the federal government and consensual lien did not attach); *In re 28th Legislative Dist. Cmty. Dev. Corp.*, No. 10-14804, 2011 WL 5509140, at *9 (Bankr. E.D. Tenn. Nov. 10, 2011) (grant money and tracks of land purchased with government grant funds were not property of the estate); *In re Cmty. Assocs. v. Novak*, 173 B.R. 824, 830 (D. Conn. 1994) (vans purchased with federal grant funds were not part of the debtor's estate); *In re Southwest Citizens' Org. for Poverty Elimination*, 91 B.R. 278, 287 (Bankr. D.N.J. 1988) (trustee's rights in grant-funded vehicles "are subject to the federal government's rights under the Head Start legislation – which amount to a 'reversionary interest'").

20. Applying the *Joliet-Will* test here, the DOE Awards and Funded Property[5] are clearly not estate property. The Ascend Award and governing regulations significantly limit Ascend's use of federally funded property, ensuring that Ascend only uses the grant funds, and property purchased with such funds, to further DOE's objective of promoting and investing in

[5] At a minimum, DOE's cost-share interest is not property of the estate.

renewable energy technology on behalf of the public interest. *See, e.g.,* 2 C.F.R. § 910. For instance, Ascend could only purchase real property and equipment with prior approval from DOE through a reimbursement system. *See* 2 C.F.R. § 910.360(a). Thus, Ascend Award funds could not be used to pay creditors beyond the scope determined to be reimbursable expenses under the Ascend Award. Additionally, the Ascend Award requires Ascend to: (1) contribute its cost-share percentage; (2) maintain records subject to audit; (3) meet reporting requirements; (4) obtain consent to encumber the Funded Property; (4) use the Funded Property toward the purposes set forth in the Ascend Award; and (5) dispose of the Funded Property pursuant to the Ascend Award terms and conditions and DOE regulations. Exhibit A, at 9-10, 12-13, 27; s*ee also* 2 C.F.R. §§ 910.500 – 521, 910.360. Moreover, DOE regulations mandate that Ascend make the Funded Property available for use in other activities that are supported through federal government grants, cooperative agreements, and assistance awards without further compensation to Ascend. *See* 2 C.F.R. § 910.360(f)(1).

21. Notably, the governing regulations in *Joliet-Will* are substantially similar to DOE's regulations in this case. *Compare* 7 C.F.R. §§ 3015.162-65[6] *with* 2 C.F.R. §§ 200.310 – 316 and 910.360. For instance, the regulations in *Joliet-Will* vested title in the Debtor; here, only conditional title vests in the Debtor. *Compare* 7 C.F.R. §§ 3015.162 *with* 2 C.F.R. § 910.360(b) (property vests conditionally, subject to all restrictions in the Ascend Award). Furthermore, the regulations in *Joliet-Will*, like here, required that a recipient request disposition instructions from the agency prior to transferring grant-funded property and that, upon disposition, the recipient was

[6] 2 C.F.R. §§ 200.310 -313, which also govern the DOE Awards and Funded Property here, replaced 7 C.F.R. §§ 3015.162 – 65. A copy of the 1988 regulations, obtained from HeinOnline, is attached hereto as **Exhibit B**.

entitled only to "an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment." *Compare* 7 C.F.R. §§ 3015.165 *with* 2 C.F.R. §§ 200.311(d)(2), 313(e)(2), 910.360(g)(1)(iii), 910.360(g)(2)(i)(B).

22. The United States' supervisory controls here, much like in *Joliet-Will*, highlight the "weighty" federal interest in ensuring that any recipient complies with the policy goals and objectives of the Ascend Award and uses the Funded Property subject to federal control in accordance with strict regulations.[7] *See Westmoreland*, 246 F.3d at 253.

23. Under the governing regulations, Ascend acquired only conditional title to the Funded Property, and the United States retained substantial controlling interests and an equitable interest in any proceeds from sale. *See* 2 C.F.R. § 910.360(b) (defining that a recipient receives only conditional title). Because of Ascend's limited rights in the Funded Property, it cannot freely dispose of Funded Property without complying with DOE's regulations. *See* 2 C.F.R. § 910.360(g). Specifically, if Ascend does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, Ascend must request disposition instructions from the responsible agency, here DOE. 2 C.F.R. § 910.360(g)(1)(iv). If Ascend requests disposition instructions, DOE will instruct it to either transfer title to the government or a third party provided that Ascend is entitled to compensation for its attributable percentage of the current fair market value of the property, 2 C.F.R. § 910.360(g)(2)(i)(A), or "sell the property and pay the federal government for that percentage of the current fair market value of the property that is attributable to the federal participation in the project." 2 C.F.R. § 910.360(g)(2)(i)(B). Accordingly, the regulations are clear: Ascend cannot

[7] 2 C.F.R. § 910.360 contains restrictions beyond *Joliet-Will*'s operative regulations, including requiring insurance and prohibiting encumbrance of the real property or equipment.

dispose of the Funded Property without DOE's consent, and even if it obtains such consent, it must pay DOE its cost share of the sale proceeds, if a sale disposition is approved.[8] Consequently, DOE's "strict, pervasive, and minute oversight" is sufficiently weighty to exclude the Funded Property from the property of the estate. *See Westmoreland*, 246 F.3d at 253. Thus, the bankruptcy court cannot authorize a sale of the Funded Property, as it is not property of the estate.

B. The Funded Property is Not Property of the Estate Because the Debtors Hold it in Trust for DOE.

24. The Ascend Award's terms and conditions create an express trust relationship whereby Ascend holds the Funded Property in trust for DOE. The Ascend Award provides that "[r]eal property, equipment, and intangible property that are acquired or improved with a Federal award must be held in trust by [Ascend] as trustee for the beneficiaries of the project or program under which the property was acquired or improved." Exhibit A at 14; *see also* 2 C.F.R. § 200.316.

25. Absence of a separate trust document outside of the Ascend Award's terms and conditions does not preclude the formation of an express trust. "[T]he absence of such a document, however, by no means automatically indicates that the trust at issue is an implied trust. The Fifth Circuit has held that trusts created by statute are express trusts." *Lone Star Milk Producers, Inc. v. Litzler*, 370 B.R. 671, 678 (Bankr. N.D. Tex. 2007); s*ee also Carey Lumber Co. v. Bell,* 615 F.2d 370, 374 (5th Cir.1980) (Oklahoma statue created express trust); *Thlocco v. Magnolia Petroleum Co.,* 141 F.2d 934, 937 (5th Cir. 1944) (interpreting a **statute** appointing a trustee to hold property in trust for the benefit of an incompetent person and holding that "it is

[8] The unfinalized (and undisbursed) EERE Award is similarly not property of the estate for the same reasons as above.

quite clear that the trust in question here was neither resulting nor constructive, but an express trust created for the purpose of enabling [the trustee], to deal freely with [the property]"). The governing regulation, 2 C.F.R. § 200.316, provides that Ascend holds the Funded Property in trust for DOE.

26. Thus, both the terms of the Ascend Award and applicable federal law provide that Ascend holds the Funded Property in trust for DOE, and as such, is not property of the estate pursuant to section 541(d). Hence, the Motion must be denied to the extent it seeks to sell property beyond property of the estate. *See* 11 U.S.C. § 363(b) (allowing a trustee to sell property of the estate).

II. Federal Law Prohibits the Debtors from Selling the Funded Property.

27. Even if the Funded Property is property of the estate, the governing regulations forbid the Debtors from selling the Funded Property. "[T]itle to real property or equipment [acquired or improved with the Ascend Award] vests in [Ascend], subject to all terms and conditions of the award and that [Ascend] shall . . . [u]se and dispose of the real property or equipment in accordance with paragraphs (e), (f), and (g) of this section." 2 C.F.R. § 910.360(b)(3).

28. The Debtors, like their non-debtor counterparts, must operate within the confines of the law. Section 959(b) of Title 28 of the United States Code requires that the Debtors comply with applicable non-bankruptcy law during their cases. *See Midlantic Nat'l Bank v. N.J. Dept. of Envtl. Prot.*, 474 U.S. 494, 502 (1986) ("Congress has repeatedly expressed its legislative determination that the trustee is not to have *carte blanche* to ignore non-bankruptcy law."); *see also In re American Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009) ("Bankrupt debtors are no different from any citizen in that they must comply with state and federal laws.");

In re H.L.S. Energy Co., Inc., 151 F.3d 434, 438 (5th Cir. 1998). Courts have interpreted section 959(b) to encompass compliance obligations under federal laws. *See Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1665-66 (2019) (noting that 28 U.S.C. § 959(b) requires a trustee to manage the estate "in accordance with applicable law" in a trademark case); *Norris Square Civic Ass'n v. Saint Mary Hosp.*, 86 B.R. 393, 398 (Bankr. E.D. Pa. 1988) ("28 U.S.C. § 959(b) requires a debtor to conform with applicable federal, state, and local law in conducting its business").[9]

29. Moreover, the Bankruptcy Code must be read *in pari materia* with other statutes and regulations. *See In re McLean Indus.*, 74 B.R. 589, 600 (Bankr. S.D.N.Y. 1987). In *McLean*, the court instructed that:

> Congress could not have intended that the bankruptcy courts ignore other statutes. Rather, courts are to interpret applicable statutes together; they are to give effect to both statutes involved, to the extent possible, unless Congress clearly indicated an intention that one apply over the other or that the two statutes cannot co-exist.

Id. The Energy Policy Act of 2005 and the Infrastructure Investment and Jobs Act of 2021 establish numerous policy objectives, including the investment in renewable energy. The implementing regulations create uniform standards for the use, management, and disposition of federally funded property, ensuring that property acquired with federal financial assistance funding be used in furtherance of the United States' significant policy objectives. *See, e.g.,* 2 C.F.R. § 910.360. Congress neither intended that property purchased under federal financial

[9] Additionally, to the extent the Motion seeks to transfer any government contract, license, permit, authorization or other interest, the Debtors and buyer must comply with applicable non-bankruptcy law to accomplish such transfer, including, potentially, obtaining the government's consent. *See, e.g.,* 11 U.S.C. § 365(c)(1); 41 U.S.C. § 6305 (Anti-Assignment Act); 47 U.S.C. § 310(d) (Communications Act of 1934).

assistance award programs should be considered "property of the estate" nor should award recipients acquire more than bare legal title in federally funded property (allowing them to hold property merely to the extent that possession furthers Congressional goals set forth in the Energy Policy Act of 2005) and the governing regulations. Thus, the court should harmonize the Bankruptcy Code with the DOE statutes and regulations by permitting DOE to enforce its regulations in the context of bankruptcy with respect to the Funded Property, ensuring it is not sold without DOE's consent and pursuant to appropriate disposition.

III. The Debtors Cannot Sell the Funded Property Free and Clear of DOE's Interest Pursuant to Sections 363.

30. The Debtors cannot sell the Funded Property free and clear of DOE's interest without its consent. First, even if the Funded Property is property of the estate, it cannot be sold free and clear of DOE's interests pursuant to section 363(f). Second, Debtors cannot use section 363(h) to sell the Funded Property free and clear of DOE's interest. Lastly, even if the Funded Property could be sold free and clear of DOE's interest, Debtors cannot adequately protect DOE's interest in the Funded Property as required pursuant to section 363(e).

