

Kentucky Power Company
KPSC Case No. 2026-00001
Sierra Club's Post-Hearing Set of Data Requests
Dated July 14, 2026

DATA REQUEST

SC Provide a copy of any contract, term sheet, memorandum, or other
PHDR_4 document setting out the project and funding milestones for the Mitchell power plant cooling tower repair project.

RESPONSE

Please see the Company's response to KPSC PHDR 1_3.

September 17, 2026 Supplemental Response

Please see KPCO_SR_SC_PHDR_4_SupplementalAttachment1 for the executed DOE contract.

Witness: Amy J. Elliott



DOE Defense Production Act Articles
Award No. DE-FE0032774.0000 with Wheeling Power Co

DEFENSE PRODUCTION ACT AGREEMENT

BETWEEN

THE UNITED STATES DEPARTMENT OF ENERGY

AND

WHEELING POWER CO

CONCERNING

MITCHELL MECHANICAL DRAFT COOLING TOWER MODERNIZATION PROJECT

1. Agreement No.: DE-FE0032774
2. Amendment No.: Base
3. Project Period: From: 09/01/2026 To: 09/30/2028
4. Total Value of the Agreement: \$161,732,436 (INCLUDES BOTH DOE & NON-DOE FUNDING)
5. Total Awardee Cost-Share of the Agreement: \$110,732,436 (INCLUDES ONLY NON-DOE FUNDING)
6. Total DOE Cost-Share of the Agreement: \$51,000,000 (INCLUDES ONLY DOE FUNDING)
7. Funds Obligated This Action: \$51,000,000
8. Total DOE Funds Obligated: \$51,000,000
9. Authority: Executive Order 14156 and Section 303 of the Defense Production Act (DPA).

This Defense Production Act Agreement ("Agreement") is entered into between the Department of Energy, hereinafter called "DOE," and Wheeling Power Co, a for profit organized and existing under the laws of Ohio, hereinafter called the "Awardee."

IN WITNESS WHEREOF, the Parties have executed this Agreement.

U.S. DEPARTMENT OF ENERGY

Lalida Crawford

By: _____
Digitally signed by Lalida Crawford
Date: 2026.09.04 12:53:07 -06'00'

LALIDA CRAWFORD
HEAD OF CONTRACTING ACTIVITY

Dated: _____

AWARDEE

Signed by:

By: Brian Abraham
56867376330E45B...

BRIAN ABRAHAM
APPALACHIAN POWER COMPANY
PRESIDENT AND COO

Dated: 9/3/2026 | 1:35 PM EDT

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SECTION I: Defined Terms

“AO” shall mean Agreements Officer. The Agreements Officer is the only individual authorized to enter into or terminate this Agreement, modify any term or condition of this Agreement, waive any requirement of this Agreement, or accept nonconforming work.

“ATR” shall mean Agreement Technical Representative.

“Awardee” shall mean the entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term excludes Subawardees, program participants, and individual beneficiaries.

“Award Property” shall mean equipment or other real or tangible property acquired using federal funds pursuant to this Agreement.

“Covered Individual” means an individual who (a) contributes in a substantive, meaningful way to the development or execution of the scope of work of a project proposed for funding by DOE, and (b) is designated as a covered individual by DOE. DOE designates as covered individuals any principal investigator (PI); project director (PD); co-principal investigator (Co-PI); co-project director (Co-PD); project manager; and any individual regardless of title that is functionally performing as a PI, PD, Co-PI, Co-PD, or project manager. Status as a consultant, graduate (master’s or PhD)” student, or postdoctoral associate does not automatically disqualify a person from being designated as a ‘covered individual’ if they meet the definition in (a) above.

“Deliverable” shall mean an item provided to DOE as required by a Technical Objective or evidence provided to DOE of the completion of a Technical Objective or other requested reports, information, or items sufficient to show achievement of the Purpose of this Agreement and the Technical Objectives.

“Domestic Entity” shall mean any corporation, business association, partnership, trust, society, or any other entity or group, or a direct or indirect subsidiary of such an entity, that (1) is incorporated or organized to do business in the United States, *and* has a majority of shareholders that are citizens of the United States or are Domestic Entities; (2) is incorporated or organized to do business in the United States *and* to which the AO agrees.

“DOE” shall mean the United States Department of Energy.

“Effective Date” shall mean the date upon which the Agreement will enter into force which will be the date of the last signatory to the Agreement.

“Equipment” An item having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the nonfederal entity for financial statement purposes, or \$10,000.

“Foreign Countries of Concern” shall mean that term as defined in 42 U.S.C. §19237 and including Countries of Risk as that term is defined in 42 U.S.C. §18912.

“Foreign Entity” shall mean any corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments including state-owned enterprises. The term “Foreign Countries of Concern” and “Foreign National” are separate terms and not covered under the definition of a Foreign Entity.

“Foreign National” shall mean any individual other than a U.S. citizen or national.

“Government” shall mean the government of the United States of America including its agencies and departments.

“Key Personnel” shall mean those individuals identified whose positions are essential to the successful implementation of the award, including but not limited to the Principal Investigator and Business Point of Contact.

“Material Breach” shall mean a breach by the Awardee or DOE of any of its obligations under this Agreement which has, or is likely to have, resulted in the inability of the Awardee or DOE to effectively complete the Technical Objectives, and/or breach of provisions included in the Agreement.

“Organizational Conflicts of Interest” shall mean where the Awardee is unable, or appears to be unable, to be impartial in conducting activities under the Agreement due to its relationships with affiliates, organizations, or any other interested party.

“Party” or “Parties” shall mean the executing entities to this Agreement, consisting of the DOE and/or the Awardee.

“Requirement” shall mean the activity or project that needs to be accomplished with DOE funding

“Subaward” shall mean an agreement between Awardee and an entity to provide support for the performance of a substantive portion of this Agreement. This term does not include the Awardee’s procurement of contract(s) for property, goods, or services needed for the project.

“Subawardee” shall mean an entity that has entered into agreement with the Awardee and receives a subaward under this Agreement. Characteristics of this role are contributing to the goals and objectives of the project by carrying out part of the Federal award received by the Awardee, carries out a substantial portion of the federal program's objectives, while a contractor or vendor, typically provides specific goods or services needed for the project.

“Technical Objective” shall mean a measurable and verifiable task or other goal whose completion by the Awardee triggers a payment or other described Federal action.

SECTION II: General

Article 2.1: Authority to Enter into the Agreement

This Agreement is entered into pursuant to Executive Order 14156 and Section 303 of the Defense Production Act (DPA). This Agreement between DOE and Awardee is a transaction other than a procurement, grant, cooperative agreement, or loan. Accordingly, only those terms or requirements set forth in this Agreement and required by law are applicable.

This Agreement is not intended as, and shall not be construed as, a concession or acknowledgment by DOE that any payments to the Awardee are required or authorized under any other provision of law not cited in this Article 2.1.

This Agreement is valid only if it is in writing and is signed, including electronically, by the AO and by the Awardee's authorized representative. Awardee must also acknowledge the Agreement through the electronic system used by DOE, which is currently Fedconnect.

Article 2.2 Incorporation by Reference

The following are incorporated into this Agreement by reference:

- DBA, available at <https://www.energy.gov/infrastructure/davis-bacon-act>

Article 2.3: Flow Down Requirement

When specified in the applicable Article, Awardee must flow down the Article requirements to all subawardees and supplier agreements at every tier.

Article 2.4: Agency and Awardee Points of Contact

The Agreement Technical Representative (ATR) is the main point of contact for the Awardee. However, certain documentation and correspondence must also be provided to the AO or their designee. The ATR and AO are listed on page 2 of the Assistance Agreement.

To promote timely and effective agreement administration, correspondence under this Agreement shall reference the agreement number, title, and subject matter, and be subject to the following procedures.

Data Correspondence:

Correspondence regarding data issues shall be sent to the DOE Intellectual Property Counsel. A copy of such correspondence shall be provided to the AO.

All correspondence other than correspondence regarding data issues, including correspondence regarding waivers, deviations, or modifications to requirements, terms or conditions of the agreement, shall be addressed to the AO. Copies of all such correspondence shall be provided to the ATR.

Technical correspondence:

Technical correspondence shall be addressed to the ATR for this Agreement, and a copy of any such correspondence shall be sent to the AO as stated in page 2 of the Assistance Agreement.

Awardee Key Personnel are included on page 2 of the Assistance Agreement. Before removing, replacing, or diverting Key Personnel, the Awardee must notify the AO reasonably in advance and submit justification including resumes for any proposed substitutes, and obtain the AO's written approval. Notwithstanding the foregoing, the Awardee may immediately remove or suspend any Key Personnel if necessary to maintain satisfactory standards of employee competency, conduct, and integrity, although the Awardee must notify the AO prior to or concurrently with such action.

SECTION III: Purpose and Scope of Work

Article 3.1: Purpose

The United States is confronting an urgent grid capacity crisis. DOE's 2025 Grid Reliability Assessment (DOE/GR-2025-001) confirmed that coal retirements outpace other reliable, affordable, and secure generation resources. These challenges are especially acute in regions with constrained transmission and sustained load growth, as recognized in the April 20, 2026, Presidential Determination Pursuant to Section 303 of the DPA.

The Purpose of this Agreement is to define the relationship between DOE and the Awardee for providing Government funding to upgrade the mechanical draft cooling tower at the Mitchell plant in Moundsville, West Virginia to enhance regional grid reliability, reduce outage risk, and improve overall system efficiency, contributing to regional energy affordability.

Article 3.2: Scope of the Agreement

The project will modernize the Mitchell Plant by installing a new mechanical draft cooling tower. This will replace the nearly 60-year-old natural draft "unit 2" cooling tower currently in operation which would otherwise require significant repair. The modernization effort is essential to maintain the plant's full generation capability of ~1600 MW and to prevent the potential loss

of up to 800 MW of capacity (associated with unit 2) if the existing tower fails. This critical upgrade will enhance regional grid reliability and reduce outage risk by eliminating reliance on aging infrastructure. The lifespan of the new mechanical draft cooling tower is expected to exceed 25 years, thereby ensuring efficient operation and improving plant reliability.

There are nine (9) Technical Objectives to successfully complete the cooling tower upgrade. Activities associated with these objectives include a Business Case Analysis and technical reporting throughout the project, Issue for Construction (IFC) engineering packages for various aspects of the upgrades (piling, foundations, underground utilities, structural and mechanical systems, electrical, controls, and instrumentation systems, etc.), procurement activities, permitting and regulatory compliance, coordination of equipment deliveries and contractor mobilization, construction and implementation, startup and commissioning, and engineering closeout. The activities are scheduled appropriately to ensure timely completion, with final tie-in activities occurring during a planned outage to minimize operational disruptions. The new mechanical draft cooling tower is expected to be in service by the end of 2028.

Article 3.3: Period of Performance

The Period of Performance is defined by the Technical Objective Schedule. This Agreement is for fixed support and includes Technical Objective payments. The Technical Objective Schedule described in Appendix II includes the anticipated due dates and payment amounts. DOE's payment of the Technical Objective is dependent on DOE's determination that the Awardee has achieved the Technical Objective.

SECTION IV: Financial

Article 4.1: Approved Price

The total estimated price for this Agreement is \$161,732,436. This includes the DOE cost share of \$51,000,000. This amount constitutes the price for all Technical Objectives outlined in Appendix II.

Article 4.2: Obligation of Funding

DOE has selected this Agreement for a maximum Federal share of \$51,000,000.