A. Even If Property of the Estate, the Debtors Cannot Sell the Funded Property Free and Clear of DOE's Interest.

31. Even if the Funded Property constitutes property of the estate, the Funded Property still cannot be sold free and clear of DOE's interests because the Debtors cannot satisfy section 363(f). Section 363(f) permits the Debtors to sell property free and clear of interests if they satisfy one of five conditions.

32. First, pursuant to section 363(f)(1) of the Bankruptcy Code, property may be sold free and clear of an interest if applicable non-bankruptcy law permits such a sale free and clear of such interest. Here, the exact opposite is true—applicable non-bankruptcy law prohibits such sale.

See 2 C.F.R. §§ 200.311 – 200.316, 2 C.F.R. § 910.360(b)(3), (g). DOE regulations specifically require Ascend to seek disposition instructions before disposing of the Funded Property and to subsequently pay DOE its cost share. *See* 2 C.F.R. § 910.360(g).

33. Second, section 363(f)(2) allows a sale free and clear of an entity's interest only if such entity consents. DOE does not consent to the sale of any Funded Property under the Motion except only to the extent its consent is secured through strict adherence to the regulatory-governed disposition process for the Funded Property. *See* 2 C.F.R. § 910.360(b), (g).

34. Third, section 363(f)(3) of the Bankruptcy Code allows a sale free and clear of an interest if such interest is a lien and the sales price is greater than the aggregate of all liens on the property. Here, DOE's interest is not a lien, but rather an interest created through a strict regulatory framework, so section 363(f)(3) does not apply.

35. Fourth, section 363(f)(4) of the Bankruptcy Code allows a sale of property free and clear of an interest if such interest is in bona fide dispute. Here, DOE's interest is not subject to a bona fide dispute. No party has disputed the DOE cost share or DOE's interest in the Funded Property and DOE Awards.

36. Lastly, section 363(f)(5) permits a sale free and clear of an entity's interest in property if such entity can be compelled to accept monetary satisfaction in a legal or equitable proceeding. DOE cannot be compelled to accept a monetary satisfaction of its interests in a legal or equitable proceeding because its interests in the Funded Property comprise non-compensatory regulatory interests. For section 363(f)(5) to be availing, "hypothetical proceedings in which . . . interest holders could be forced to accept a money satisfaction of their interests, from enforcement of buy-out or agreed damages provisions, to tax sales or foreclosure sales" must exist. *In re Banning Lewis Ranch Co.*, LLC, 532 B.R. 335, 350 (Bankr. D. Colo. 2015). This hypothetical

proceeding must allow for the extinguishment of the DOE's cost-share interest "without paying such interest in full." *In re PW, LLC,* 391 B.R. 25, 43 (B.A.P. 9th Cir. 2008); *see also In re WK Lang Holdings, LLC*, No. 13-11934, 2013 WL 6579172 at *8 (Bankr. D. Kan. December 11, 2013); *In re Gulf States Steel, Inc.*, 285 B.R. 497, 508 (Bankr. N.D. Ala. 2002). No such hypothetical non-bankruptcy proceeding exists with respect to DOE's interest. Title 2 of the Code of Federal Regulations does not authorize a grant recipient to force the United States to accept monetary satisfaction for the United States' interest in grant-funded property; to the contrary, the regulations provide the United States with several options when disposition of recipient property is required.[10] *See* 2 C.F.R. §§ 200.311 - 316 and 910.360.

37. Thus, even if the Funded Property is estate property, the DOE's interests in the Funded Property are not interests that can be avoided pursuant to section 363(f).

B. **The Debtors Cannot Sell the Funded Property Pursuant to Section 363(h).**

38. Section 363(h) authorizes a trustee to "sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety." 11 U.S.C. § 363(h). Nothing in the regulations governing the Ascend Award[11] classifies DOE's interest as one of tenants in common or joint tenancy. Specifically, section 910.360 of Title 2 of the Code of Federal Regulations states that

[10] Besides DOE's cost-share interest, DOE has other continuing regulatory interests in the Funded Property, such as reporting and audit requirements and the requirement to make the Funded Property available for other federal projects. These requirements cannot be reduced to a money judgment, and the Debtors have not identified any hypothetical proceeding that could force DOE to accept a money judgment in lieu of compliance with regulatory requirements.

[11] 2 C.F.R. Parts 200 and 910.

"title to real property or equipment vests in the recipient, subject to all terms and conditions of the award." 2 C.F.R. § 910.360(b). Unlike tenants in common or joint tenancy, DOE's interest does not entitle DOE to possession of the Funded Property at this time. *See Luminant Mining Co., L.L.C. v. PakeyBey*, 14 F.4th 375, 378 (5th Cir. 2021) (noting that a tenant in common has the right to possession). Thus, section 363(h) does not apply.

C. The Debtors Cannot Sell the Funded Property Pursuant to Section 363 Because They Cannot Provide DOE with Adequate Protection of its Interests.

39. Section 363 of the Bankruptcy Code does not allow a sale free and clear of an entity's interest in property of the estate without adequate protection. 11 U.S.C. § 363(e). Section 363(e) provides that "on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

40. As discussed at length, *supra*, DOE has extensive regulatory interests in the Funded Property and DOE Awards, including ensuring appropriate use and disposition. These interests must be fully reserved if this Court approves a sale of the Funded Property without the Debtors obtaining DOE's express consent to an appropriate regulatory disposition. As DOE's regulatory interests cannot be reduced to a monetary amount (unlike a lien or some other property ownership interests), DOE's extensive regulatory interests in the Funded Property and DOE Awards cannot be substituted or satisfied with sale proceeds. Consequently, the Debtors cannot adequately protect DOE's extensive regulatory interests in the Funded Property.

41. Finally, section 910.360(g)(2)(i)(B) of Title 2 of the Code of Federal Regulations requires Ascend to pay DOE for the federal cost-share of the project if DOE directs the sale of the

Funded Property. While the contemplated sale transaction provides debt satisfaction and sale proceeds as adequate protection for the various lienholders, the Debtors make no proposal to adequately protect DOE's cost-share interest.

IV. The Buyer of the Funded Property Cannot Acquire it as a Good Faith Purchaser.

42. If the Debtors and potential buyers dispute DOE's interest in the Funded Property, any buyer of the Funded Property cannot qualify as a section 363(m) good faith purchaser. A section 363(m) "good faith" acquirer is "one who [acquires] the assets for value . . . *without notice of adverse claims*." *In re Palm Springs II, L.L.C.*, 65 F.4th 752, 759 (5th Cir. 2023) (emphasis added); *see also* 3 Collier on Bankruptcy ¶ 363.11 (16th ed. 2021). "The threshold for an 'adverse claim' is a dispute in" the seller's rights in the thing transferred. *In re Palm Springs II, L.L.C.*, 65 F.4th at 761. To the extent Ascend asserts that it has unrestrained title with the power to sell the Funded Property, the DOE's claimed interests (as outlined above) in the Funded Property are adverse claims. On notice of this, no buyer here can acquire the Funded Property as a good faith purchaser.

V. The Debtors Impermissibly Seek a Determination of the Characterization and Extent of the DOE's Interest in the Funded Property Through a Contested Matter.

43. The Motion, to the extent it seeks a determination of the extent of DOE's interest in the Funded Property, impermissibly seeks to determine DOE's interest in the Funded Property. Neither the Motion nor the proposed sale order can serve as the vehicle to determine DOE's interests or the extent of such interests in the Funded Property. Federal Rule of Bankruptcy Procedure 7001(b) requires an adversary proceeding to "determine the validity, priority or extent of a lien or *other interest* in property." Fed. R. Bankr. P. 7001(b) (emphasis added). If the Motion seeks a decree that the DOE's interest in the Funded Property is a lien, encumbrance, or other

interest subject to section 363(f) of the Bankruptcy Code, the Debtors must bring an adversary proceeding for the bankruptcy court to make those determinations, as those determinations relate to, at the very least, the extent of DOE's interest in the Funded Property. Here, the Debtors seek those findings and determinations through a sale motion, a contested proceeding. For this reason, too, the Motion must be denied.

CONCLUSION

The United States objects to the relief sought in the Motion to the extent it seeks to sell the Funded Property without DOE's consent. If the Court approves the Motion, the United States requests that the Court require Ascend to comply with 2 C.F.R. Parts 200 and 910, and the terms and conditions of the DOE Awards.

Dated: May 29, 2026

Respectfully Submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

/s/ Leah V. Lerman
KIRK T. MANHARDT
RODNEY A. MORRIS
LEAH V. LERMAN
United States Department of Justice
Civil Division
1100 L Street, NW
Washington, DC 20005
Tel: (202) 307-0452
Fax: (202) 514-9163
E-mail: leah.v.lerman@usdoj.gov

Attorneys for the United States of America

CERTIFICATE OF SERVICE

I certify that on May 29, 2026, a true and correct copy of this pleading was served via electronic means through transmission facilities from the Court upon those parties authorized to participate and access the Electronic Filing System in the above-captioned case, and by email to the parties listed below.

/s/ Leah V. Lerman
Leah V. Lerman

Via email to the below parties:

To United States Trustee:
Ha Nguyen at Ha.Nguyen@usdoj.gov
Vianey Garza at Vianey.Garza@usdoj.gov

To Debtors' Counsel:
Ryann Manns at ryan.manns@nortonrosefulbright.com
Maria Mokrzycka at maria.mokrzycka@nortonrosefulbright.com
Michael Berthiaume at michael.berthiaume@nortonrosefulbright.com
Jason Blanchard at jason.blanchard@nortonrosefulbright.com

To Counsel to the Certain CLN Holders:
Sunny Singh at Sunny.Singh@weil.com
Stephanie Morrison at Stephanie.Morrison@weil.com
Emma Wheeler at Emma.Wheeler@weil.com

To Committee Counsel:
Charles Gibbs at crgibbs@mcdermottlaw.com
Kristin Going at kgoing@mcdermottlaw.com
Darren Azman at dazman@mcdermottlaw.com
Joshua Lee at jclee@mcdermottlaw.com
Carole Wurzelbacher at cwurzelbacher@mcdermottlaw.com

To Kinterra's Counsel:
John Higgins at jhiggins@porterhedges.com
Eric English at eenglish@porterhedges.com
James Keefe at jkeefe@porterhedges.com
Jordan Stevens at jstevens@porterhedges.com

Adam Goldberg at adam.goldberg@lw.com
Andrew Rudolph at andrew.rudolph@lw.com
Montana Licari at montana.licari@lw.com

To American Battery Technology Company's Counsel:
Jay Bender at jbender@bradley.com

To Turner-Kokosing Joint Venture's Counsel:
Lauren Wilkes at laurens.wilkes@cliffordchance.com