Subject to the availability of additional funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority, DOE anticipates obligating the total estimated amount for the duration of this project. However, future additional funding is not guaranteed.

The Parties acknowledge that the project includes substantial costs beyond the amount of the Technical Objective payments of this Agreement and that Awardee bears responsibility for all costs beyond the "Total DOE Funds Obligated."

Article 4.3: Technical Objectives and Cost Sharing

Payments will be made by DOE to the Awardee upon successful completion by the Awardee of each Technical Objective, provided the costs are reasonable and directly related to the project.

Although not mandatory, DOE reserves the right to assess Technical Objective completion progress and/or verify completion of any of the Technical Objectives through site visits, monthly (or as modified by the ATR and the Awardee) review meetings that will include a review of Technical Objectives that are expected to be completed before the next meeting and a discussion of scheduling, or other progress and success criteria that the AO or ATR would like to witness either in-person or remotely.

In no instance shall the Awardee's costs constitute less than 50 percent of the total project costs incurred from the time of award. No invoice will be approved if the cumulative Recipient cost share contribution falls below the minimum requirement of 50%.

The Awardee must retain records of all project costs that are claimed. These records are subject to audit.

Article 4.4: Contingency

Proposed Technical Objective cost estimates may include budget contingency. If any portion of the budgeted contingency is subsequently realized and used, the Awardee must document the specific use of those funds and provide the corresponding required cost share for the realized amount.

Article 4.5: Award Property – Domestic Preference

To further enhance the defense industrial base and to ensure the long-term security of national security infrastructure, Awardee shall use commercially reasonable efforts to acquire Award Property from domestic sources, particularly preferring Award Property manufactured within the United States. In the event that domestic sources are unavailable or economically infeasible, Awardee shall inform the AO of the need to acquire Award Property from foreign sources. The AO may request, in writing, additional information or explanation from the Awardee. The AO shall have 30 (thirty) days to object to the foreign acquisition once the AO has confirmed to Awardee that DOE has all the necessary information to assess the foreign acquisition, specifically stating the grounds by which the AO is objecting to the acquisition of Award Property for a foreign source. Under no circumstances shall Award Property be acquired from a Foreign Entity that is an entity owned, controlled by, incorporated in, or located in a Foreign Country of Concern or that is manufactured in a Foreign Country of Concern.

Article 4.6: Payment Procedures

A. Requesting Payment

Only the Awardee is required to submit/may submit payment requests to DOE. Subawardees must submit reimbursement requests to the Awardee. The Awardee must submit actual costs incurred for the Technical Objective. DOE will reimburse up to the maximum federal share specified in the corresponding Technical Objective documentation. Any unused federal share from a previous Technical Objective will automatically carry forward. Requests to use the carried forward federal share must be approved by the AO. The Awardee's submission of payment requests should coincide with the Technical Objective schedule described in this Agreement. To access and use VIPERS, the Awardee must enroll at <https://vipers.doe.gov>. Detailed instructions on how to enroll are provided on the website.

B. Payments

DOE will disburse payments under this Agreement through Automated Clearing House (ACH) VIPERS. The Awardee may check the status of its payments at the VIPERS website. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) filed by the Awardee. DOE will make the Technical Objective payment within 30 days of receipt of the request for payment unless the billing and/or supporting documentation provided by the Awardee is insufficient.

C. Supporting Documents for Agency Approval of Payments

The Recipient must submit a Standard Form SF-270 "Request for Advance or Reimbursement" and attach the following supporting documentation:

1. Summary document explaining the work completed
2. All deliverables as noted in Appendix II Technical Objective Table

DOE may request additional documentation to support costs incurred from the Awardee to justify the payment requests prior to release of funds. The Awardee must comply with these requests.

Article 4.7: Insolvency, Bankruptcy, or Receivership

- A. The Awardee shall immediately notify DOE of the plans for, or significant likelihood of, any of the following events: (i) the Awardee or the Awardee's parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) the Awardee's consent to the institution of an involuntary case under the Bankruptcy Act against it or its parent; (iii) the filing of any similar proceeding for or against the Awardee or the Awardee's parent, or its consent to, the dissolution, winding-up or readjustment

of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over it, under any other applicable state or federal law; or (iv) the Awardee's insolvency due to its inability to pay its 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 Agreement.
- C. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of the Awardee's Agreement to determine their compliance with the required elements of the Agreement. If the DOE review determines that there are significant deficiencies or concerns with the Awardee's performance under the Agreement, DOE reserves the right to impose additional requirements, as needed.
- D. Failure of the Awardee to comply with this term may be considered a Material Breach of this Agreement.

Article 4.8: Fraud, Waste, and Abuse

This article flows down to all Subawardees.

The Awardee shall disclose, in a timely manner, in writing to DOE all violations of Federal criminal law involving fraud, bribery, or gratuity violations by Awardee, its employees, and agents that potentially affect the award. Compliance with the Rules of Professional Conduct does not violate this paragraph. The DOE Office of Inspector General 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>.

SECTION V: Information Sharing and Intellectual Property

All articles in this Section flow down to all Subawardees.

Article 5.1:

A. Information Sharing with Awardee

To carry out the work of this Agreement so that DOE and the Awardee may pursue the purpose of the Agreement, DOE and the Awardee will need to share information that is not publicly available. The Awardee shall not use non-public information provided by the Government or otherwise acquired through its performance of this Agreement for its own purposes, or to disclose the information to third parties, unless specifically authorized to do so in writing by the AO. Any third party authorized to receive the information must agree to the same restrictions as the Awardee regarding the information prior to receiving the information.

These restrictions do not apply to: (i) information which, at the time of receipt by the Awardee, is in the public domain; (ii) Information which, subsequent to receipt by the Awardee, becomes part of the public domain through no fault or action of the Awardee; (iii) information which the Awardee can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained by performing work under this Agreement; (iv) information which the Awardee can demonstrate was received from a third party who did not require the Awardee to hold it in confidence; or (v) information which is subject to release under applicable law.

DOE may provide the Awardee with access to certain program or application related data. In such circumstances, DOE may require the signing of additional non-disclosure agreements or data use agreements associated with that program or application related data, for example documents typically required by merit reviewers or data use agreements required by a third party data owner.

The Awardee agrees to use data systems that protect DOE-provided non-public information from accidental or malicious release. The Awardee agrees to confer with DOE on appropriate requirements for such a system and to implement agreed-upon requirements prior to receiving any DOE non-public information.

Article 5.2. Intellectual Property

See Appendix III: Title to Inventions.

See Appendix IV: Data Rights.

SECTION VI: Indemnification, Contaminated Sites, Insurance

Article 6.1: Indemnification and Liability

This article flows down to all Subawardees.

A. Awardee's Indemnity

Except as to the indemnity of DOE as set forth in Part B of this section, but in all other instances to the greatest extent allowed by law, Awardee shall indemnify and hold harmless DOE, its agents, employees, officers, and lenders (if any) (collectively, DOE Indemnities) from and against: (i) any and all Claims and all damages, liabilities, losses, costs and expenses associated therewith (including attorneys' fees and other professionals' fees) for any injury of or death to persons, damage to or destruction of third party property, contamination of the environment or injury to natural resources, whether contractual, in tort, or as a matter of strict liability or liability imposed by law, to the extent any of the foregoing arise out of the negligence or willful misconduct or wanton acts or omissions of Awardee, or of any supplier, subawardee, contractor, or any of their respective employees, agents or third

parties over which either has reasonable control during the performance of the Scope of Work, and (ii) any and all claims, demands or causes of action of every kind and character by any person and all damages, liabilities, losses, costs and expenses associated therewith (including attorneys' fees and other professionals' fees) for: (a) any violation or alleged violation of laws by Awardee, any supplier, subawardee, contractor, or any of their respective employees, agents or third parties over which either has reasonable control; (b) any action taken by Awardee, any supplier, subawardee, contractor or any of their respective employees, agents or third parties over which either has reasonable control, or (c) any Material Breach by Awardee of this Agreement.

B. DOE's Indemnity

Except as set forth in Part C of this section, DOE makes no indemnity agreement whatsoever in connection with this Agreement and Awardee expressly agrees and acknowledges that no indemnity of any kind is made by DOE.

C. Contaminated Sites

The Awardee must notify DOE if any activities under the Agreement will occur on previously contaminated or potentially contaminated sites with hazardous substances, including, but not limited to, Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") "Superfund sites" or properties where redevelopment or reuse may be complicated by hazardous substance contamination ("Brownfield sites").

D. Decontamination and/or Decommissioning

The Awardee is solely responsible for handling and disposal of any hazardous substances and wastes arising from activities under this Agreement.

Decommissioning encompasses all activities to remove installed facilities and return the site to its original status (e.g., as a greenfield, brownfield, etc.).

The Awardee is responsible for decontamination and decommissioning (D&D) of the site and facilities. Notwithstanding any other provisions of the Agreement, DOE shall not be responsible for or have any obligation to the Awardee for (i) D&D of any facilities, or (ii) any costs which may be incurred by the Awardee in connection with the D&D of any facilities.

The Awardee must ensure that qualified staff and adequate financial resources are available, that safety management programs remain in place as applicable and that appropriate records are maintained to support any remaining liability at an Awardee site.

E. Insurance Coverage

The Awardee is required to carry adequate insurance to cover potential liabilities arising from

activities under the Agreement. Specific requirements include:

- (a) Workers' compensation – amount in accordance with applicable Federal and State workers' compensation and occupational disease statutes.
- (b) Employer's liability – (except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers).
- (c) Comprehensive bodily injury liability.
- (d) Property damage liability – (None, unless otherwise required by the AO.)
- (e) Comprehensive automobile bodily injury liability.
- (f) Comprehensive automobile property damage.

The Awardee shall provide evidence of such insurance, if requested by the AO; the AO may require such evidence to be provided prior to the commencement of work under the Agreement.

SECTION VII: Research, Technology and Economic Security (RTES)

Article 7.1: Prohibition on Incorporation in or Ownership or Control by Foreign Countries of Concern

This article flows down to all Subawardees.

Neither the Awardee or a parent company may be solely incorporated in, or owned or controlled by, or subject to the direction of a Foreign Country of Concern. In the event the Awardee, the Awardee's parent company or project team member undergoes a change in ownership or control that increases foreign ownership or control by Foreign Country of Concern or a change that effectively makes the entity subject to the direction of a Foreign Country of Concern, the Awardee must immediately alert the AO and suspend all activities under this Agreement pending evaluation by DOE and any required mitigation.

Article 7.2: Annual List of Personnel

This article flows down to all Subawardees.

The Awardee shall submit an updated list of all personnel working on the project on an annual basis to the AO.

Article 7.3: Foreign Collaboration and Commitments in Support of the Agreement

Before the Awardee may engage with, collaborate with, accept a commitment from, or enter into an agreement with any Foreign Entity directly related to this Award, the Awardee shall submit a written request for approval to DOE. Following a written request for approval, DOE will provide approval or a written response as soon as reasonably practicable. DOE may prohibit or impose conditions on the Awardee relating to such collaborations, commitments, or other agreements with a foreign entity in connection with this Award.

The Awardee must provide the AO with a written list of all existing foreign collaborations and commitments in which it has entered in connection with this Agreement within ten (10) business days of the Effective Date.

In general, a collaboration will involve some provision of a thing of value to, or from, the Awardee. A thing of value includes but may not be limited to all resources made available to, or from, the Awardee in support of and/or related to the Agreement, 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 Agreement but resulting in provision of a thing of value from or to the Agreement must also be reported. Collaborations do not include routine workshops, discussions, conferences, use of the Awardee'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 Awardee's standard policies and procedures

The Awardee shall ensure that its Subawardees are similarly bound.