Caitlin Gernert at caitlin.gernet@cliffordchance.com
David Feldman at david.feldman@cliffordchance.com
Brian Lohan at brian.lohan@cliffordchance.com
Madison Haueisen at mhaueisen@winston.com
Johnathan Levine at jonlevine@winston.com
James Bentley at jbentley@winston.com
Daniel McGuire at dmcguire@winston.com

EXHIBIT A

SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS..... 6
LEGAL AUTHORITY AND EFFECT (JUNE 2015)..... 6
RESOLUTION OF CONFLICTING CONDITIONS..... 6
AWARD PROJECT PERIOD AND BUDGET PERIODS..... 6
CONFERENCE SPENDING (FEBRUARY 2015)..... 7
PAYMENT PROCEDURES - REIMBURSEMENT THROUGH THE AUTOMATED CLEARING HOUSE (ACH) VENDOR INQUIRY PAYMENT ELECTRONIC REPORTING SYSTEM (VIPERS)..... 7
COST SHARING FFRDC'S NOT INVOLVED..... 8
REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS..... 9
PRE-AWARD COSTS (DECEMBER 2014)..... 9
USE OF PROGRAM INCOME - ADDITION..... 9
STATEMENT OF FEDERAL STEWARDSHIP..... 9
SITE VISITS..... 9
REPORTING REQUIREMENTS (APRIL 2023)..... 10
PUBLICATIONS..... 10
FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS..... 11
INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION..... 11
CONTINUATION APPLICATION AND FUNDING (APRIL 2024)..... 11
NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS..... 12
FUNDING OF BUDGET PERIODS..... 12
INSURANCE COVERAGE (DECEMBER 2014)..... 12
REAL PROPERTY (DECEMBER 2014)..... 12
EQUIPMENT (DECEMBER 2014)(NETL – MAY 2024)..... 13
SUPPLIES (DECEMBER 2014)..... 14
INTANGIBLE PROPERTY (DECEMBER 2014)..... 14
PROPERTY TRUST RELATIONSHIP (DECEMBER 2014)..... 14
PERFORMANCE OF WORK IN UNITED STATES..... 14
REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION..... 15
SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS..... 17
FINAL INCURRED COST AUDIT (DECEMBER 2014)..... 18
LOBBYING RESTRICTIONS (MARCH 2012)..... 19
CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES (MARCH 2014)..... 19
NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUNE 2015)..... 19
REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (DECEMBER 2015)..... 20
DECONTAMINATION AND/OR DECOMMISSIONING (D &D) COSTS..... 22
NEPA REQUIREMENTS..... 22
SUBAWARD/SUBCONTRACT CHANGE NOTIFICATION..... 23
FOREIGN NATIONAL PARTICIPATION – APPROVAL REQUIRED (APRIL 2024)..... 24
EXPORT CONTROL (APRIL 2024)..... 24
PROHIBITION RELATED TO FOREIGN GOVERNMENT-SPONSORED TALENT RECRUITMENT PROGRAMS (MARCH 2023)..... 24

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (APRIL 2024) **25**
SEE PUBLIC LAW 115-232, SECTION 889 FOR ADDITIONAL INFORMATION **26**
IMPLEMENTATION OF EXECUTIVE ORDER 13798, PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY (NOVEMBER 2020) **26**
INTERIM CONFLICT OF INTEREST POLICY FOR FINANCIAL ASSISTANCE (MARCH 2023) **26**
CONTINUED USE OF REAL PROPERTY AND EQUIPMENT (OCTOBER 2022) **27**
POST AWARD DUE DILIGENCE REVIEWS (APRIL 2024) **27**
CURRENT AND PENDING SUPPORT (APRIL 2024) **27**
ORGANIZATIONAL CONFLICT OF INTEREST (APRIL 2024) **30**
ORGANIZATIONAL CONFLICT OF INTEREST (APRIL 2024) **30**
PARTICIPANTS AND OTHER COLLABORATING ORGANIZATIONS (APRIL 2023) **31**
HUMAN SUBJECTS RESEARCH (MARCH 2023) **32**
FRAUD, WASTE AND ABUSE (MARCH 2023) **33**
TRANSPARENCY OF FOREIGN CONNECTIONS (APRIL 2024) **33**
FOREIGN COLLABORATION CONSIDERTATIONS (MARCH 2023) **34**
REPORTING, TRACKING AND SEGREGATION OF INCURRED COSTS (MARCH 2023) **35**
COMMUNITY BENEFITS OUTCOMES AND OBJECTIVES (APRIL 2024) **35**
CYBERSECURITY PLAN (APRIL 2024) **35**
TECHNOLOGY PROTECTION PLAN (MARCH 2023) **36**
MATERIAL SUPPLY PLAN (MARCH 2023) **36**
THREAT BRIEFING (MARCH 2023) **36**
DAVIS-BACON REQUIREMENTS (APRIL 2024) **37**
AFFIRMATIVE ACTION AND PAY TRANSPARENCY REQUIREMENTS (SEPTEMBER 2023) **38**
ACCESS RESTRICTIONS **39**
RESEARCH TECHNOLOGY AND ECONOMIC SECURITY OFFICER **40**
THIRD-PARTY MONITOR **42**
INDEMNITY 43
CONSTRUCTION SIGNAGE (APRIL 2024) **43**
INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP **43**
GO/NO-GO DECISION **44**
IMPACTED INDIAN TRIBES (MAY 2024) **44**

SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS

LEGAL AUTHORITY AND EFFECT (JUNE 2015)

(a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

(b) Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

AWARD AGREEMENT TERMS AND CONDITIONS – BIPARTISAN INFRASTRUCTURE LAW (DECEMBER 2014) (NETL – APRIL 2024)
This award/agreement consists of the Assistance Agreement cover page, plus the following:

Attachment 1	Intellectual Property Provisions
Attachment 2	Statement of Project Objectives
Attachment 3	Federal Assistance Reporting Checklist and Instructions
Attachment 4	Budget Information
Attachment 5	Data Management Plan
Attachment 6	Community Benefits Outcomes and Objectives
Attachment 7	Wage Determination

The following are incorporated into this Award by reference:

- DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at https://www.eCFR.gov.
- Research Terms & Conditions (November 12, 2020) and the DOE Agency Specific Requirements (November 2020) at https://www.nsf.gov/awards/managing/rtc.jsp. Applicable if the Award is for research and the Award is to a university or non-profit.
- National Policy Requirements (November 12, 2020) at https://www.nsf.gov/awards/managing/rtc.jsp.
- As applicable, Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL).
- The Recipient's application/proposal as approved by DOE.

AWARD PROJECT PERIOD AND BUDGET PERIODS

The Project Period for this award is September 1, 2023 through August 31, 2026 consisting of the following budget periods:

	Start Date	End Date
Budget Period 1	09/01/2023	02/28/2025
Budget Period 2	03/01/2025	08/31/2026

CONFERENCE SPENDING (FEBRUARY 2015)

The recipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant or cooperative agreement was awarded that would defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed $20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

PAYMENT PROCEDURES - REIMBURSEMENT THROUGH THE AUTOMATED CLEARING HOUSE (ACH) VENDOR INQUIRY PAYMENT ELECTRONIC REPORTING SYSTEM (VIPERS)

a. Method of Payment. Payment will be made by reimbursement through ACH.

b. Requesting Reimbursement. Requests for reimbursements must be made electronically through Department of Energy's Oak Ridge Financial Service Center (ORFSC) VIPERS. To access and use VIPERS, you must enroll at https://vipers.doe.gov. Detailed instructions on how to enroll are provided on the web site.

For non-construction awards, you must submit a Standard Form (SF) 270, "Request for Advance or Reimbursement" at https://vipers.doe.gov and attach a file containing appropriate supporting documentation. The file attachment must show the total federal share claimed on the SF 270, the non-federal share claimed for the billing period if cost sharing is required, and cumulative expenditures to date (both Federal and non-Federal) for each of the following categories: salaries/wages and fringe benefits; equipment; travel; participant/training support costs, if any; other direct costs, including subawards/contracts; and indirect costs. For construction awards, you must submit a SF 271, "Outlay Report and Request for Reimbursement for Construction Programs," through VIPERS.

c. Timing of submittals. Submittal of the SF 270 or SF 271 should coincide with your normal billing pattern, but not more frequently than every two weeks. Requests for reimbursement must be limited to the amount of disbursements made during the billing period for the federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.

d. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.

e. Payments. The DOE approving official will approve the invoice as soon as practicable but not later than 30 days after your request is received, unless the billing is improper. Upon receipt of an invoice payment authorization from the DOE approving official, the ORFSC will disburse payment to you. You may check the status of your payments at the VIPER web site. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) that you filed.

f. Uniform Commercial Code (UCC) Filings. In accordance with 2 CFR 910.360, absent DOE approval for reimbursement of progress payments, the DOE will reimburse for equipment only if provided a fully executed UCC financing statement that represent DOE’s secured interest in the equipment and complies with the UCC

filing instructions contained in the Federal Assistance Reporting Checklist and all applicable laws and regulations.

g. Reimbursement of Equipment Progress Payments Prior to Uniform Commercial Code Filings. In accordance with 2 CFR 910.360(b)(4), the Recipient may request reimbursement for progress payments incurred for equipment prior to submission of the UCC financing statement as required below:

i. All progress payment reimbursement requests must include the vendor name, vendor location, project risks being mitigated by the progress payments, the progress payment schedule inclusive of any final hold-back amounts required prior to final payment, a copy of the vendor agreement outlining equipment purchase terms, and the source(s) and availability of cash for the purchase.

ii. Late or missed progress payments to the vendor that do not adhere to the payment schedule must be justified prior to DOE reimbursement and may result in a DOE determination that all Federal funds previously reimbursed toward the purchase of the equipment shall be promptly returned to DOE or credited back to the award.

iii. If progress payments are made toward an equipment purchase that is terminated or not fully executed, all prior reimbursements for previously incurred progress payments shall be promptly returned to DOE or credited back to the award.

iv. Final progress payments may only be reimbursed after the Recipient secures title and complies with the UCC filing instructions contained 2 CFR 910.360, the Federal Assistance Reporting Checklist, and all applicable laws and regulations.

COST SHARING FFRDC'S NOT INVOLVED

a. Total Estimated Project Cost is the sum of the Government share and Recipient share of the estimated project costs. The Recipient's cost share must come from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award, you agree that you are liable for your percentage share of total allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion. This cost is shared as follows:

Budget Period No.	Budget Period Start	DOE Share $/%	Recipient Share $/%	Total Estimated Cost
1	9/1//2023	$259,071,742/49.03%	$277,,747,448/51.74%	$536,819,190
2	03/01/2025	$57,114,834/49.03%	$59,368,054/50.97%	$116,482,888
Total Project		$316,186,575/48.40%	$337,115,502/51.60%	$653,302,078

b. If you discover that you may be unable to provide cost sharing of at least the amount identified in paragraph a of this term, you should immediately provide written notification to the DOE Award Administrator indicating whether you will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost sharing will be secured.

c. You must maintain records of all project costs that you claim as cost sharing, including in-kind costs, as well as records of costs to be paid by DOE/NNSA. Such records are subject to audit.

d. Failure to provide the cost sharing required by this term may result in the subsequent recovery by DOE/NNSA of some or all the funds provided under the award.

REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.

b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

PRE-AWARD COSTS (DECEMBER 2014)

You are entitled to reimbursement for costs incurred on or after **September 27, 2022**, as authorized by the pre-award costs letter dated **August 30, 2023**, if such costs are allowable in accordance with the applicable Federal cost principles referenced in 2 CFR part 200 as amended by 2 CFR part 910.

USE OF PROGRAM INCOME - ADDITION

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

STATEMENT OF FEDERAL STEWARDSHIP

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

SITE VISITS

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

REPORTING REQUIREMENTS (APRIL 2023)

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Dissemination of scientific/technical reporting products. Reporting project results in scientific and technical information (STI) publications/products to the DOE Office of Scientific and Technical Information (OSTI) ensures dissemination of research results to the public as well as preservation of the results. The DOE form F 4600.2, B. Scientific/Technical Reporting, has instructions for the DOE Energy Link (E-Link) system managed by OSTI. Scientific/technical reports and other STI products submitted under this award will be disseminated publicly on the Web via OSTI.GOV (https://www.osti.gov), unless the STI contains patentable material, protected data, or SBIR/STTR data, which must be indicated per instructions in DOE 4600.2.

c. Restrictions. Restrictions. STI products submitted to the DOE via E-link must not contain any Protected Personally Identifiable Information (PII), limited rights data, classified information, information subject to export control classification, or other information not subject to public release. The Contracting Officer or Technical Project Officer should be contacted with any questions. Limited rights data means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. SBIR/STTR Protected Data, and other data subject to statutory data protection authorized by the award may be submitted, provided such data is properly marked and identified during submission. Submissions must not contain any “Proprietary”, “Confidential” or “Business Sensitive” markings or similar restrictive markings not authorized by the applicable government agreement.; it is acknowledged that DOE has the right to cancel or ignore such markings.

PUBLICATIONS

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number(s) **DE-MS0000002**."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

a. The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced on the Assistance Agreement Face Page. A list of all intellectual property provisions may be found at http://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards

b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at http://energy.gov/gc/downloads/intellectual-property-ip-service-providers-acquisition-and-assistance-transactions

CONTINUATION APPLICATION AND FUNDING (APRIL 2024)

A. **Continuation Application**

A continuation application is a non-competitive application for an additional budget period within a previously approved project period of performance. At least 90 calendar days before the end of each budget period, the Recipient must submit its continuation application as required in Attachment 3, Federal Assistance Reporting Checklist, with written notification to the DOE Program Manager and the DOE Award Administrator that it has been submitted. The continuation application must include the following information:

i. A report on the Recipient's progress towards meeting the objectives of the project set forth in the SOPO and Community Benefits Outcomes and Objectives, including any significant findings, conclusions, or developments, and an estimate of any unobligated balances remaining at the end of the budget period. If the remaining unobligated balance is estimated to exceed 20 percent of the funds available for the budget period, explain why the excess funds have not been obligated and how they will be used in the next budget period. The report must also address the Recipient's progress towards meeting the objectives and milestones set forth in the Material Supply Plan.

ii. A detailed budget and supporting justification if there are changes to the negotiated budget, or a budget for the upcoming budget period was not approved at the time of award.

iii. A description of any planned changes for the negotiated Statement of Project Objectives.

B. **Continuation Funding**

Continuation funding is contingent on (1) the availability of funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) Recipient's technical progress stated in the SOPO and in the Community Outcomes and Objectives; (4) Recipient's submittal of required reports; (5) Recipient's compliance with the terms and conditions of the Award; (6) the Recipient's submission of a continuation application; and (7) written approval of the continuation application by the Contracting Officer.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

FUNDING OF BUDGET PERIODS

DOE has obligated **$316,186,575 f**or completion of the Project authorized by this agreement, however, only **$259,071,742** is available for work performed by the Recipient during Budget Period 1 of the Project. For Budget Period 2, the remainder or **$57,114,834** will be available contingent upon (1) availability of funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) substantial progress towards meeting the objectives of your approved application; (4) submittal of required reports; (5) compliance with the terms and conditions of the award; (6).the submission by the Recipient of a continuation application; and (7) written approval of the continuation application by the DOE Contracting Officer.

In the event that the Recipient does not submit a continuation application for subsequent Budget Periods or DOE disapproves a continuation application for subsequent Budget Periods, the maximum DOE liability to the Recipient is the funds that are available for the current approved Budget Period(s). In such event, DOE reserves the right to deobligate any remaining funds.

INSURANCE COVERAGE (DECEMBER 2014)

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds.

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

See 2 CFR Part 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award.

Also see 2 CFR Part 910.360 for amended requirements for Real Property for For-Profit recipients.

REAL PROPERTY (DECEMBER 2014)

Subject to the conditions set forth in 2 CFR Part 200.311, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR Part 200.311 before disposing of the property.

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

See 2 CFR Part 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award.

EQUIPMENT (DECEMBER 2014) (NETL – MAY 2024)

Subject to the conditions provided in 2 CFR 200.313 and 2 CFR 910.360 (as applicable), title to equipment (property) acquired under a Federal award will vest conditionally with the non-Federal entity.

The non-Federal entity cannot encumber this property or permit encumbrance without prior written approval by the DOE Contracting Officer and must follow the requirements of 2 CFR 200.313 before disposing of the property.

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

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

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

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. However, pursuant to the FY23 Consolidated Appropriations Act (Pub. L. No. 117-328), Division D, Title III, Section 309, the Secretary, or a designee of the Secretary may, at their discretion, vest unconditional title or other property interests acquired under this project regardless of the fair market value of the property at the end of the award period.

Subject to the vesting of any property pursuant to Section 309 of the FY23 Consolidated Appropriations Act (Pub. L. No. 117-328), Division D, Title III, disposition will be made as follows: (a) items of equipment with a current fair market value of $5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency; (b) non-Federal entity may retain title or sell the equipment after compensating the Federal awarding agency as described in 2 CFR 200.313(e)(2); or (c) transfer title to the Federal awarding agency or to an eligible third Party as specified in 2 CFR 200.313(e)(3).

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

See 2 CFR 910.360 for supplemental requirements for Equipment for for-profit Recipients.

SUPPLIES (DECEMBER 2014)

See 2 CFR Part 200.314 for requirements pertaining to supplies acquired under a Federal award.

See also § 200.453 Materials and supplies costs, including costs of computing devices.

INTANGIBLE PROPERTY (DECEMBER 2014)

Title to intangible property (as defined in 2 CFR Part 200.59) acquired under a Federal award vests upon acquisition in the non-Federal entity. Intangible property includes trademarks, copyrights, patents and patent applications.

See 2 CFR Part 200.315 for additional requirements pertaining to intangible property acquired under a Federal award.

Also see 2 CFR Part 910.362 for amended requirements for Intellectual Property for For-Profit recipients.

PROPERTY TRUST RELATIONSHIP (DECEMBER 2014)

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

See 2 CFR Part 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

PERFORMANCE OF WORK IN UNITED STATES

A. Requirement
All work performed under this award must be performed in the United States unless the Contracting Officer approves a waiver. The Recipient must flow down this requirement to its subrecipients or other project partners.

B. Failure to Comply
If the Recipient fails to comply with the performance of work in the United States requirement, the Contracting Officer may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Recipient cost share regardless if the work is performed by the Recipient, subrecipients, vendors, or other project partners.

C. Waiver for Work Outside the U.S.
All work performed under this award must be performed in the United States. However, the Contracting Officer may approve the Recipient to perform a portion of the work outside the United States under limited circumstances. The Recipient must obtain a waiver from the Contracting Officer prior to conducting any work outside the United States. To request a waiver, the Recipient must submit a written waiver request to the Contracting Officer A separate waiver request must be

submitted for each entity proposing performance of work outside the United States.

For the rationale, the Recipient must demonstrate to the satisfaction of the Contracting Officer that the performance of work outside the United States would further the purposes of the FOA that the award was selected under and is in the economic interests of the United States. A request for a foreign work waiver must include the following:

1. The rationale for performing the work outside the United States ("foreign work");
2. A description of the work proposed to be performed outside the United States;
3. An explanation as to how the foreign work is essential to the project;
4. A description of the anticipated benefits to be realized by the proposed foreign work and the anticipated contributions to the U.S. economy;
5. The associated benefits to be realized and the contribution to the project from the foreign work;
6. How the foreign work will benefit the United States, including manufacturing, contributions to employment in the United States and growth in new markets and jobs in the United States;
7. How the foreign work will promote manufacturing of products and/or services in the United States;
8. A description of the likelihood of intellectual property being created from the foreign work and the treatment of any such intellectual property;
9. The total estimated cost (DOE and recipient cost share) of the proposed foreign work;
10. The countries in which the foreign work is proposed to be performed; and
11. The name of the entity that would perform the foreign work.

The Contracting Officer may require additional information before considering such request. Additionally, the Contracting Officer's decision concerning the waiver request is not appealable.

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards
   1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $30,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
   2. Where and when to report.
      i. You must report each obligating action described in paragraph a.1. of this award term to http://www.fsrs.gov.
      ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
   3. What to report. You must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives
   1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if
      i. The total Federal funding authorized to date under this award is $30,000 or more;
      ii. In the preceding fiscal year, you received:

a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
b) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
   i. As part of your registration profile at https:www.sam.gov.
   ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.
1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if
   i. In the subrecipient's preceding fiscal year, the subrecipient received;
      a) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
      b) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
   ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)
2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
   i. To the recipient
   ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions
If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:
   i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:
1. Entity means all of the following, as defined in 2 CFR part 25:
i. A Governmental organization, which is a State, local government, or Indian tribe;
ii. A foreign public entity;
iii. A domestic or foreign nonprofit organization;
iv. A domestic or foreign for-profit organization;
v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
ii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
i. Receives a subaward from you (the recipient) under this award; and
ii.Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
i. Salary and bonus.
ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
v. Above-market earnings on deferred compensation which is not tax-qualified.
vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System for Award Management (SAM) Unless exempted from this requirement under 2 CFR 25.110, the prime recipient must remain registered and maintain current information in SAM for the entire period of performance of the award. This includes providing information on the prime recipient's immediate and highest level owner and subsidiaries, as well as on all of its predecessors that have been awarded a Federal contract or Federal financial assistance agreements within the last three years, if applicable, until the prime recipient submits the final financial report required under this award or receives the final payment, whichever is

later. This requires the prime recipient to review its information in SAM at least annually after the initial registration, and to update its information as soon as there are changes. Reviews and updates may be required more frequently due to changes in recipient information or as required by another award term.

B. Requirement for Unique Entity Identifier

If authorized to make subawards under this award, the prime recipient:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward until the entity has provided its unique entity identifier to the prime recipient.

2. Must not make a subaward to an entity unless the entity has provided its unique entity identifier to the prime recipient. Subrecipients are not required to obtain an active SAM registration, but must obtain a unique entity identifier.