Article 7.4: Entity of Concern Prohibition

This article flows down to all Subawardees.

No Entity of Concern as defined in [Section 10114 of Public Law 117-167 \(42 U.S.C. § 18912\)](#) may participate in the Agreement.

Article 7.5: Malign Foreign Talent Recruitment Program Prohibition

This article flows down to all Subawardees.

Individuals participating in a Malign Foreign Talent Recruitment Program, as defined in Section 10638(4) of P.L. 117-167 (42 U.S.C. §§ 19237(4), 19232), are prohibited from participating in this Agreement.

Article 7.6: Due Diligence Reviews and Disclosures

The Agreement is subject to a post-selection and ongoing RTES risk review and monitoring to identify potential risks of undue foreign influence. As part of the review, the Awardee and/or project partners must cooperate with DOE requests for information, including the following required disclosures and certifications for all covered individuals and entities which must be updated within fifteen (15) business days of any changes except advanced notice to DOE must be given for changes relating to a Foreign Country of Concern: DOE [Common Form for Current and Pending \(Other\) Support](#) (42 USC 6605), DOE Common Form for Biosketch (NSPM-33), and Transparency of Foreign Connections, including a Malign Foreign Talent Recruitment Program certification, available on the DOE website provided post-selection by DOE. New covered individuals during the term of the Agreement must provide the disclosures above and

receive DOE approval before participating. DOE may share information regarding the risks identified as part of the RTES due diligence review process or monitoring with other Federal agencies.

In the event an RTES risk is identified, or the required disclosures, certifications, or updates, are not submitted, DOE may require risk mitigation measures, including but not limited to, requiring that an individual or entity not participate in the project. If significant risks are identified and cannot be sufficiently mitigated, DOE may terminate the Agreement.

DOE's decision regarding a due diligence review is not appealable.

Article 7.7: Performance of Work in the United States

This article flows down to all Subawardees.

All work for this Agreement must be performed in the United States (i.e., the Awardee must expend 100% of the total project cost in the United States), unless the Awardee receives advance written authorization from the AO to perform certain work overseas. This provision does not apply to the acquisition of materials or components of the Awardee's project unless otherwise instructed in writing by the AO.

Article 7.8: Board of Directors

The Awardee represents that no voting member of the Board of Directors of the Awardee shall be a citizen of a Foreign Country of Concern.

Article 7.9: Disclosure of Connections with Foreign Countries of Concern

As of the Effective Date, the Awardee affirms that it has not entered into any active or prior contracts or agreements for work related to achieving Technical Objectives under this Agreement with any Foreign Entity that is subject to the ownership, control, or influence of one or more of the Foreign Countries of Concern or a Foreign Entity that is a Foreign Entity of Concern pursuant to 42 U.S.C. § 19237.

Article 7.10 Cybersecurity Compliance

To the extent the Awardee is subject to the federally mandated jurisdiction of the North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection (CIP) standards, DOE formally recognizes NERC CIP compliance (CIP-002 through CIP-014) as satisfying all cybersecurity planning and implementation requirements under this Agreement. The Awardee must maintain active compliance with these requirements for the duration of this Agreement and shall provide proof of compliance to the AO upon reasonable request.

SECTION VIII: Reporting Requirements and Approvals

Article 8.1: Technical Objectives - Review, Acceptance or Rejection of Technical Objectives

The Awardee shall be responsible for timely delivery and satisfactory completion of all Technical Objectives listed in Appendix II. Unless otherwise specified by the AO in advance of the deadline, all documents, including reports, are to be furnished to the DOE electronically such as via email, or uploaded to an agreed upon file sharing location.

DOE shall accept or reject the completed Technical Objectives as promptly as practicable after completion, unless otherwise specified in the Agreement. DOE's failure to review and accept or reject the work shall not relieve the Awardee from responsibilities under this Agreement, nor create liability for the Government. Acceptance will not be unreasonably withheld or delayed.

If DOE determines that the Technical Objective was not completed or is inadequate, the notice of rejection will provide the Awardee a specific description of the identified nonconformity. The Awardee will have the opportunity to cure under a timeline agreed to by the Awardee and the AO.

Article 8.2: Work at Risk

Only those pre-award costs approved by DOE will be reimbursed. Because this project is structured on a reimbursement payment basis, DOE will only pay approved prior incurred costs as part of the Technical Objective structure. The Technical Objectives in which these costs are included must be reviewed and determined to be complete by DOE prior to reimbursement.

Article 8.3: Accounting Standards and Audits

- A. All award costs must be reasonable and directly related to the project as determined by the AO Accounting Standards and Financial Reporting
 - a. Awardee will comply with Generally Accepted Accounting Principles and the terms and conditions of this Agreement. The Awardee will maintain financial records consistent with its ordinary accounting practices to account for project costs.
 - b. Financial records made and retained by the Awardee in connection with this Agreement will be subject to the audit provisions in this Article.
- B. The Awardee shall maintain adequate records to account for all funding under this Agreement. All Awardee financial records for work related to this Agreement are subject to examination or audit on behalf of DOE by the Government for a period not to exceed three (3) years after expiration of the term of this Agreement. The AO or designee shall have direct access to all such records and information of the Awardee, to ensure full accountability for all funding under this Agreement.

- C. The Awardee is required to provide any information, documents, site access, or other assistance requested by DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office, Defense Contracting Audit Agency) for audit work related to this Agreement. Single Audits are not required under this Agreement.
- D. In accordance with 42 U.S.C. § 7137, the Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of the Awardee of Federal funding or assistance under this Agreement, including contracts between the Awardee and other entities.

SECTION IX: Compromise and Disclaimers

Article 9.1: Disclaimer of Liability

DOE and Awardee further mutually agree that this Agreement does not constitute, and shall not be construed as, an admission of any wrongdoing, misconduct, or liability on the part of the United States, including any agency, officer, agent, or employee thereof.

Article 9.2: Limitation on Use of the Agreement

DOE and Awardee further mutually agree that this Agreement is limited to the specific matters addressed by the provisions herein, and that this Agreement is not intended as, and may not be used as, evidence of any concession, stipulation, acknowledgment, or waiver on any question of fact or law that has arisen or may arise in any matter not governed by this Agreement.

Article 9.3: Conflicts of Interest

This article flows down to all Subawardees.

The Awardee shall adopt and maintain a conflict-of-interest policy under this award, which shall be provided to DOE upon request. This conflict-of-interest policy shall address both individual conflicts of interest as related to Key Personnel and Organizational Conflicts of Interest.

The Awardee's conflict of interest policy must: 1) require disclosure of any financial interests related to the purpose of this Agreement by Key Personnel; 2) include annual reviews and recertification of the disclosures; 3) incorporate a mitigation and management process when financial conflicts of interest (FCOI) are disclosed; and 4) provide DOE with an annual FCOI report that includes all FCOIs (i.e., managed, and unmanaged/unmanageable) for work performed in whole or in part with DOE funding.

The Awardee shall disclose in writing to the AO any potential or actual Organizational Conflict of Interest as soon as reasonably practical after discovery thereof. The Awardee and the DOE

shall jointly develop a mitigation plan to address Organizational Conflicts of Interest as they arise.

SECTION X: Modifications, Assignment, and Termination

Article 10.1: Modifications

Proposals for modifications will be documented in writing and submitted by the Awardee to the AO, or by DOE to the Awardee. Parties may request the technical, schedule, and financial impact of the proposed modification as appropriate.

Any modification to this Agreement shall be executed in writing and signed by an authorized representative of DOE and the Awardee. The DOE is not obligated to pay for additional costs related to modifications unless formally agreed to by the AO and the Awardee. Further, the Awardee is not obligated to accomplish work prior to mutual agreement between the AO and the Awardee.

For minor or administrative modifications (e.g., changes to the paying office or appropriation data), Awardee approval is not required, unless Awardee timely objects to such a proposed minor or administrative modification. In the event of any objection to a minor or administrative modification, the modification must be bilaterally executed. If the parties are unable to resolve such objection, the dispute shall be resolved pursuant to Article 10.2.

Article 10.2: Disputes

A. General: The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

- a. Any disagreement, claim, or dispute between DOE and the Awardee concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.
- b. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable.
- c. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party in writing of the relevant facts, identifying unresolved issues, and specifying the clarification or remedy sought. Within ten (10) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the DOE cognizant Head(s) of Contracting Activity of the DOE offices providing funding to this Agreement and the Point(s) of Contact for the Awardee specified in the

Assistance Agreement. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. Any agreed upon joint decision is final and binding.

- C. Limitation of damages:** Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of DOE funding obligated under this Agreement as of the time the dispute arises. In no event shall DOE or Awardee be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

Article 10.3: Assignment

The Awardee or any Successor in Interest may not assign its interest in this Agreement without prior written consent from the AO. For the purposes of this Agreement, change of control is a sale of all or a controlling ownership percentage of Awardee to a third party. Change of control is also when Awardee sells all or a controlling ownership percentage of Awardee to a third party. While AO approval will not be unreasonably withheld, the AO will not approve assignment of this Agreement if the third-party purchaser is a Foreign Entity without seeking additional information regarding the purchaser and a Foreign Ownership, Influence, and Control risk analysis is completed by DOE. Additionally, the AO shall not approve assignment of this Agreement if the third-party purchaser is a citizen of or an entity owned, controlled by, incorporated in, or located in a Foreign Country of Concern.

A. Upon any Change of Control, or if DOE requests the information in writing, the Awardee must provide the Agreements Officer with documentation identifying all parties who exercise control in the Awardee.

B. When there is a Change of Control of the Awardee, or the Awardee has reason to know a Change of Control is likely, the Awardee must notify the Agreements Officer within thirty (30) days of its knowledge of such Change of Control to the maximum extent practical. Such notification must include, at a minimum, copies of documents necessary to reflect the change, and identification of all individuals or other parties to such transaction along with any changes to bylaws or other controlling articles.

C. Failure to notify the Agreements Officer of a Change of Control is grounds for suspension of the Agreement or termination for failure to comply with the terms and conditions of the Award.

Article 10.4: Termination and Enforcement

It is understood and agreed that the liability of the DOE under this Agreement will not exceed the amount of funds obligated at the time of any termination unless the DOE otherwise authorizes in writing.

In the event of a termination of the Agreement, disposition of data developed under this Agreement shall be in accordance with the provisions set forth under this Agreement.

A. This Agreement may be terminated by:

1. Either Party, upon sixty (60) days written notice to the other Party, with or without cause;
 2. DOE, upon a Material Breach of any term of this Agreement by the Awardee. DOE shall promptly provide Awardee with a Cure Notice identifying the Material Breach. Within ten (10) days after receipt of the Cure Notice, Awardee shall respond in writing to the Cure Notice and provide DOE with a Cure Plan; and
 3. DOE, if the Awardee files a bankruptcy petition that is not dismissed within ten (10) business days, the Awardee is adjudicated bankrupt or is otherwise insolvent, or the Awardee ceases to do business or otherwise terminates its business operations.
- B. In the event of termination, DOE and the Awardee shall meet to affect an orderly termination of any ongoing or planned activities. In no case will the DOE be liable for expenses or other financial obligations of the Awardee incurred due to early termination.
- C. On the effective date of a termination, the authority granted to Awardee via this Agreement immediately ceases.
- D. Unless otherwise negotiated, DOE shall pay the Awardee a proportionate share of DOE's financial commitment to the project based on the percentage of project completion as of the date of termination.
- E. Notwithstanding paragraph D. of this section, if the Agreement includes Technical Objective payments, DOE has no obligation to pay the Awardee beyond the last completed and paid Technical Objective if the Awardee decides to terminate.
- F. DOE enforcement remedies include, but are not limited to:
- (1) Temporarily withhold cash payments pending correction of the deficiency by the Awardee or more severe enforcement action by the AO.
 - (2) Wholly or partly suspend or terminate the current Agreement.
 - (3) Withhold further agreements for the project or program.
 - (4) Apply other remedies that may be legally available.