C. Definitions

For purposes of this term:

1. System for Award Management (SAM) means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at https://www.sam.gov).

2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

3. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following for purposes of this part:

a. A foreign organization;

b. A foreign public entity;

c. A domestic for-profit organization; and

d. A Federal agency.

4. Subaward has the meaning given in 2 CFR 200.1.

5. Subrecipient has the meaning given in 2 CFR 200.1.

FINAL INCURRED COST AUDIT (DECEMBER 2014)

In accordance with 2 CFR Part 200 as amended by 2 CFR Part 910, DOE reserves the right to initiate a final incurred cost audit on this award. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

LOBBYING RESTRICTIONS (MARCH 2012)

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES (MARCH 2014)

By entering into this agreement, the undersigned attests that **Ascend Elements, Inc**. has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

The undersigned further attests that **Ascend Elements, Inc**. does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

For purposes of these assurances, the following definitions apply:

A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.

NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUNE 2015)

(1) By entering into this agreement, the undersigned attests that **Ascend Elements, Inc**. does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contactors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The undersigned further attests that **Ascend Elements, Inc**. does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

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

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

c. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (DECEMBER 2015)

a. General Reporting Requirement

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

b. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

2. Reached its final disposition during the most recent five year period; and

3. Is one of the following:

(A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(C) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(D) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

c. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

d. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

e. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or A. Reporting of Matters Related to Recipient Integrity and Performance.

2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(B) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

DECONTAMINATION AND/OR DECOMMISSIONING (D &D) COSTS

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

NEPA REQUIREMENTS

A. NEPA Determination and Authorization
DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of federal funds. Based on all information provided by the Recipient, EERE has made a NEPA determination by issuing a *Finding of No Significant Impact (FONSI)* for all activities listed in the Statement of Project Objectives (SOPO) approved by the Contracting Officer. The Recipient is thereby authorized to the use federal funds for the defined project activities, except where such activity is subject to a restriction set forth elsewhere in this Award. This NEPA determination and authorization are specific to the project activities and locations as described in the *Environmental Assessment.*

This authorization is subject to the Recipient's compliance with all conditions, limitations, mitigation requirements, monitoring requirements, and reporting requirements specified in (B).

B. Requirements Specific to the NEPA Determination and Authorization
The Recipient must:

1. Abide by the conditions, limitations, mitigation requirements, monitoring requirements and reporting responsibilities specified in *Environmental Assessment titled APEX-Intergrated Susttainable Battery Active Material and Precursor Production Plan Project.*
2. Undertake the project activities in accordance with necessary landowner approvals, required permits, and any additional approvals and mitigation requirements of other federal, state and local governmental agencies with jurisdiction by law.
3. Negotiate with DOE changes to the project schedule, costs, and/or scope as necessary to effect the requirements or conditions in *(B)(1).*
4. Allow DOE's authorized representatives to visit the site and facilities upon notice to verify project status and compliance to include conditions and requirements in *(B)(1).* and
5. Submit data or otherwise meet specified reporting requirements that may be in *(B)(1).*

If the Recipient finds the conditions and requirements to be unacceptable, they reserve the right to terminate the Award in accordance with 2 CFR 200.340.

C. Future Additions or Modifications
If the Recipient later intends to add to or modify the activities or locations as described in the *Environmental Assessment*, those new activities/locations or modified activities are subject to additional NEPA review and are not authorized for federal funding until the Contracting Officer provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or change locations prior to authorization from the Contracting Officer, the Recipient does so at risk of not receiving federal funding for those activities, and such costs may not be recognized as allowable cost share.

SUBAWARD/SUBCONTRACT CHANGE NOTIFICATION

Except for subawards and/or subcontracts specifically proposed as part of the Recipient's Application for award, the Recipient must notify the DOE Contracting Officer and Project Officer in writing 30 days prior to the execution of new or modified subawards/subcontracts. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR 200, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, Recipient documentation must, as a minimum, include the following:

1. A description of the research to be performed, the service to be provided, or the equipment to be purchased;
2. Cost share commitment letter if the subawardee is providing cost share to the award;
3. Updated budget justification, budget pages;
4. An assurance that the process undertaken by the Recipient to solicit the subaward/subcontract complies with their written procurement procedures as outlined in 2 CFR 200.318.
5. An assurance that no planned, actual or apparent conflict of interest exists between the Recipient and the selected subawardee/subcontractor and that the Recipient's written standards of conduct were followed;[1]
6. A completed Environmental Questionnaire, if applicable;
7. An assurance that the subawardee/subcontractor is not a debarred or suspended entity; and
8. An assurance that all required award provisions will be flowed down in the resulting subaward/subcontract.

The Recipient is responsible for making a final determination to award or modify subawards/subcontracts under this agreement, but the Recipient may not proceed with the subaward/subcontract until the Contracting Officer determines, and provides the Recipient written notification, that the information provided is adequate.

Should the Recipient not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the subaward/subcontract documentation stipulated above, Recipient may proceed to award or modify the proposed subaward/subcontract.

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

Commented [KJS1]: Has this changed to just Subrecipient change notifications for MESC awards or just certain awards?

FOREIGN NATIONAL PARTICIPATION – APPROVAL REQUIRED (APRIL 2024)

If the Recipient (including any of its subrecipients and contractors) anticipates involving foreign nationals in the performance of this award, the Recipient must provide DOE with specific information about each foreign national to ensure compliance with the requirements for foreign national participation and access approvals. The volume and type of information required may depend on various factors associated with the award.

Approval for foreign nationals in Principal Investigator/Co-Principal Investigator roles, from countries of risk (i.e., China, Iran, North Korea, and Russia), and from countries identified on the U.S. Department of State's list of State Sponsors of Terrorism (https://www.state.gov/state-sponsors-of-terrorism/) must be obtained from DOE before they can participate in the performance of any work under this award.

A "foreign national" is defined as any person who is not a United States citizen by birth or naturalization (may include a stateless person). DOE may elect to deny a foreign national's participation in the award. Likewise, DOE may elect to deny a foreign national's access to a DOE sites, information, technologies, equipment, programs, or personnel. DOE's determination to deny participation or access is not appealable.

The Recipient must include this term in any subaward and in any applicable contractual agreement(s) associated with this award.

EXPORT CONTROL (APRIL 2024)

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as "Export Controls." The Recipient is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under the award.

The Recipient must immediately report to DOE any export control changes, indictments, convictions, and violations related to the project funded under this Award and any export control investigations potentially implicating any technologies or equipment under the subject Award, at the recipient or subrecipient level, and if the charge/indictment/investigation results in a conviction or violation, provide the corrective action(s) to prevent future violations.

PROHIBITION RELATED TO FOREIGN GOVERNMENT-SPONSORED TALENT RECRUITMENT PROGRAMS (MARCH 2023)

A. Prohibition

Persons participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk* are prohibited from participating in this Award. The Recipient must exercise ongoing due diligence to reasonably ensure that no individuals participating on the DOE-funded project are participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. Consequences for violations of this prohibition will be determined according to applicable law,

regulations, and policy. Further, the Recipient must notify DOE within five (5) business days upon learning that an owner of the Recipient or subrecipient or individual on the project team is or is believed to be participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. DOE may modify and add requirements related to this prohibition to the extent required by law.

B. Definitions

1. **Foreign Government-Sponsored Talent Recruitment Program**. An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

2. **Foreign Country of Risk**. DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (APRIL 2024)

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (Federal and non-Federal funds) to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain;

(3) Exercise an option to procure; or

(4) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See Public Law 115-232, section 889 for additional information

IMPLEMENTATION OF EXECUTIVE ORDER 13798, PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY (NOVEMBER 2020)

States, local governments, or other public entities may not condition sub-awards in a manner that would discriminate, or disadvantage sub-recipients based on their religious character.

INTERIM CONFLICT OF INTEREST POLICY FOR FINANCIAL ASSISTANCE (MARCH 2023)

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term "Investigator" means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities, with the exception of DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports.

Prior to award, the Recipient was required to: 1) ensure all Investigators on this Award completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/unmanageable). Within 180 days of the date of the Award, the Recipient must be in full compliance with the other requirements set forth in DOE's interim COI Policy.

CONTINUED USE OF REAL PROPERTY AND EQUIPMENT (OCTOBER 2022)

Real property and equipment purchased with project funds (federal share and recipient cost share) under this Award are subject to the requirements at 2 CFR 200.311, 200.313, and 200.316 (non-Federal entities, except for-profit entities) and 2 CFR 910.360 (for-profit entities). The Recipient may continue to use the real property and equipment after the conclusion of the award period of performance so long as the Recipient:

a. Continues to use the property for the authorized project purposes;
b. Complies with the applicable reporting requirements and regulatory property standards;
c. As applicable to for-profit entities, UCC filing statements are maintained; and
d. Submits a written Request for Continued Use for DOE authorization, which is approved by the DOE Contracting Officer.

The Recipient must request authorization from the Contracting Officer to continue to use the property for the authorized project purposes beyond the award period of performance ("Request for Continued Use"). The Recipient's written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period (e.g., perpetuity, until fully depreciated, or a calendar date where the Recipient expects to submit disposition instructions); acknowledgement that the recipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.

When the property is no longer needed for authorized project purposes, the Recipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310 through 200.316.

POST AWARD DUE DILIGENCE REVIEWS (APRIL 2024)

During the life of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event, a risk is identified, DOE may require the Recipient implement specific risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award. As part of the research, technology, and economic security risk review, DOE may contact the Recipient project team members for additional information to inform the review.

CURRENT AND PENDING SUPPORT (APRIL 2024)

A. Definitions

For purposes of this term, the following definitions are applicable:

i. **Current and pending support** – (a) All resources made available, or expected to be made available, to an individual in support of the individual's RD&D efforts, regardless of (i) whether the source is foreign or domestic; (ii) whether the resource is made available through the Recipient or directly to the individual; or (iii) whether the resource has monetary value; and (b) includes in-kind contributions requiring a commitment of time and directly supporting the individual's RD&D efforts, such as the provision of office or laboratory space, equipment, supplies, employees, or students. This term has the same meaning as the

term Other Support as applied to researchers in the National Security Presidential Memorandum (NSPM) 33: For researchers, Other Support includes all resources made available to a researcher in support of and/or related to all of their professional RD&D efforts, including resources provided directly to the individual or through the organization, and regardless of whether or not they have monetary value (e.g., even if the support received is only in-kind, such as office/laboratory space, equipment, supplies, or employees). This includes resource and/or financial support from all foreign and domestic entities, including but not limited to, gifts provided with terms or conditions, financial support for laboratory personnel, and participation of student and visiting researchers supported by other sources of funding.

ii. **Foreign Government-Sponsored Talent Recruitment Program** – An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to United States entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

iii. **Senior/key personnel** – an individual who contributes in a substantive, meaningful way to the scientific development or execution of a research, development and demonstration (RD&D) project proposed to be carried out with DOE award.[1]

B. Disclosure Requirements

Prior to award, the Recipient was required to provide current and pending support disclosure statements and a CV or Biosketch for each principal investigator (PI) and senior/key personnel, at the recipient and subrecipient level, regardless of funding source. In accordance with the Federal Assistance Reporting Checklist, throughout the life of the award, the Recipient must submit current and pending support disclosure statements and a CV or Biosketch for any new PI and senior/key personnel at the recipient and subrecipient level, added to the project funded under this Award within thirty (30) calendar days of the individual joining the project. In addition, if there are any changes to current and pending support disclosure statements previously submitted to DOE, the Recipient must submit updated current and pending disclosure statements within thirty (30) calendar days of the change. The Recipient must ensure all PIs and senior/key personnel at the recipient and subrecipient level, are aware of the requirement to submit updated current and pending support disclosure statements to DOE.