SECTION XI: Miscellaneous

Article 11.1: Export Control

This article flows down to all Subawardees.

The U.S. government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the US 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 Awardee is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under the resulting Agreement.

The Awardee must immediately report to DOE any export control charges, 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 Awardee or subawardee level, and, if the charge/indictment/investigation results in a conviction or violation, provide the corrective action(s) to prevent future violations.

Article 11.2: Administration by Non-Federal Personnel

DOE may use non-Federal personnel to conduct oversight, administrative, and/or verification activities for this Agreement. Non-Federal personnel used will be required to sign conflict of interest and non-disclosure agreements prior to doing any work regarding the Agreement.

Article 11.3: National Policy Assurances

This article flows down to all Subawardees.

The Awardee acknowledges that it is subject to all applicable Federal, Tribal, State, and Local laws and regulations, for all activities performed under this Agreement, and implementing regulations/Executive Orders, including but not limited to, any relevant provisions that may be contained in the following:

- A. Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d and 2000e, respectively, (prohibiting discrimination based on race, color, religion, sex, and national origin)
- B. The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et. seq. (prohibits employment discrimination against persons 40 years of age or older)
- C. The Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq. (prohibits unjustified discrimination based on disability)
- D. The Clean Water Act, 33 U.S.C. § 1251 et. seq.
- E. The Clean Air Act, 42 U.S.C. § 7401 et. seq.
- F. The Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et. seq. (promotes safe and healthful working conditions)

G. Executive Order No. 13224, Blocking Property and Prohibiting Transactions with
Persons who Commit, Threaten to Commit, or Support Terrorism, 66 FR 49079

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 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. The Awardee must obtain approval from DOE 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 Awardee must coordinate with DOE on all Tribal interactions. DOE will determine if formal government-to-government consultation is needed, and if so, DOE will conduct that consultation.

Article 11.4: Suspension and Debarment

This article flows down to all Subawardees and contractors.

In accordance with Executive Orders 12549 and 12689, the regulations at 2 CFR part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) are applicable to this Agreement. The Awardee hereby certifies, to the best of its knowledge and belief, that it has complied, and shall comply, with 2 C.F.R. Part 180. The Awardee shall not contract with entities that are currently listed on the System for Award Management as suspended or debarred in support of this Agreement.

Article 11.5: Inspector General and Access to Records

- A. The Awardee is required to provide any information, documents, site access, or other assistance requested by DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office, Defense Contracting Audit Agency, United States Digital Service, Department of Government Efficiency) for work related to this Agreement. Single Audits are not required under this Agreement.
- B. In the event that the Awardee has Federal funding from another Federal agency or entity, in accordance with 42 U.S.C. § 7137, the Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of the Awardee of Federal funds or assistance under this Agreement, including contracts between the Awardee and other entities.
- C. In accordance with 42 USC 7137, the Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of any awardees of Federal funds or assistance under this Agreement, including subagreements.

Article 11.6: System for Award Management

Awardee must comply with [Appendix A to Part 25, Title 2](#). The Awardee is required to be registered in the System for Award Management (SAM, www.sam.gov). The Awardee agrees to

opt in to SAM notifications and monitor SAM for DOE issued information. Subawardees must register for a Unique Entity Identifier (UEI) number.

Article 11.7: Davis-Bacon Act Requirements

This article flows down to all Subawardees.

If it is determined that the Davis Bacon Act (DBA) is applicable to this Agreement, the Awardee must comply with the requirements of the DBA and any subsequent modifications to this Agreement as soon as DOE or DOL informs the Awardee of such determination. DOE has made an initial determination that the Davis-Bacon Act is applicable to this Agreement subject to any exclusions, exemptions, limitations, or exceptions set forth in applicable statutes, regulations, case law, or other controlling legal authority.

All laborers and mechanics employed by the Awardee, subawardees, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2,000 on an award funded directly by or assisted in whole or in part by funds made available under this Agreement 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").

The Awardee shall provide a written assurance acknowledging the DBA requirements for the Agreement or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 on projects funded directly by or assisted in whole or in part by funding under the Agreement are paid or will be paid wages at rates not less than those prevailing on a project of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code.

The Awardee must comply with all DBA requirements including, but not limited to:

1. Ensuring that the wage determination(s) (as defined by Department of Labor and incorporated by reference) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subawardee awards.
2. Being responsible for compliance by any subcontractor or subawardee with the Davis-Bacon labor standards.
3. Receiving and reviewing certified weekly payrolls submitted by all subcontractors and subawardees 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 subawardees 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 Agreements Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the Awardee, subawardee, 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 subawardee award.
9. Preparing and submitting to the Agreements 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. .

The Awardee must undergo DBA compliance training and must maintain competency in DBA compliance. The Agreements Officer will notify the Awardee of any DOE sponsored DBA 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 Awardee must ensure the timely submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act.

DBA Wage Determination

The DBA prevailing wages to be paid laborers and mechanics under this award involved in performance of work at the project sites, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are found at <https://sam.gov/content/wage-determinations>.

The General Decision Number(s) specific to this award are found below. These wage rates are minimum rates and are not intended to represent the actual wage rates that the Contractor may have to pay.

CONSTRUCTION TYPE

GENERAL DECISION NUMBER

To be determined

To be determined

Article 11.8: Lobbying Restrictions

This article flows down to all Subawardees.

The Awardee agrees that none of the funds obligated for this Agreement shall be expended, directly or indirectly, to influence in any manner a Member of Congress, a jurisdiction, or an official of any government on action on any legislation, law, ratification, or appropriation matters pursuant to 18 USC § 1913. This restriction is in addition to those prescribed elsewhere in statute or regulation.

Article 11.9: Environmental Requirements

A. Endangered Species

DOE must comply with Section 7 of the Endangered Species Act (“ESA”), 16 U.S.C. § 1536, prior to authorizing the use of federal funds. Awardee is required to cooperate with DOE and the U.S. Fish and Wildlife Service in its compliance with the requirements of Section 7 of the ESA. Per 50 C.F.R. § 402.09, DOE and Awardee shall not make any irreversible or irretrievable commitment of funding which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives. Awardee is prohibited from spending federal funds prior to DOE’s notification of Awardee that DOE has completed its Section 7 obligation, unless Awardee receives prior written approval from the AO to proceed with specific activities or funding that do not have any proximate impacts on threatened and endangered species. Should Awardee elect to undertake activities prior to required authorization from the AO, Awardee does so at risk of not receiving federal funding for those activities and such costs may not be recognized as allowable cost share.

In DOE’s sole discretion, DOE may terminate this agreement based on the results of DOE’s compliance with Section 7 of the ESA.

B. National Historic Preservation Act

DOE must comply with the requirements of Section 106 of the NHPA prior to deciding whether to authorize the subject coal-fired generation assets. Section 106 requires DOE to identify and consider adverse effects to historic properties that are listed in or eligible for listing in the National Register of Historic Places. DOE will require the Awardee to assist in this review and consider impacts to historic properties.

C. Permits

Awardee will obtain and maintain required federal/state/local permits (e.g., building, utilities, stormwater).

Article 11.10: Nondisclosure and Confidentiality Agreements Assurances

This article flows down to all Subawardees.

By entering into this Agreement, the Awardee attests that it does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

The Awardee further attests that it does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

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 the 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.

Article 11.11: Corporate Felony Conviction and Federal Tax Liability Assurances

This article flows down to all Subawardees.

By entering into this Agreement, the undersigned attests that the Awardee 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 the Awardee 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.

Article 11.12: Inspection Requirements

The Awardee is responsible for performing any required inspections, tests, commissioning, start-up, and other related activities under this Award.

The Awardee must maintain inspection system(s) acceptable to DOE that covers the activities under this Award. DOE may perform technical inspections and specialized inspections as DOE deems necessary. DOE will make reasonable efforts to ensure these inspections do not interfere with or unduly delay project work. The Awardee is required to maintain complete records, including inspections, tests, commissioning, start-up, and operations and provide those records when requested by DOE. DOE may use these inspections to validate successful Technical Objective completion.

Article 11.13: Independent Engineering Reviews and Assessments

DOE may, with prior notification, conduct on-site, independent validation and verification assessments of the Award. DOE may use federal and/or contractor personnel to conduct these assessments. The Awardee shall cooperate with the performance of these assessments by providing DOE, and its federal and contractor personnel, access to all facilities, and delivery of all data and information that are required to successfully complete these assessments. DOE shall ensure that all contractor personnel are subject to confidentiality requirements prior to receiving Awardee data and information. The Awardee is responsible for providing all federal and contractor personnel with required training for site and/or system access. DOE, and its federal and contractor personnel, shall be responsible for completing all required training. All site visits and evaluations will be performed in a manner that does not unduly interfere with or delay the work.

Article 11.14: Closeout

Upon Agreement completion, the AO must close out the Agreement in accordance with standard DOE procedures, including ensuring all Technical Objectives have been completed and accepted, audits completed, final payment made, and excess funds be de-obligated. The Awardee agrees to provide DOE all relevant documents requested to closeout this Agreement.

Article 11.15: Property, Equipment and Closeout

Pursuant to the FY23 Consolidated Appropriations Act (Pub. L. No. 117-328), Division D, Title III, Section 309 (“Section 309 authority”), the Secretary of Energy, or the Secretary’s designee may, at their discretion:

DOE expects to vest unconditional title to the award property Awardee with the Awardee, regardless of the fair market value of the property, at the conclusion of the award period when certain criteria, as outlined in the Technical Objective Table, are met.

Prior to the end of the project period, the non-Federal entity must comply with the following conditions:

The Awardee may continue to use real property and equipment for authorized purposes beyond the award period without prior approval of the Agreements Officer. Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the original authorized purpose as long as needed for that purpose.

Certify that it will not sell or transfer the equipment or real property to a Foreign Country of Risk or State Sponsor of Terrorism, or to an entity owned, controlled by, incorporated in, or located in those countries, after the conclusion of the award period.

Certify that it will not sell or transfer the equipment or real property to any third-party entity for the purposes of profit.

If, during the period of performance, the property or equipment reaches the end of its useful life and after notification and approval to the AO, the Awardee may dispose of the equipment in a reasonable and safe manner in accordance with standard industry standards.

Article 11.16: Agreement Technical Representative (ATR) Authority

The DOE ATR assigned to this Agreement is not authorized to issue, and the Awardee is not required to follow, any technical advice that constitutes work which:

1. is not within the agreed work scope approved by the Agreement;
2. in any manner causes an increase or decrease in the total estimated Project cost or in the time required for performance of the Project;
3. has the effect of changing any of the terms or conditions of the Agreement;

4. unduly interferes with Awardee's contractual negotiations or obligations with third-parties;
5. unduly interferes with Awardee's health, safety, security, and environmental obligations whether provided by statute, ordinance or regulation ("law"), or Awardee corporate policy that is consistent with law; or
6. interferes with Awardee's right to perform the project in accordance with the terms and conditions of the Agreement.

Article 11.17: Resolution of Conflicting Conditions

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Agreement must be referred to the AO for guidance.

Article 11.18: Coordinated Communications and Communications Plan

The Parties will use best efforts to coordinate any public-facing communications regarding this Agreement. Neither party will disseminate any press release or other public-facing written communication without first conferring with the other party about the contents of that communication and considering the other party's comments in good faith.

Public communications regarding work subject to this Agreement must be coordinated with the ATR. The ATR serves as a liaison to ensure the appropriate entities approve of communications that involve work subject to this Agreement. These communications can come in the following forms, but are not limited to:

- a. Press releases
- b. Pictures or videos of proposed deployment sites or partner sites
- c. Publications
- d. Multi-media content
- e. Promotional materials
- f. Public statements and interviews
- g. Social media content/posts

All external communications pertaining to this Agreement are subject to specific approvals by DOE prior to being released. The ATR will serve as the primary liaison to Awardee on all communications requests. Awardee should provide the ATR with a 30-day advanced notice to process photo and video requests. A 15-day notice to process all other communication requests, understanding that some requests may take additional time to process. Any communications about Awardees commercial offerings not pertaining to this Agreement are not subject to DOE review.

Article 11.19: Prohibition on Certain Telecommunications and Video Surveillance

Equipment or Services

This article flows down to all Subawardees.

Awardees are prohibited from expending agreement funds to:

1. Procure or obtain covered telecommunications equipment or services;
2. Extend or review a contract to procure or obtain covered telecommunications equipment or services; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

“Covered telecommunications equipment or services” means any of the following:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
2. 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);
3. 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.

For the purposes of this article, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

DOE must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

Acceptance of this agreement certifies compliance with the prohibition on covered telecommunications equipment and services in this article. The awardee is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the agreement and those provided upon submitting payment requests and financial reports.

Article 11.20: Conference Spending

The Awardee must not expend any funds on a conference that is not directly and programmatically related to the purpose for which the agreement was awarded that would defray the cost to the United States Government or 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 of 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.

APPENDIX I: Reporting and Deliverables

Reporting Requirements

The Awardee shall report project progress to the DOE in the following manner:

1. Kickoff and Closeout Meetings

The Awardee shall host (in-person or virtually) a project kickoff meeting and project closeout meeting with the Awardee's team, the AO, the ATR, and any other DOE personnel or contractors deemed necessary.

At a minimum, the kickoff meeting shall cover: the project team and their responsibilities; motivation for the project; project Technical Objectives; project risks and associated risk mitigation strategies; expected public benefits; expected project outcomes; and key performance metrics to measure project success.

At a minimum, the closeout meeting shall cover: updated project team and responsibilities; updated project Technical Objectives and associated payments; discussion of realized and/or mitigated project risks; key lessons learned; realized public benefits; and realized project successes.

2. Monthly Project Status Meetings

On or before thirty (30) calendar days after the effective date of the Agreement and monthly thereafter throughout the term of the Agreement, the Awardee shall provide a monthly status presentation (meeting) to the ATR and any other DOE personnel or contractors deemed necessary.

At a minimum, the monthly presentation shall cover: a summary of major activities completed in the last month; a summary of major activities planned for the next month; a one-slide public summary of the project status; updates to the Business Case Analysis, as appropriate; the status of all project Technical Objectives, to include percent completion, updated completion date(s), and updated Technical Objectives costs (Awardee and DOE share); updated project risks and mitigation strategies; updated integrated project schedule showing project baseline, current status, schedule performance index, and critical path; a spend curve showing cumulative actual costs (Awardee and DOE Share), planned value, earned value, and cost performance index; actions that require DOE input/review/approval; and any other significant items.

3. Annual Project Status Meetings

The Awardee shall provide the DOE and relevant stakeholders, at an agreed upon location or via virtual means, an annual project status presentation (meeting). The presentation should be tailored towards a more general, public audience, but should be detailed enough for all parties to understand project progress, lessons learned, public benefits, and grid impacts.

4. Deliverables

The Awardee shall submit Deliverables to the DOE at regular intervals (Quarterly Reports), at Technical Objective-specific intervals (Technical Objective-specific Deliverables), and after any special event (Special Status Reports). All Deliverables shall be submitted electronically to DE-FOA-0003605.Reporting@netl.doe.gov with the subject line “[Insert Award No.] Insert Deliverable Name – Insert Delivery Date” and a courtesy copy to the ATR and AS. Files should be named according to the following convention: Insert Award No.-Insert Deliverable Name-Insert Delivery Date.extension.

a. Quarterly Reports

On or before one (1) month after the conclusion of each Government fiscal quarter, the Awardee shall submit both a Narrative and Quantitative Quarterly Report using DOE-prescribed templates. Taken together, the Quarterly Reports should contain the same subject matter prescribed for the Monthly Project Status Meetings with additional detail and explanation.

b. Technical Objectives-specific Deliverables

The Awardee shall submit Technical Objectives-specific Deliverables at intervals necessary to allow sufficient DOE review prior to expected Technical Objective payment. The Technical Objectives-specific Deliverables should contain sufficient information for the DOE and/or appropriate contractors to unambiguously verify Technical Objective completion. Technical Objectives-specific Deliverables should follow DOE guidelines and/or templates, when available.

c. Special Status Reports

The Awardee shall submit Special Status Reports to the DOE within seven (7) calendar days of notable problems, delays, or adverse conditions which materially impair the Awardee’s ability to meet the objectives of the award, or which may require the DOE to respond to questions relating to such events from the public. For example, the Awardee must report any of the following incidents, if they impact the project, and include the anticipated impact and remedial action to be taken to correct the problem/condition: any single fatality or injuries requiring hospitalization of five or more individuals; any significant environmental permit violation; any written Notice of Violation of any Environmental, Safety, and Health statutes or regulations; any incident which causes a significant process or hazard control system failure; any event which is anticipated to cause a significant schedule slippage or cost increase; any damage to DOE-owned equipment in excess of \$50,000; and any other incident that has the potential for high visibility in the media.

d. Final Technical Report(s)

Upon completion of the project, the Awardee shall prepare and submit one or more Final Technical Report(s) that provide a comprehensive, cumulative summary of all project activities and results. The report(s) shall detail the project's motivation, objectives, describe the approaches used, and present the facts, figures, analyses, and conclusions derived from the work performed in a manner that conveys the information created. Generally, Technical Objectives-specific Deliverables should be included as attachments so long as the Deliverable data restriction(s) match the report(s)' data restriction(s). The Final Technical Report(s) shall be submitted in the following versions, as applicable:

i. Unlimited

An unlimited, publicly releasable version of the Final Technical Report must be submitted using the same procedure outlined above for other Deliverables. This version shall be free of any Protected Data, Limited Rights Data, or Protected Personally Identifiable Information (PII).

Following Government review and acceptance by the ATR, the final version shall be submitted by the Awardee to the DOE Office of Scientific and Technical Information (OSTI) via the E-Link system (<https://www.osti.gov/mlink/2413-submission.jsp>). The final submission must be accompanied by a completed DOE Form AN 241.3, on which the Awardee must select "unlimited" for the Intellectual Property/Distribution Limitation.

ii. Protected

If the Awardee elects to protect data produced under this award, as authorized by the articles of this Agreement, the Awardee shall submit a protected version of the Final Technical Report using the same procedure outlined above for other Deliverables. This version must cover the entire period of performance and include the proper data protection markings (e.g., the "Protected Rights Notice") on the cover page and within the document. It must not contain any Limited Rights Data.

Following Government review and acceptance, the final version shall be submitted by the Awardee to OSTI via the E-Link system. This submission must be accompanied by a completed DOE Form AN 241.3, selecting "Protected Data" in the Intellectual Property/Distribution Limitation section and providing a future public release date consistent with the data protection period authorized by the Agreement.

iii. Limited

If the Final Technical Report contains Limited Rights Data as defined in this Agreement, the Awardee shall provide a version containing such data for internal Government use only. In accordance with DOE guidance, reports containing Limited Rights Data are not to be submitted to OSTI via the E-Link system. All versions of this Final Technical

Report, including the final version, shall be submitted using the same procedure outlined above for other Deliverables.

Acceptance

The ATR shall indicate in writing acceptance of all Deliverables submitted under this Agreement. Only the AO can accept non-conforming work.

Data Markings

The Awardee may mark data in applicable portions of the Deliverables, reports, and other documents delivered to the DOE with the Limited Rights, Restricted Computer Software, or Protected Data legends. The DOE will treat such properly marked data and information consistent with this Agreement.

APPENDIX II: Technical Objectives

See Appendix II (separate attachment).

APPENDIX III: Title to Inventions

DOE Modified Patent Rights Clause*

**the standard patent rights clause at 37 CFR 401.14 has been modified to (1) reflect DOE required subcontracting instructions pursuant to 37 CFR 401.5(a) as well as the deletion of the definition of contractor that does not apply based on the subcontracting instructions; (2) change acquisition terms of contractor, contract and subcontract to other transaction terms of awardee, award, subaward or agreement pursuant to 37 CFR 401.5(c); and (3) include paragraphs (n) and (o) regarding U.S. competitiveness provision.*

(a) Definitions

- (1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
- (2) Subject invention means any invention of the Awardee conceived or first actually reduced to practice in the performance of work under this Agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Agreement performance.
- (3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- (6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- (7) Statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

(b) Allocation of Principal Rights

The Awardee may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Awardee retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Awardee

- (1) The Awardee will disclose each subject invention to the Federal agency within two months after the inventor discloses it in writing to Awardee personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Awardee will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Awardee. If required by the Federal agency, the Awardee will provide periodic (but no more frequently than annual)-reports of all subject inventions which were disclosed to the agency during the period covered by the report, and will provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.
- (2) The Awardee will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
- (3) (i) The Awardee will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use.

(ii) If the Awardee files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Awardee will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited

by a Secrecy Order.

(iii) If required by the Federal agency, the Awardee will provide the filing date, patent application number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the Awardee has applied for a patent.

(4) For any subject invention with Federal agency and Awardee co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S. C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the Awardee, may file such application at its own expense, provided that the Awardee retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When an Awardee has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the Awardee within 60 days of receiving the request.

(6) In the event a subject invention is made under agreements of more than one agency, at the request of the Awardee or on their own initiative the agencies shall designate one agency as responsible for administration of the rights of the government in the invention.

(d) Conditions When the Government May Obtain Title

(1) A Federal agency may require the Awardee to convey title to the Federal agency, of any subject invention -

(i) If the Awardee fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(ii) In those countries in which the Awardee fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Awardee has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Awardee shall continue to retain title in that country.

(iii) In any country in which the Awardee decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(iv) Upon breach of paragraph (n) U.S. Competitiveness of this Patent Rights clause.

- (2) A Federal agency at its discretion may waive the requirement for the Awardee to convey title to any subject invention.

(e) Minimum Rights to Awardee and Protection of the Awardee Right to File

- (1) The Awardee will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Awardee fails to disclose the invention within the times specified in (c), above. The Awardee's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Awardee is a party and includes the right to grant sublicenses of the same scope to the extent the Awardee was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the Awardee's business to which the invention pertains.
- (2) The Awardee's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Awardee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Awardee, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license, the funding Federal agency will furnish the Awardee a written notice of its intention to revoke or modify the license, and the Awardee will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Awardee) after the notice to show cause why the license should not be revoked or modified. The Awardee has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Awardee Action to Protect the Government's Interest

- (1) The Awardee agrees to execute or to have executed and promptly delivered to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Awardee elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.
- (2) The Awardee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as

responsible for the administration of patent matters and in a format suggested by the Awardee each subject invention made under agreement in order that the Awardee can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the Awardee the entire right, title and interest in and to each subject invention made under agreement, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Awardee shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

- (3) For each subject invention, the Awardee will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.
- (4) The Awardee agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the agreement) awarded by U.S. Department of Energy. The government has certain rights in the invention."