[1] Typically, these individuals have doctoral or other professional degrees, although individuals at the masters or baccalaureate level may be considered senior/key personnel if their involvement meets this definition. Consultants, graduate students, and those with a postdoctoral role also may be considered senior/key personnel if they meet this definition.

Current and pending support is intended to allow the identification of potential duplication, overcommitment, potential conflicts of interest or commitment, and all other sources of support. All PIs and senior/key personnel at the recipient and subrecipient level must provide a list of all sponsored activities, awards, and appointments, whether paid or unpaid; provided as a gift with terms or conditions or provided as a gift without terms or conditions; full-time, part-time, or voluntary; faculty, visiting, adjunct, or honorary; cash or in-kind; foreign or domestic; governmental or private-sector; directly supporting the individual's research or indirectly supporting the individual by supporting students, research staff, space, equipment, or other research expenses. All involvement with foreign government-sponsored talent recruitment programs must be identified in current and pending support.

For every activity, list the following items:

- The sponsor of the activity or the source of funding.
- The award or other identifying number.
- The title of the award or activity. If the title of the award or activity is not descriptive, add a brief description of the research being performed that would identify any overlaps or synergies with the proposed research.
- The total cost or value of the award or activity, including direct and indirect costs and cost share. For pending proposals, provide the total amount of requested funding.
- The award period (start date – end date).
- The person-months of effort per year being dedicated to the award or activity.

To identify overlap, duplication of effort, or synergistic efforts, append a description of the other award or activity to the current and pending support.

Details of any obligations, contractual or otherwise, to any program, entity, or organization sponsored by a foreign government must be provided to DOE upon request to either the applicant institution or DOE. Supporting documents of any identified source of support must be provided to DOE on request, including certified translations of any document.

All PIs and senior/key personnel must provide a separate disclosure statement listing the required information above regarding current and pending support. The individual must sign and date their respective disclosure statement and include the following certification statement:

> I, [Full Name and Title], certify to the best of my knowledge and belief that the information contained in this Current and Pending Support Disclosure Statement is true, complete and accurate. I understand that any false, fictitious, or fraudulent information, misrepresentations, half-truths, or omissions of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (18 U.S.C. §§ 1001 and 287, and 31 U.S.C. 3729-3733 and 3801-3812). I further understand and agree that (1) the statements and representations made herein are material to DOE's funding decision, and (2) I have a responsibility to update the disclosures during the period of performance of the award should circumstances change which impact the responses provided above.

The information may be provided in the approved common disclosure format available at Common Form for Current and Pending (Other) Support (nsf.gov) to be implemented by DOE.

Regardless of the format used, the individual must still include a signature, date, and a certification statement using the language included in the paragraph above.

ORGANIZATIONAL CONFLICT OF INTEREST (APRIL 2024)

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Recipient is unable or appears to be unable to be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)).

The Recipient must disclose in writing any potential or actual organizational conflict of interest to the DOE Contracting Officer. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included the disclosure, see Section VI. of the DOE interim Conflict of Interest Policy for Financial Assistance at https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance.

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds.

The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities, with the exception of DOE National Laboratories. The Recipient is responsible for ensuring subrecipient compliance with this term.

If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian Tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.

ORGANIZATIONAL CONFLICT OF INTEREST (APRIL 2024)

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Recipient is unable or appears to be unable to be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)).

The Recipient must disclose in writing any potential or actual organizational conflict of interest to the DOE Contracting Officer. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included the disclosure, see Section VI. of the DOE interim Conflict of Interest Policy for Financial Assistance at https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance.

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds.

The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities, with the exception of DOE National Laboratories. The Recipient is responsible for ensuring subrecipient compliance with this term.

If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian Tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.

.

PARTICIPANTS AND OTHER COLLABORATING ORGANIZATIONS (APRIL 2023)

Prior to award, the Recipient was required to provide the following information on participants and other collaborating organizations. If there are any changes to Participants and Collaborating Organizations information previously submitted to DOE, the Recipient must submit updated information within thirty (30) calendar days after the end of the quarterly reporting period in which the change occurred:

A. What individuals have worked on the project

Provide the following information for individuals at the prime recipient and subrecipient level: (1) all senior and key personnel; (2) authorized representative of applicant with primary responsibility for business support (e.g., financial management, fiscal oversight, providing resources, award administration, etc.), if other than listed senior/key personnel, e.g., the Administrative Officer listed on the SF-424 Application; and (3) each person who has worked or is expected to work at least one person month per year on the project regardless of the source of compensation (a person month equals approximately 160 hours of effort).

i. Name
ii. Organization
iii. Job Title
iv. Role in the project
v. Start and end date (month and year) working on the project
vi. State, U.S. territory, and/or country of residence
vii. Whether this person collaborated with an individual or entity located in a foreign country in connection with the scope of this Award, and
viii. If yes to vii, whether the person traveled to the foreign country as part of that collaboration, and, if so, where and what the duration of stay was.

B. Organizations

Identify all subrecipients, contractors, U.S. National Laboratories, partners, and collaborating organizations. Recipients must also include all foreign collaborators as outline din the Foreign Collaboration Considerations term of the award Terms and Conditions. For each, provide name, UEI, zip code or latitude/longitude, role in the project, contribution to the project and start and end date.

HUMAN SUBJECTS RESEARCH (MARCH 2023)

Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (DOE) funding is subject to the requirements of DOE Order 443.1C, *Protection of Human Research Subjects*, 45 CFR Part 46, *Protection of Human Subjects* (*subpart A which is referred to as the "Common Rule"),* and 10 CFR Part 745, *Protection of Human Subjects*.

Federal regulation and the DOE Order require review by an Institutional Review Board (IRB) of all proposed human subjects research projects. The IRB is an interdisciplinary ethics board responsible for ensuring that the proposed research is sound and justifies the use of human subjects or their data; the potential risks to human subjects have been minimized; participation is voluntary; and clear and accurate information about the study, the benefits and risks of participating, and how individuals' data/specimens will be protected/used, is provided to potential participants for their use in determining whether or not to participate.

The Recipient shall provide the Federal Wide Assurance number identified in item 1 below and the certification identified in item 2 below to DOE prior to initiation of any project that will involve interactions with humans in some way (e.g., through surveys); analysis of their identifiable data (e.g., demographic data and energy use over time); asking individuals to test devices, products, or materials developed through research; and/or testing of commercially available devices in buildings/homes in which humans will be present. *Note:* This list of examples is illustrative and not all inclusive.

No DOE funded research activity involving human subjects, biospecimens, or identifiable private information shall be conducted without:

1) A registration and a Federal Wide Assurance of compliance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services; and
2) Certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance. IRB review may be accomplished by the awardee's institutional IRB; by the Central DOE IRB; or if collaborating with one of the DOE national laboratories, by the DOE national laboratory IRB.

The Recipient is responsible for ensuring all subrecipients comply and for reporting information on the project annually to the DOE Human Subjects Research Database (HSRD) at https://science.osti.gov/HumanSubjects/Human-Subjects-Database/home. *Note:* If a DOE IRB is used, no end of year reporting will be needed.

Additional information on the DOE Human Subjects Research Program can be found at: https://science.osti.gov/ber/human-subjects.

FRAUD, WASTE AND ABUSE (MARCH 2023)

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit https://www.energy.gov/ig/ig-hotline.

Additionally, the Recipient must be cognizant of the requirements of 2 CFR § 200.113 Mandatory disclosures, which states:

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

TRANSPARENCY OF FOREIGN CONNECTIONS (APRIL 2024)

The Recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the Recipient and subrecipients:

1. Any current or pending subsidiary, foreign business entity, or offshore entity that is based in or funded by any foreign country of risk or foreign entity based in a country of risk;;;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an entity owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the Recipient or subrecipients that increases foreign ownership related to a country of risk. Each notification shall be accompanied by a complete and up-to-date capitalization table showing all equity interests held including limited liability company (LLC) and partnership interests, as well as derivative securities. Include both the number of shares issued to each equity holder, as well as the percentage of that series and of all equity on fully diluted basis. For each equity holder, provide the place of incorporation and the principal place of business, as applicable. If the equity holder is a natural person, identify the citizenship(s);
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk;

6. Any changes to the Recipient or the subrecipients' board of directors, including additions to the number of directors, the identity of new directors, as well as each new director's citizenship, shareholder affiliation (if applicable); each notification shall include a complete up-to-date list of all directors (and board observers), including their full name, citizenship and shareholder affiliation, date of appointment, duration of term, as well as a description of observer rights as applicable; and
7. Any proposed changes to the equipment used on the project that would result in:
   a. Equipment originally made or manufactured in a foreign country of risk (including relabeled or rebranded equipment).
   b. Coded equipment where the source code is written in a foreign country of risk.
   c. Equipment from a foreign country of risk that will be connected to the internet or other remote communication system.
   d. Any companies from a foreign country of risk that will have physical or remote access to any part of the equipment used on the project after delivery.

Should DOE determine the connection poses a risk to economic or national security, DOE will require measures to mitigate or eliminate the risk.

DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

Recognizing the disclosures may contain business confidential information, subrecipients may submit their disclosures directly to DOE.

FOREIGN COLLABORATION CONSIDERTATIONS (MARCH 2023)

A. Consideration of new collaborations with foreign entities, organizations, and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.

B. Existing collaborations with foreign entities, organizations and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.

C. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences,

use of the Recipient's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Recipient's standard policies and procedures.

REPORTING, TRACKING AND SEGREGATION OF INCURRED COSTS (MARCH 2023)

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

COMMUNITY BENEFITS OUTCOMES AND OBJECTIVES (APRIL 2024)

The Recipient must meet the stated objectives and milestones set forth in its Community Benefits Outcomes and Objectives, which is incorporated into the Award as an attachment. Reporting on the Recipient's progress towards meeting the objectives and milestones set forth in the Community Benefits Outcomes and Objectives must be submitted in accordance with the Federal Assistance Reporting Checklist, attached to this award.

CYBERSECURITY PLAN (APRIL 2024)

The Secretary of Energy, per IIJA Section 40126, designated the DOE's Office of Cybersecurity, Energy Security, and Emergency Response (CESER) as responsible for coordinating cybersecurity project plans for IIJA provisions the Secretary deemed to have a cyber risk. CESER coordinates with DOE National Lab Subject Matter Experts (SMEs) to provide project lifecycle support activities that maintain or improve the project cybersecurity over its lifecycle.