(g) Subaward/Contract

- (1) The Awardee will include this clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental, or research work to be performed by a domestic small business firm or nonprofit organization. The subawardee will retain all rights provided for the Awardee in this clause, and the Awardee will not, as part of the consideration for awarding the subaward/ contract, obtain rights in the subawardee's subject inventions.
- (2) The above requirement in (g)(1) does not apply for any agreement with a DOE laboratory. The Awardee and the DOE laboratory shall use a technology transfer agreement (e.g., Strategic Partnership Project (SPP), Cooperative Research and Development Agreement (CRADA)) that is executed by the Awardee and the DOE laboratory and approved by DOE. The technology transfer agreement will provide the applicable patent rights clause for the work to be performed by the DOE laboratory.
- (3) The Awardee will include in all other subawards/contracts, regardless of

tier, for experimental, developmental, or research work the patent rights clause directed by the Agreements Officer.

(h) Reporting on Utilization of Subject Inventions

The Awardee agrees to submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Awardee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Awardee, and such other data and information as the agency may reasonably specify. The Awardee also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the Awardee.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the Awardee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Awardee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The Awardee agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Awardee, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Awardee, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

- (1) Such action is necessary because the Awardee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Awardee, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Awardee, assignee or licensees; or

- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Special Provisions for Agreements with Nonprofit Organizations If the Awardee is a nonprofit organization, it agrees that:
- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Awardee;
 - (2) The Awardee will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
 - (3) The balance of any royalties or income earned by the Awardee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education;
 - (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that, when appropriate, it will give a preference to a small business firm when licensing a subject invention;
 - (5) The Federal agency may review the Awardee's licensing program and decisions regarding small business applicants, and the Awardee will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the Awardee could take reasonable steps to more effectively implement the requirements of paragraph (k)(4) of this clause; and
 - (6) The Federal agency may take into consideration concerns presented by small businesses in making such determinations in paragraph (k)(5) of this clause.

(l) Communication

Unless otherwise directed by DOE Patent Counsel, all reports and notifications required by this clause shall be submitted in accordance with the instructions provided by the AO.

(m) Electronic Filing.

- (1) Unless otherwise requested or directed by the Federal agency --
 - (i) The written disclosure required in (c)(1) of this clause shall be electronically filed;
 - (ii) The written election required in (c)(2) of this clause shall be electronically filed; and

(iii) If required by the agency to be submitted, the close-out report in paragraph (c)(1) of this clause and the patent information and periodic reporting identified in paragraph (c)(3) of this clause shall be electronically filed.

(2) Other written notices required in this clause may be electronically delivered to the agency or the Awardee through an electronic database used for reporting subject inventions, patents, and utilization reports to the funding agency.

(n) U.S. Competitiveness

The Awardee agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Awardee can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Awardee agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. In the event that the Awardee or other such entity receiving rights in the Subject Invention undergoes a change in ownership amounting to a controlling interest, the Awardee or other such entity receiving rights shall ensure continual compliance with the requirements of this paragraph (n) and shall inform DOE, in writing, of the change in ownership within six months of the change. The Awardee and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph (n). The Awardee will include this paragraph (n) in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(o) The requirements, rights and administration of paragraph (n) are further clarified as follows:

1. **Waivers.** The Awardee (or any entity subject to paragraph (n)) may request a waiver or modification of paragraph (n). Such waivers or modifications may be granted when DOE determines that (1) the Awardee (or any entity subject to paragraph (n)) has demonstrated, with quantifiable data, that manufacturing in the United States is not commercially feasible and (2) a waiver or modification would best serve the interests of the United States and the general public.
2. **Final determination of breach of paragraph (n).** If DOE determines the Awardee is in breach of paragraph (n), the Department may issue a final written determination of such breach. If such determination includes a demand for title to the subject inventions under the award, the demand for title will cause an immediate conveyance and assignment of all rights to all subject inventions under the award to the United States Government, including all pending U.S. and foreign patent applications and all U.S. and foreign patents that cover any subject invention, without compensation. Any such final determination shall be signed by the Agreements Officer with the concurrence of the Assistant General Counsel for Technology Transfer & Intellectual Property. Advanced notice will be provided for comment to the Awardee before any final written

determination by DOE is issued.

3. Pursuant to Awardee's agreement in paragraph (n) to not license, assign or otherwise transfer rights to subject inventions at any tier unless the entity agrees to paragraph (n): any such license, assignment, or other transfer of right to any subject invention developed under the award shall contain paragraph (n) suitably modified to properly identify the parties. If a licensee, assignee, or other transferee of rights to any subject invention is finally determined by DOE in writing to be in breach of paragraph (n), the applicable license, assignment or other transfer shall be deemed null and void. Advanced notice will be provided for comment to the non-complying party before any final written determination by DOE is made.
4. For clarity, if the forfeiture of title to any subject invention is due to a breach of paragraph (n), the Awardee shall not be entitled to any compensation, or to a license to the subject invention including the reserved license in section (e)(1), unless DOE grants a license through a separately agreed upon licensing agreement.
5. Authority. The requirements and administration of paragraph (n) is in accordance with the Determination of Exceptional Circumstances (DEC) under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021. A copy of the DEC is available at <https://www.energy.gov/gc/determination-exceptional-circumstances-decs>. By accepting or acknowledging the award, the Awardee is also acknowledging that it has received a copy of the DEC through the foregoing link. As set forth in 37 CFR 401.4, any nonprofit organization or small business firm as defined by 35 U.S.C. 201 affected by any DEC has the right to appeal the imposition of the DEC within thirty (30) working days from the Awardee's acceptance or acknowledgment of this award.

APPENDIX IV: Data Rights

Rights in Data

(a) Definitions

Computer Databases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include Computer Software.

Computer Software, as used in this clause, means

- (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which it is recorded, that allow or cause a computer to perform a specific operation or series of operations and
- (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include Computer Databases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes Technical Data and Computer Software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for Computer Software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited Rights Data, as used in this clause, means data (other than Computer Software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted Computer Software, as used in this clause, means Computer Software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted Computer Software; including modifications of such Computer Software.

Protected Data, as used in this clause, means Technical Data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5

U.S.C. 552(b)(4) and which data is marked as being Protected Data by a Party to the Agreement.

Protected Data Rights, as used in this clause, mean the rights in Protected Data set forth in the Protected Data Rights Notice of paragraph (g) of this clause.

Technical Data, as used in this clause, means data which are of a scientific or technical nature. Technical Data does not include Computer Software, but does include manuals and instructional materials and Technical Data formatted as a computer database.

Unlimited Rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have Unlimited Rights in --
 - (i) Data specifically identified in this Agreement as data to be delivered without restriction;
 - (ii) Form, fit, and function data delivered under this Agreement;
 - (iii) Data delivered under this Agreement (except for Restricted Computer Software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Agreement; and
 - (iv) All other data delivered under this Agreement unless provided otherwise for Protected Data in accordance with paragraph (g) of this clause or for Limited Rights Data or Restricted Computer Software in accordance with paragraph (h) of this clause.
- (2) The Awardee shall have the right to --
 - (i) Protect Data Rights in Protected Data delivered under this Agreement in the manner and to the extent provided in paragraph (g) of this clause;
 - (ii) Withhold from delivery those data which are Limited Rights Data or Restricted Computer Software to the extent provided in paragraph (h) of this clause;
 - (iii) Substantiate use of, add, or correct Protected Data Rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and
 - (iv) Establish claim to copyright subsisting in data first produced in the performance of this Agreement to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright

- (1) Data first produced in the performance of this Agreement. Except as otherwise specifically provided in this Agreement, the Awardee may establish, without the prior approval of the Agreements Officer, claim to copyright subsisting in any data first produced in the performance of this Agreement. If claim to copyright is made, the Awardee shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including Agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including Computer Software, the Awardee hereby grants and agrees to grant to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.
- (2) Data not first produced in the performance of this Agreement. The Awardee shall not,

without prior written permission of the Agreements Officer, incorporate in data delivered under this Agreement any data that are not first produced in the performance of this Agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Awardee identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data are Computer Software, the Government shall acquire a copyright license as otherwise may be provided in a collateral agreement incorporated or made a part of this Agreement.

- (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

- (1) The Awardee shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Awardee in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this Agreement.
- (2) The Awardee agrees that to the extent it receives or is given access to data necessary for the performance of this Agreement which contains restrictive markings, the Awardee shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Agreements Officer.

(e) Unauthorized Marking of Data

- (1) Notwithstanding any other provisions of this Agreement concerning inspection or acceptance, if any data delivered under this Agreement are marked with notices or any other restrictive or limiting markings not authorized by this Agreement, the Agreements Officer may at any time either return the data to the Awardee or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.
 - (i) The Agreements Officer shall make written inquiry to the Awardee affording the Awardee thirty days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Awardee fails to respond or fails to provide written justification to substantiate the propriety of the markings within the thirty day period (or a longer time not exceeding ninety days approved in writing by the Agreements Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (iii) If the Awardee provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Agreements Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Agreements Officer determines that the markings are authorized, the Awardee shall be so notified in writing. If the Agreements Officer determines, with concurrence of the head of the

contracting activity, that the markings are not authorized, the Agreements Officer shall furnish the Awardee a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Awardee files suit in a court of competent jurisdiction within ninety days of receipt of the Agreements Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Agreements Officer's determination become final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

- (2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

- (1) Data delivered to the Government without either a notice authorized by paragraphs (g) or (h) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with Unlimited Rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Awardee may request, within six months (or a longer time approved by the Agreements Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Awardee's expense, and the Agreements Officer may agree to do so if the Awardee --
 - (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (2) The Agreements Officer may also:
 - (i) Permit correction at the Awardee's expense of incorrect notices if the Awardee identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
 - (ii) Correct any incorrect notices.

(g) Rights to Protected Data

- (1) The Awardee may, with the concurrence of DOE, claim and mark as Protected Data, any data first produced in the performance of this award that would have been treated as a trade secret if developed at private expense. Any such claimed "Protected Data" will be clearly marked with the following Protected Data Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of this clause.

Protected Data Rights Notice

These Protected Data were produced under Agreement No. _____ with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until five years after the date the data were first produced, unless express written authorization is obtained from the Awardee. Upon expiration of the period of protection set forth in this Notice, the Government shall have Unlimited Rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

- (2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:
 - (a) For evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or
 - (b) To subawardees or other team members performing work under the Government's Hydrocarbons and Geothermal Energy Office (or under its former Fossil Energy and Carbon Management Office) programs of which this Agreement is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.
- (3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data:
 - (a) At the end of the protected period;
 - (b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;
 - (c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or
 - (d) If the Awardee disseminates or authorizes another to disseminate such data without obligations of confidentiality.
- (4) However, the Awardee agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this Agreement without any claim that the data are Protected Data. The Parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this Agreement, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that Technical Data not on the list is Protected Data.
 - (a) General test or performance results demonstrating technical breakthroughs, Technical Objectives or achievements;
 - (b) General data demonstrating progress toward meeting DOE's technical targets; and
 - (c) Any research data contained in publications resulting from the work under the Agreement.
- (5) The Government's sole obligation with respect to any Protected Data shall be as set forth in this paragraph (g).
- (6) The Government shall have the right to publish aggregated and anonymized data derived from Protected Data delivered under this Agreement, but only if the

Government maintains its obligations of confidentiality to the underlying raw Protected Data as set forth in this Appendix. This provision shall be included in all subagreements under this Agreement unless otherwise approved by the AO in coordination with DOE Patent Counsel.

(h) Protection of Limited Rights Data

(1) When data other than that listed in paragraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this Agreement and such data qualify as either Limited Rights Data or Restricted Computer Software, the Awardee, if the Awardee desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this Agreement. As a condition to this withholding the Awardee shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(2) Notwithstanding paragraph (h)(1) of this clause, the Agreement may identify and specify the delivery of Limited Rights Data, or the Agreements Officer may require by written request the delivery of Limited Rights Data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Awardee may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

Limited Rights Notice

(a) These data are submitted with Limited Rights under Government Agreement No. _____ (and subaward/ contract no. ____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Awardee, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to the restriction that the Limited Rights Data be retained in confidence and not be further disclosed:

- (1) Use (except for manufacture) by Federal support services contractors and subcontractors within the scope of their contracts;
- (2) This Limited Rights Data may be disclosed for evaluation purposes;
- (3) This Limited Rights Data may be disclosed to other awardees/contractors participating in the Government's program of which this Awardee is a part for information or use (except for manufacture) in connection with the work performed under their awards, contracts or agreements; and
- (4) Use for independent validation and verification assessments.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.
(End of notice)

(3) Notwithstanding paragraph (h)(1) of this clause, Awardee agrees to deliver upon request from the DOE, including from the AO or the ATR, the following data, including if such data is Limited Rights Data, for the purposes of evaluating, validating and/or verifying Awardee's project:

- Data in technical narrative descriptions of the power plant itself and mode of operation prior to capital improvement projects, specifically nameplate capacity (gross/net) and air quality control configuration.
- Data regarding design basis, specifically, coal property details (Heating Value BTU/LB).

(i) Subaward/Contract

The Awardee has the responsibility to obtain from its subawardees all data and rights therein necessary to fulfill the Awardee's obligations to the Government under this Agreement. If a subawardee refuses to accept terms affording the Government such rights, the Awardee shall promptly bring such refusal to the attention of the Agreements Officer and not proceed with subaward/contract award without further authorization.

(j) Additional Data Requirements

In addition to the data specified elsewhere in this Agreement to be delivered, the Agreements Officer may, at any time during Agreement performance or within a period of 3 years after acceptance of all items to be delivered under this Agreement, order any data first produced or specifically used in the performance of this Agreement.

This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Awardee to deliver any data the withholding of which is authorized by this clause or data which are specifically identified in this Agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Awardee will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(k) Inspection

The Awardee agrees, except as may be otherwise specified in this Agreement for specific data items listed as not subject to this paragraph, that the Agreements Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Awardee's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Awardee's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Awardee whose data are to be inspected demonstrates to the Agreements Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Agreements Officer shall designate an alternate inspector.

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
1 (Q3 2026)	1.1	Technical Objective Description	Initial Business Case Analysis (BCA) and Initial Other Project Reporting. Initial Reporting Technical Objective signifies completion and submission of the initial project reporting package, including BCA, required to support DOE award execution and project initiation. This reporting establishes the technical, financial, and regulatory foundation for the project and documents baseline assumptions used for performance tracking and future reporting. BCA to include economic evaluation of proposed Mitchell projects within this award that includes listing all assumptions and, at a minimum, addressing the following points as listed by DOE: coal properties; actual gross and net (summer and winter) capacity; air quality control configuration; boiler description (main steam/heat steam temp, vintage, manufacturer, etc.); turbine configuration (how many, vintage, manufacturer, etc.); cost of upgrade (\$), separated by equipment and installation labor costs; impact on heat rate (Btu/kWh); impact on criteria pollutant emissions (tons/year or lb/MWh); impact on operating cost (\$/year or \$/MWh) and/or maintenance costs; impact to other plant systems (water, solid waste, plant cooling duty, auxiliary load, etc.); impact on gross and net (summer and winter) capacity; impact on plant life; impact on reliability/availability; economic evaluation; cost-benefit analysis; payback period; return on investment; net present value; and impact on levelized cost of electricity.	\$3,028,184	\$954,894	\$2,073,289
		Success Criteria	Business Case Analysis (BCA) is completed and submitted, documenting project scope, technical assumptions, cost basis, and expected benefits Submitted materials must be internally reviewed, complete, and suitable for DOE evaluation.			
		Technical Objective Deliverable(s)	Initial Business Case Analysis prepared in accordance with BCA guidance from DOE.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Method of Verification	DOE review and acceptance of the submitted initial reporting materials, including the Business Case Analysis.			
		Planned Completion Date	Q3 2026			
	1.2	Technical Objective Description	Major Equipment and Electrical Systems Purchase Order Awards: This Technical Objective represents completion of procurement activities for the project's major long-lead equipment and electrical infrastructure packages, including the Cooling Tower OEM package, Power Distribution Center (PDC) package (including station transformers, motor control centers (MCCs), and associated electrical equipment), Medium Voltage Switchgear, and Distributed Control System (DCS). The Technical Objective includes completion of technical and commercial evaluations, bidder clarifications, contract negotiations, vendor selection, and execution of purchase orders authorizing suppliers to proceed with detailed engineering, manufacturing, factory testing, and delivery activities. Completion of this Technical Objective establishes the foundation for the project's critical equipment supply chain and supports achievement of overall project schedule objectives.			
		Success Criteria	Purchase orders have been issued and executed for the Cooling Tower OEM, PDC package (including station transformers and MCCs), Medium Voltage Switchgear, and DCS packages. Scope, pricing, delivery schedules, commercial terms, testing requirements, and performance guarantees have been finalized, and suppliers have been authorized to proceed with detailed design, manufacturing, testing, and delivery activities.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Technical Objective Deliverable(s)	Executed purchase orders for the Cooling Tower OEM, PDC package, Medium Voltage Switchgear, and DCS packages; technical bid evaluations; commercial evaluations; vendor schedules; preliminary equipment submittals; and procurement status reports documenting vendor selection, contract execution, and equipment delivery schedules.			
		Method of Verification	DOE review and acceptance of executed purchase orders, procurement evaluation documentation, vendor schedules, and supporting procurement records demonstrating authorization for suppliers to proceed with detailed engineering, manufacturing, testing, and delivery of major project equipment and electrical systems.			
		Planned Completion Date	Q3 2026			
2 (Q4 2026)	2.1	Technical Objective Description	IFC Package Release – Piling, Foundations & Underground Utilities: This Technical Objective represents completion and issuance of the Issue for Construction (IFC) engineering package required to support early site construction activities. The package includes all engineering deliverables necessary for piling installation, foundations, underground piping systems, embedded components, drainage systems, and related civil works. Deliverables include civil grading plans, geotechnical design criteria, pile layouts, foundation drawings, excavation plans, underground utility routing, piping plans and profiles, construction specifications, material quantities, and supporting calculations. Issuance of this package enables commencement of site preparation, piling, excavation, and foundation construction activities.	\$5,705,522	\$1,799,154	\$3,906,368