The Recipient is responsible for maintaining and improving project cybersecurity throughout the project period, including responding to DOE feedback on the plans and the associated milestones, deliverables, including responding to DOE feedback on the plans and the associated milestones, deliverables, and attending associated cybersecurity plan lifecycle support meeting dates with CESER and DOE SMEs. Any revisions to the cybersecurity plans and all related deliverables shall be emailed securely to CR-IIJACybersecurityplans@hq.doe.gov.

Any DOE and/or Laboratory review comments or feedback provided to Recipients does not constitute an endorsement or approval of any specific elements within the cybersecurity plan or the proposed security approach. Therefore, such feedback should not be referenced or used in marketing or promotional materials.

All cybersecurity plans and deliverables are exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552) pursuant to Section 40126(e). This exemption is limited to information provided to or collected by the Federal Government described in Pub. L. 117-58 § 41026, 42 U.S.C. §18725.

TECHNOLOGY PROTECTION PLAN (MARCH 2023)

The Recipient must submit a Technology Protection Plan within 60 days of award setting out the Recipient's policies and procedures for identifying, accessing, handling, controlling, and releasing the following under this Award: (1) Recipient's proprietary information, including non-public technical information, trade secrets and other confidential business information, including but not limited to information, know-how, methods or processes that give the Recipient a competitive advantage in the marketplace; (2) information that is subject to U.S. export control laws or regulations; (3) information that has been designated as classified or controlled unclassified information (CUI) by DOE; (4) any other information designated by DOE as sensitive throughout the period of performance. The Recipient must meet the stated objectives set forth in its Technology Protection Plan. The Recipient must notify the Department of any revisions to the Technology Protection Plan or the proposed security approach. A report on the Recipient's progress toward meeting the objectives and milestones set forth in the Technology Protection Plan must be included in any continuation application. The Technology Protection Plan and any revisions to the plan and all related deliverables must be emailed securely to the point of contact designated by DOE.

Any DOE and/or National Laboratory review comments or feedback provided to the Recipient does not constitute an endorsement or approval of any specific elements within the Technology Protection Plan or the proposed security approach. Therefore, such feedback should not be referenced or used in marketing or promotional materials.

MATERIAL SUPPLY PLAN (MARCH 2023)

The Recipient must submit a Material Supply Plan to DOE within 60 days of award setting out the Recipient's strategy and approach for materials supply, including a new supply chain for North American and European suppliers, in form and substance satisfactory to DOE. The Recipient must meet the stated objectives set forth in its Material Supply Plan. The Recipient must notify the Department of any revisions to the Material Supply Plan. A report on the Recipient's progress towards meeting the objectives and milestones set forth in the Material Supply Plan must be included in any continuation application. The Material Supply Plan and any revisions to the plan and all related deliverables must be emailed securely to the point of contact designated by DOE.

THREAT BRIEFING (MARCH 2023)

The Recipient and DOE shall meet, at a mutually agreeable time, no later than six (6) months after the effective date of this award, to discuss, at an unclassified level, the current threat environment related to economic espionage, intellectual property theft, insider threats, and other relevant topics. DOE, in its sole discretion, may invite other U.S. Government representatives, to participate in these briefings and discussions. The parties may also meet additionally during the period of performance, at DOE's discretion, to continue these briefings and discussions.

DAVIS-BACON REQUIREMENTS (APRIL 2024)

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of $2000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of $2000 on projects funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Recipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:

(1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.

(2) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.

(3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.

(4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).

(5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.

(6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

(7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-

14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (https://doeibenefits2.energy.gov) or its successor system.

The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events.

The Recipient must ensure the timely submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act.

The Department of Energy has contracted with LCPtracker, a third-party DBA electronic payroll compliance software application. A waiver for the use of LCPtracker may be granted to a particular contractor or subcontractor if they are unable or limited in their ability to use or access the software.

Davis Bacon Act Electronic Certified Payroll Submission Waiver
A waiver must be granted before the award starts. The applicant does not have the right to appeal DOE's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see https://www.dol.gov/agencies/whd/government-contracts/construction and https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction.

AFFIRMATIVE ACTION AND PAY TRANSPARENCY REQUIREMENTS (SEPTEMBER 2023)

All federally assisted construction contracts exceeding $10,000 annually will be subject to the requirements of Executive Order 11246:

(1) Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.

(2) Recipients and Contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.

(3) Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take. See OFCCP's Technical Assistance Guide at: https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec.

Additionally, for construction projects valued at $35 million or more and lasting more than one year, Recipients, subrecipients, contractors, or subcontractors may be selected by OFCCP to participate in the Mega Construction Project Program. DOE, under relevant legal authorities including Sections 205 and 303(a) of Executive Order 11246, will require participation as a condition of the award. This program offers extensive compliance assistance with EO 11246. For more information regarding this program, see https://www.dol.gov/agencies/ofccp/construction/mega-program.

POTENTIALLY DUPLICATIVE FUNDING NOTICE (MARCH 2023)

If the Recipient or subrecipients have or receive any other award of federal funds for activities that potentially overlap with the activities funded under this Award, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Award. If there are identical cost items, the Recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

ACCESS RESTRICTIONS

The Recipient (including its employees, directors, officers, managers, agents, contractors, or other representatives, and includes the respective successors or assigns of the foregoing) shall not disclose any information that is not publicly available (including technical data, subject inventions, or any other information that is not publicly available or required to be made public under applicable law or regulation) developed under the DOE-funded project with any Recipient subsidiary, affiliate, investor, supplier, licensee at any tier, battery manufacturer for Recipient end customers, or joint development partner that: (1) has a place of incorporation or a principal place of business in a Foreign Country of Risk (for entities) or (2) is a national of a Foreign Country of Risk (for individuals). The Recipient shall also ensure that its subsidiaries or affiliates under its control adhere to this same restriction.

The Recipient shall provide on an annual basis and upon request of the DOE Contracting Officer (CO), a certificate of compliance with this term to the CO or designee.

RESEARCH TECHNOLOGY AND ECONOMIC SECURITY OFFICER

A. Within thirty (30) calendar days following the award date, the Recipient shall nominate in writing to DOE an employee of the Recipient as a Security Officer (the "Security Officer") who will be responsible for ensuring the Recipient's compliance the terms and conditions related to research, technology and economic security (RTES)[2]. The appointment of the Security Officer shall be subject to prior written consent by DOE. If DOE does not object within twenty (20) calendar days following receipt of a proposed nomination and of the information pursuant to paragraph D, to ensure that the nominee can effectively perform the functions of the position, the lack of action shall constitute a non-objection. If DOE objects to a nominated Security Officer, the Recipient shall nominate an alternate nominee within ten (10) calendar days of its receipt of any such objection, subject to the same consent and objection procedures as the initial nomination. The Recipient shall appoint the nominated Security Officer within three (3) days following consent or non-objection by DOE.

B. The Recipient shall notify DOE of the any of following changes to the appointed Security Officer:

   a. At least fifteen (15) calendar days before the proposed removal or replacement of the Security Officer unless removed for cause. In the event of a removal for cause, the Recipient shall notify DOE of the removal within (5) calendar days of the removal. To prevent a vacancy from taking place, the Recipient should, to the greatest extent possible, nominate a new candidate for the position in conjunction with a notice of proposed removal or notice of removal for cause, subject to the same consent and objection procedures as the initial nomination.

   b. Within forty-eight (48) hours upon learning of (1) an actual or planned resignation of the Security Officer, (2) the incapacitation of the Security Officer, or (3) the death of the Security Officer.

C. The Recipient shall provide DOE with a written nomination for each Security Officer. The Recipient shall provide a curriculum vitae or similar professional synopsis of each nominee, as well as the following information of the nominee:

   1. Full name (first, middle, last name);

   2. Contact Information;

   3. Education: Include all academic institutions attended, major/area, degree;

   4. Training;

[2] Terms and Conditions related to research, technology and economic security (RTES) are as follows: Foreign Collaboration Considerations, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, Prohibition Related to Foreign Government-Sponsored Talent Recruitment Programs, Current and Pending Support, Export Control, Foreign National Participation, Potentially Duplicative Funding, Cybersecurity Plan, Technology Protection Plan, Material Supply Plan, Performance of Work in United States, Threat Briefing, Post Award Due Diligence Reviews, Participants and Other Collaborating Organizations, Transparency of Foreign Connections, Access Restrictions, Research Technology and Economic Security Officer, Third-Party Monitor.

5. Professional Experience: Beginning with the current position, list professional/academic positions in chronological order with a brief description; and

6. All current academic, professional, or institutional appointments, foreign or domestic, at the applicant institution or elsewhere, whether or not remuneration is received, and, whether full-time, part-time, or voluntary.

The curriculum vitae or similar professional synopsis should have no lapses in time over the past ten years or since age 18, which ever time period is shorter.

D. The Recipient shall ensure that the Security Officer:

1. is a non-dual U.S. citizen who is eligible to hold a security clearance at least at the Secret level, and physically resides in the United States (the position may require obtaining and maintaining at least Secret level security clearance);

2. has the appropriate senior-level authority and necessary skills and resources across the Recipient's corporate structure to fulfill the responsibilities of his or her position and to ensure compliance with the RTES requirements of this Award;

3. has physical and logical access to the records, information, networks, and resources necessary to ensure, monitor, document, and report on compliance with the RTES requirements of this Award;

4. provides written responses to inquiries from DOE within five (5) days after receiving any inquiry and is available upon reasonable notice for discussions with DOE on matters relating to the enforcement of and compliance with the RTES requirements of this Award or any other RTES matter with respect to this Award;

5. reports any actual or suspected violation of the RTES requirements of this Award to DOE as soon as practicable, but in any event within three (3) calendar days of learning of the actual or suspected violation;

6. continuously monitors the Recipient's compliance with the RTES requirements of this Award and ensures the Recipient's day-to-day compliance with the RTES requirements of this Award;

7. serves as primary point of contact for DOEs regarding the Recipient's compliance with the RTES requirements of this Award;

8. serves as liaison between the Recipient and third-party monitor put in place to assess the Recipient's compliance with the RTES requirements of this Award;

9. instructs all personnel of the Recipient as to the RTES requirements of this Award, and provides training as necessary to ensure compliance;

10. takes all reasonable steps to rectify promptly any actual or potential violation immediately upon learning of such actual or potential violation;

11. develops, maintains, and provides oversight of any RTES requirements of this Award;

12. ensures that compliance and other periodic reports related to RTES requirements are submitted to the DOE as required by this Award; and

13. maintains control over information concerning matters relating to the enforcement of and compliance with the RTES requirements of this Award.

THIRD-PARTY MONITOR

A. DOE may require a Third-Party Monitor at any point during the Award to assess the Recipient's compliance with the research technology and economic security (RTES) requirements of this Award, but not more often than once every year. The engagement of the Third-Party Monitor and the scope and terms of the monitoring (the "Monitoring Plan") shall be subject to the prior non-objection of DOE. If DOE notifies the Recipient that monitoring is required, within thirty (30) days, the Recipient shall propose a Third-Party Monitor and the Monitoring Plan for their non-objection. If DOE does not provide written objection within thirty (30) days, the lack of action shall constitute a non-objection. If DOE objects to the proposed Third-Party Monitor, the Recipient shall propose an alternative candidate within fifteen (15) days, subject to the same non-objection procedure as the initial proposal. If DOE objects to the Monitoring Plan, the Recipient shall address the objections and submit a revised Monitoring Plan within fifteen (15) days, subject to the same non-objection procedure as the initial proposal. The Recipient shall engage the Third-Party Monitor within ten (10) days after receiving DOE's non-objection, and shall ensure that the monitoring is completed, in accordance with the Monitoring Plan, within ninety (90) days thereafter.

B. The Recipient shall require the Third-Party Monitor to produce a written final Monitoring Report, which shall be provided to the Security Officer and DOE upon completion. The DOE may request supplemental reports if a final Monitoring Report is not consistent with the DOE's expectations as it relates to the details of the analysis and conclusions presented. The Recipient shall ensure that the Third-Party Monitor promptly delivers all reports and related information generated or gathered during its review to DOE. DOE shall have the right to meet and confer with the Third-Party Monitor independently of the Recipient.

C. The Recipient shall ensure that the Third-Party Monitor:

1. is a U.S. business and uses only U.S. citizens to monitor compliance with this Award;

2. has qualifications appropriate for monitoring compliance with this Award, including, at a minimum, demonstrated experience in physical security, logical access security, and battery technology in the automobile, defense, and aerospace industries with the ability to access and deploy resources as necessary to discharge the duties described herein;

3. has no current or prior contractual, financial, or fiduciary relationship with either the Recipient, Subrecipient(s), or personnel thereof; and

4. has access to all information in the possession of the Recipient reasonably deemed necessary by the Third-Party Monitor to monitor and verify compliance with this Award, including non-public information and any records of communications or other documents.

D. The Recipient shall cooperate with the Third-Party Monitor and provide all information requested by the Third-Party Monitor to monitor and verify compliance with RTES requirements of this Award, including any records of communications or other documents.

INDEMNITY

The Recipient shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

CONSTRUCTION SIGNAGE (APRIL 2024)

The Recipient is encouraged to display DOE Investing in America signage during and after construction. Guidance can be found at: (https://www.energy.gov/branding). Proposed signage costs that meet these specifications are an allowable cost and may be included in the proposed project budget.

INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

a. You shall immediately notify the DOE of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.

b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.

c. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines that there are significant deficiencies or concerns with your performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.

d. Failure of the Recipient to comply with this term may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

GO/NO-GO DECISION

The Government has elected to include a go/no-go decision in the Statement of Project Objectives (SOPO) of the award. If it is advantageous for the Government to proceed beyond the technical milestone(s) set forth in the SOPO, the Contracting Officer will notify the recipient in writing authorizing the recipient to proceed beyond the technical milestone(s) in the SOPO. If it is determined that it would not be advantageous for the Government to proceed beyond the technical milestone(s), the Contracting Officer will notify the recipient in writing of such decision and the award is considered completed. The maximum liability to the Government is limited to the allowable, allocable, and reasonableness of the cost incurred by the recipient within the funds made available. The Government reserves the right to deobligate any remaining funds from the award. The recipient shall submit all final deliverables, including a final scientific/technical report, for the completed work in accordance with the reporting requirements of the award.

IMPACTED INDIAN TRIBES (MAY 2024)

If any activities anticipated to take place under this agreement could potentially impact the resources or reserved rights of Indian Tribe(s), as defined in 25 U.S.C. § 5304 (e), then the recipient/awardee agrees to develop and maintain active and open communications with the potentially impacted Indian Tribe(s), during the period of performance of the agreement, and, if necessary, after the end of the agreement. Approval by DOE must be obtained before any activities take place that could impact Tribal resources or reserved rights, including but not limited to lands, cultural sites, sacred sites, water rights, mineral rights, fishing rights, and hunting rights. The recipient/awardee must coordinate with DOE on all Tribal interactions. DOE will determine if formal government-to-government consultation is needed, and DOE will conduct that consultation accordingly.

- Tribal lands is as defined in 25 U.S.C. §§ 3501(2), (3), (4)(A) and (13).
- Indian Tribe is as defined in 25 U.S.C. § 5304 (e).

Commented [KJS2]: Bonding requirement has been satisfied…..

EXHIBIT B

(6) Awards to fund unique and innovative unsolicited applications.

[51 FR 17172, May 9, 19861

Subpart R-Property

§ 3015.160 Scope and applicability.

(a) Except as explained in paragraphs Cc), Cd), and Ce) of this section, this subpart applies to real property, equipment (including ADP) and supplies whose acquisition is supported by a grant.

Cb) Also contained in this subpart are standards covering inventions, pat-ents, and copyrights arising out of ac-tivities supported by a grant.

(c) This subpart does not apply to:

<l) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third party in-kind contribution; or

(3) Equipment or supplies acquired primarily for sale or rental, rather than for use.

(d) This subpart applies to equipment or supplies acquired by a contractor under a grant or subgrant only if, by terms of the contract, title vests in the recipient or subrecipient.

(e) For research grants that are subject to an institutional cost-sharing agreement, real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is supported as a direct cost by Federal grant funds.

§ 3015.161 **Additional requirements.**

Provided they observe the requirements of this subpart, recipients may follow their own property management policies and procedures. Unless specifically required by Federal statutes or Executive Orders, awarding agencies may not impose on recipients property requirements <including property reporting requirements> not authorized by this subpart.

§ 3015.162 Title to real property, equipment and supplies.

Subject to the obligations and conditions specified in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the re-cipient or subrecipient, respectively. In certain cases, money due the Federal government upon disposition of real property may be authorized to be used for allowable costs rather than paid to USDA. (See§ 3015.173.>

§ 3015.163 **Real property.**

Except as stated otherwise by Federal statutes, real property applicable to this subpart shall be subject to the following requirements, in addition to any other requirements imposed by the provisions of the grant award:

<a> *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, the awarding agency may approve the use of the property for other purposes. These uses shall be limited to:

Cl) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having purposes consistent with those of the legislation under which the original grant was made.

Cb) *Transfer of title.* In accordance with paragraph <a> of this section, approval may be requested from the awarding agency to transfer title to an eligible third party for continued use for authorized purposes. If approval is permissible under Federal statutes, and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this sub-part or in other terms of the grant or subgrant.

Cc) *Disposition.* When the real property is no longer to be used as provided in paragraphs <a> and (b) of this section, the disposition instructions of the awarding agency shall be followed. Those instructions will provide for one of the following alternatives:

<l > The property shall be sold and the Federal government shall have a right to an amount computed by mul-tiplying the Federal share of the prop-erty times the proceeds from sale <after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be followed which provide for competition to the extent

practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(l) of this section or of retaining title. If title is retained, the Federal govern-ment shall have a right to an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal government or an eligible non-Federal party named by the awarding agency. The recipient shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. In cases where the property belonged to a subrecipient, see § 3015.172 for the subrecipient's share.

§ 3015.164 Statutory exemptions for equip-ment and supplies.

(a) In certain circumstances some Federal statutes permit title to equip-ment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal government or on such terms and conditions set forth in the grant award, as deemed appropriate. The Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, is an example of such a statute. It provides this au-thority for equipment and supplies purchased with the funds of grants <and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at non-profit institutions of higher education or at non-profit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph <a> of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, when an equipment item has a unit acquisition cost of $1,000 or more, it shall be subject to § 3015.165 concern-ing rights to require transfer, and, while subject to such a right, to the rules on replacement in § 3015.167.

<c> If supplies are subject to a statute of the kind described in paragraph <a> of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 3015.165 Rights to require transfer of equipment.

(a) *USDA right.* The awarding agency shall have the right to require the transfer of equipment <including title) for items of equipment having a unit cost of $1,000 or more to the Fed-eral government or to an eligible non-Federal party named by the awarding agency. Normally, USDA agencies will only exercise this right if the project or program for which the equipment was acquired is transferred from one recipient to another. The following conditions shall govern this right:

<l > The property shall be appropri-ately identified in the grant award.

(2) In order for the awarding agency to exercise the right, disposition in-structions must be issued no later than 120 days after the end of USDA grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 3015.164 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the disposition instructions must have been received by the recipient while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, disposition in-structions must have been received by the recipient before other permissible disposition of the equipment took place in accordance with § 3015.168.

(3) If the right is exercised, the re-cipient shall be entitled to be paid any reasonable, resulting shipping or stor-age costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment.

(b) *Right of parties awarding sub-grants.* A recipient may reserve for itself, when awarding a subgrant, rights similar to those found in para-graph (a) of this section which covers items of equipment having a unit ac-quisition cost of $1,000 or more which

are acquired under that subgrant. Without the approval of the awarding agency, the right may be exercised only if the project or program for which the equipment was acquired is transferred to another subrecipient and only for the purpose of transfer-ring the equipment to the new subreci-pient for continued use in the project or program.

<c> *Equipment lists.* If at any time an awarding agency is considering exercising its right to require transfer of equipment, it may require the recipi-ent to furnish it with a list of all items of equipment that are subject to the right. As such, the awarding agency will decide which items, if any, should be transferred.

§ 3015.166 Use of equipment.

(a) *Basic rule.* Whenever the equipment is not transferred under the provisions set forth in § 3015.165, it shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When the equipment is no longer needed for the original project or program the recipient shall use the equipment, if needed, in other projects or programs currently or previously funded by the Federal government, in the following order of priority:

(1) Projects or programs currently or previously funded by the same USDA awarding agency.

(2) Projects or programs currently or previously funded by any USDA awarding agency.

(3) Projects or programs currently or previously funded by other Federal agencies.

(b) *Shared use.* When equipment is used less than full time in the original project or program, the recipient shall make it available for use in other projects or programs currently or previously funded by the Federal government. Provided, such other use will not interfere with the work on the original project or program. First pref-erence for such use, however, shall be given to other projects or programs funded by the same USDA awarding agency.

<c> *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously funded by the Federal government which the recipient is supporting through subgrants or through non-Federal grants. A subrecipient may also voluntarily make the equipment available for use in projects or programs currently or previously funded by the Federal government which are being conducted or supported by the recipient.

<d> *Other uses.* Unless the awarding agency provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part-time for other purposes. The use as de-scribed in the previous paragraphs, however, shall be given priority over other uses.

§ 3015.167 **Replacement of equipment.**

(a) If needed, equipment may be exchanged for replacement equipment. Replacement of equipment may be done either through trade-in or through sale and application of the proceeds to the acquisition cost of replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

Cb) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replace-ment equipment shall be subject to whatever property requirements or ex-emptions are applicable to that award. If the award is a grant from USDA, the full acquisition cost of the replace-ment equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph Cb) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. None of the provisions of this subpart shall carry over if <1) the Federal share of the equipment replaced was 10 percent or less or <2> the product of