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Success Criteria	All civil, structural, and underground utility engineering deliverables required to support site construction have been completed, reviewed, approved, and issued for construction. Design interfaces have been resolved, permitting assumptions incorporated, and no outstanding engineering issues remain that would impact piling, excavation, foundation installation, or underground utility construction activities.			
		Technical Objective Deliverable(s)	Approved IFC drawings and specifications for piling, foundations, underground piping, drainage, excavation, grading, embedded items, and associated civil and structural calculations. Engineering status reports documenting completion and issuance of the package.			
		Method of Verification	DOE review and acceptance of the IFC package and supporting engineering documentation demonstrating readiness to initiate piling, foundation, and underground utility construction activities.			
		Planned Completion Date	Q4 2026			
	2.2	Technical Objective Description	Circulating Water Pumps Purchase Order Award: This Technical Objective represents completion of procurement activities for the circulating water pump package. The Technical Objective includes completion of technical and commercial evaluations, equipment selection, final negotiations, and execution of the purchase order for the circulating water pumps and associated accessories.			
		Success Criteria	A purchase order has been issued and executed with the selected pump supplier. Equipment performance requirements, delivery schedule, commercial terms, and testing requirements have been finalized, authorizing manufacturing and delivery activities.			
		Technical Objective Deliverable(s)	Executed purchase order, technical bid evaluation, pump performance data, vendor schedule, commercial evaluation, and procurement status report.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Method of Verification	DOE review and acceptance of the executed purchase order and procurement documentation confirming authorization to manufacture and deliver the circulating water pumps.			
		Planned Completion Date	Q4 2026			
3 (Q1 2027)	3.1	Technical Objective Description	Air Permit Approval and Floodplain Compliance Approval: This Technical Objective represents completion of the environmental review and regulatory approval activities required to support project construction and future operation. The Technical Objective includes preparation and submittal of the air permit application, emissions evaluations, regulatory coordination, floodplain assessments, hydraulic and hydrologic evaluations, and receipt of all necessary agency approvals or determinations. Completion of this Technical Objective demonstrates that the project has satisfied applicable air quality and floodplain regulatory requirements and may proceed with construction activities in accordance with approved permit conditions and environmental commitments.	\$6,236,182	\$1,966,491	\$4,269,692
		Success Criteria	The air permit has been approved by the applicable regulatory agency, and all required floodplain permits, approvals, or determinations have been obtained. Permit conditions and floodplain compliance requirements have been incorporated into the project design and construction planning. No outstanding regulatory issues remain that would impact project execution or construction authorization.			
		Technical Objective Deliverable(s)	Approved air permit, emissions calculations, permit application package, floodplain assessment reports, hydraulic and hydrologic studies, floodplain permit documentation or determination letters, agency correspondence, and an environmental compliance matrix documenting regulatory requirements and commitments.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Method of Verification	DOE review and acceptance of approved air permitting and floodplain compliance documentation, including regulatory approvals, permit conditions, agency correspondence, and supporting studies demonstrating environmental compliance and readiness to proceed with construction activities.			
		Planned Completion Date	Q1 2027			
	3.2	Technical Objective Description	Piling, Foundations, and Underground Utilities Contractor Mobilization: This Technical Objective represents the contractor's readiness to commence site construction activities associated with piling, foundations, excavation, grading, underground piping, drainage systems, and associated civil infrastructure. The Technical Objective includes mobilization of construction personnel, field supervision, major construction equipment, temporary facilities, survey controls, site utilities, and implementation of approved environmental compliance requirements.			
		Success Criteria	Construction crews and equipment have been mobilized to the project site, temporary facilities are operational, environmental and safety requirements are implemented, and all prerequisites have been completed to initiate piling, excavation, foundation, and underground utility installation activities.			
		Technical Objective Deliverable(s)	Mobilization report, site logistics plan, safety plan, environmental compliance documentation, equipment mobilization records, construction schedule, and staffing plan.			
		Method of Verification	DOE review and acceptance of mobilization documentation demonstrating readiness to commence piling, foundation, and underground utility construction activities.			
		Planned Completion Date	Q1 2027			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
4 (Q2 2027)	4.1	Technical Objective Description	IFC Package Release – Structural & Mechanical Systems: This Technical Objective represents completion and issuance of the Issue for Construction (IFC) engineering package for all major structural and mechanical scope associated with the cooling tower facility and supporting systems. The package includes structural steel framing, cooling tower structures, platforms, equipment supports, mechanical equipment layouts, aboveground piping systems, circulating water systems, pumps, valves, and associated mechanical equipment. Issuance of this package confirms completion of detailed design required to support fabrication, equipment installation, steel erection, and major mechanical construction activities.	\$9,501,489	\$2,996,158	\$6,505,331
		Success Criteria	All structural and mechanical engineering deliverables have been completed, coordinated across disciplines, approved, and issued for construction. Vendor information has been incorporated as required, design interfaces have been resolved, and all construction drawings and specifications necessary to support fabrication, erection, and installation activities have been released.			
		Technical Objective Deliverable(s)	Approved IFC drawings and specifications for structural steel, equipment supports, mechanical equipment installations, piping systems, cooling tower structures, general arrangements, equipment layouts, isometrics, material take-offs, and supporting design calculations. Engineering completion and issuance status reports documenting package readiness.			
		Method of Verification	DOE review and acceptance of the IFC package and supporting engineering documentation demonstrating readiness for fabrication, structural erection, mechanical installation, and associated field construction activities.			
		Planned Completion Date	Q2 2027			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
	4.2	Technical Objective Description	SWPPP Approval and NPDES Permit Authorization: This Technical Objective represents completion of the stormwater management and water discharge permitting activities required to support project construction. The Technical Objective includes development and approval of the Stormwater Pollution Prevention Plan (SWPPP), identification of erosion and sediment control measures, implementation of stormwater best management practices (BMPs), preparation and submittal of National Pollutant Discharge Elimination System (NPDES) permitting documentation, and receipt of authorization for regulated stormwater and/or wastewater discharges associated with project construction activities. Completion of this Technical Objective confirms that the project has satisfied applicable stormwater and water discharge regulatory requirements necessary to initiate site disturbance and construction activities.			
		Success Criteria	The SWPPP has been completed and approved, and the NPDES permit application has been submitted and approved or authorization has been received from the applicable regulatory agency. All erosion and sediment control measures, stormwater management requirements, monitoring requirements, and reporting obligations have been incorporated into project planning and construction execution. No outstanding stormwater or water discharge compliance issues remain that would prevent commencement of construction activities.			
		Technical Objective Deliverable(s)	Approved SWPPP, erosion and sediment control plans, BMP implementation plans, NPDES permit application package, approved NPDES permit or authorization documentation, site maps, monitoring and reporting requirements, inspection procedures, and supporting regulatory correspondence.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Method of Verification	DOE review and acceptance of approved SWPPP and NPDES permitting documentation, including agency approvals, permit authorizations, compliance requirements, and supporting documentation demonstrating environmental compliance and readiness to proceed with site disturbance and construction activities.			
		Planned Completion Date	Q2 2027			
	4.3	Technical Objective Description	Large Diameter (120") Circulating Water Pipe Purchase Order Award: This Technical Objective represents completion of procurement activities for the large-diameter circulating water piping system, including pipe sections, fittings, specials, coatings, and associated materials required to support cooling tower and circulating water system construction.			
		Success Criteria	A purchase order has been issued and executed with the selected supplier. Material specifications, fabrication requirements, delivery schedule, commercial terms, and quality requirements have been finalized, authorizing fabrication and material procurement activities.			
		Technical Objective Deliverable(s)	Executed purchase order, material specifications, technical bid evaluation, commercial evaluation, delivery schedule, fabrication plan, and procurement status report.			
		Method of Verification	DOE review and acceptance of the executed purchase order and procurement documentation confirming authorization to proceed with fabrication and delivery of the large-diameter piping system.			
		Planned Completion Date	Q2 2027			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
	4.4	Technical Objective Description	Cooling Tower OEM Mobilization: This Technical Objective represents the readiness of the Cooling Tower OEM to commence on-site construction and erection activities. The Technical Objective includes execution of the construction subcontract, mobilization planning, staffing of key field supervision personnel, establishment of site offices and laydown requirements, submission and approval of safety plans, quality plans, erection procedures, construction schedules, and coordination with project stakeholders for initiation of cooling tower construction activities.			
		Success Criteria	The Cooling Tower OEM has mobilized key personnel to the project site, construction execution plans have been approved, required materials and equipment delivery schedules are established, site logistics have been coordinated, and all prerequisites necessary to begin cooling tower erection activities have been satisfied.			
		Technical Objective Deliverable(s)	Approved construction execution plan, project-specific safety plan, quality control plan, site staffing plan, mobilization report, construction schedule, and notice of mobilization.			
		Method of Verification	DOE review and acceptance of mobilization documentation demonstrating readiness to commence cooling tower erection and construction activities.			
		Planned Completion Date	Q2 2027			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
5 (Q3 2027)	5.1	Technical Objective Description	IFC Package Release – Electrical, Controls & Instrumentation Systems: This Technical Objective represents completion and issuance of the Issue for Construction (IFC) engineering package required to support installation and commissioning of project electrical and control systems. The package includes power distribution systems, the Power Distribution Center (PDC), motor control equipment, grounding systems, lighting systems, cable tray layouts, conduit routing, instrumentation installations, Distributed Control System (DCS) integration, network architecture, control panel designs, loop drawings, and control narratives. Issuance of this package confirms that the electrical and control systems design is complete and ready to support procurement, installation, testing, and commissioning activities.	\$7,788,268	\$2,455,918	\$5,332,350
		Success Criteria	All electrical, instrumentation, and control system engineering deliverables have been completed, reviewed, approved, and issued for construction. Equipment interfaces have been coordinated, vendor information has been incorporated, and all construction documents required to support installation, energization, testing, and commissioning have been released without unresolved design issues.			
		Technical Objective Deliverable(s)	Approved IFC drawings and specifications for power distribution, PDC systems, cable routing, grounding, lighting, instrumentation, control systems, DCS integration, electrical one-line diagrams, wiring diagrams, loop drawings, control narratives, and supporting engineering calculations. Engineering status reports documenting completion and issuance of all electrical and I&C deliverables.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Method of Verification	DOE review and acceptance of the IFC package and supporting engineering documentation demonstrating readiness for electrical installation, instrumentation installation, system integration, energization, testing, and commissioning activities.			
		Planned Completion Date	Q3 2027			
6 (Q4 2027)	6.1	Technical Objective Description	Major Electrical, Controls, and Mechanical Equipment Delivery: This Technical Objective represents completion of manufacturing, factory testing, shipment, and receipt of the project's major long-lead equipment packages, including the Power Distribution Center (PDC) package (including station transformers, motor control centers (MCCs), and associated electrical equipment), Medium Voltage Switchgear, Distributed Control System (DCS), and Circulating Water Pumps. Completion of this Technical Objective confirms that critical equipment required to support installation, system integration, energization, and commissioning activities has been delivered to the project site and is available to support construction execution.	\$13,537,270	\$4,268,784	\$9,268,487
		Success Criteria	All major equipment associated with the PDC package, Medium Voltage Switchgear, DCS, and Circulating Water Pumps has completed factory testing, been delivered to the project site, inspected, and accepted. Equipment inventories have been verified, any transportation-related deficiencies have been resolved, and all equipment is available to support planned installation, integration, testing, and commissioning activities. No outstanding delivery issues remain that would impact the project schedule.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Technical Objective Deliverable(s)	Factory acceptance test reports, shipping documentation, receiving reports, inspection records, equipment inventory verification reports, vendor release documentation, equipment preservation records, and procurement status reports documenting successful delivery of all major equipment packages.			
		Method of Verification	DOE review and acceptance of delivery documentation, inspection records, equipment inventories, and procurement status reports demonstrating that all major electrical, controls, and mechanical equipment has been delivered to the project site and is available to support installation, construction, commissioning, and startup activities.			
		Planned Completion Date	Q4 2027			
	6.2	Technical Objective Description	Mechanical and Structural Contractor Mobilization: This Technical Objective represents the contractor's readiness to commence structural steel erection, mechanical equipment installation, piping installation, and associated construction activities. The Technical Objective includes mobilization of craft labor, field supervision, lifting equipment, welding resources, fabrication support services, temporary facilities, construction management personnel, and implementation of required safety and quality programs.			
		Success Criteria	Key personnel, craft labor, and major construction equipment have been mobilized to the project site. Construction execution plans, lifting plans, welding procedures, quality control requirements, and installation schedules have been approved and all prerequisites have been satisfied to begin structural and mechanical construction activities.			
		Technical Objective Deliverable(s)	Approved construction execution plan, site staffing plan, heavy lift and rigging plans, welding procedures, quality control plan, safety plan, mobilization report, and construction schedule.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Method of Verification	DOE review and acceptance of mobilization documentation demonstrating readiness to commence structural steel erection, mechanical equipment installation, and piping construction activities.			
		Planned Completion Date	Q4 2027			
	6.3	Technical Objective Description	Electrical and Instrumentation & Controls Contractor Mobilization: This Technical Objective represents the contractor's readiness to commence installation of electrical systems, power distribution equipment, cable tray systems, conduit systems, instrumentation, communication systems, and control system infrastructure. The Technical Objective includes mobilization of field supervision, electrical construction personnel, testing resources, temporary facilities, construction equipment, and implementation of safety and quality programs necessary to support field installation activities.			
		Success Criteria	Electrical and I&C construction personnel, supervision, and equipment have been mobilized to the project site. Installation procedures, testing plans, energization strategies, quality requirements, and construction schedules have been approved, and all prerequisites have been satisfied to begin electrical, instrumentation, and controls installation activities.			
		Technical Objective Deliverable(s)	Approved construction execution plan, electrical installation procedures, testing and commissioning plan, site staffing plan, safety plan, quality control plan, mobilization report, and construction schedule.			
		Method of Verification	DOE review and acceptance of mobilization documentation demonstrating readiness to commence electrical, instrumentation, controls, and associated installation activities.			
		Planned Completion Date	Q4 2027			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
7 (Q1 2028)	7.1	Technical Objective Description	Cooling Tower Materials and Equipment Delivery: This Technical Objective represents completion of manufacturing, procurement, shipment, and receipt of all major Cooling Tower OEM-supplied materials, components, and equipment required to support field erection of the cooling tower. Because the cooling tower is a stick-built structure constructed on-site, this Technical Objective includes delivery of structural framing components, fan assemblies, gearboxes, driveshafts, fill media, drift eliminators, louvers, mechanical hardware, distribution system components, connection materials, and associated OEM-supplied construction materials necessary for assembly and installation activities.	\$16,219,019	\$5,114,435	\$11,104,584
		Success Criteria	All major Cooling Tower OEM materials, components, and equipment required to support construction have been manufactured, inspected, shipped, received at the project site, and verified against procurement requirements. Materials are available to support planned field erection activities, and no outstanding delivery issues remain that would impact the cooling tower construction schedule.			
		Technical Objective Deliverable(s)	Shipping documentation, receiving reports, inspection records, inventory verification reports, vendor release documentation, material receiving logs, and procurement status reports confirming delivery completion.			
		Method of Verification	DOE review and acceptance of delivery documentation demonstrating that all major Cooling Tower OEM-supplied materials, components, and equipment have been received at the project site and are available to support cooling tower erection and construction activities.			
		Planned Completion Date	Q1 2028			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
	7.2	Technical Objective Description	Large Diameter Circulating Water Pipe Delivery: This Technical Objective represents completion of fabrication, shipment, and receipt of the 120-inch circulating water piping system and associated fittings required for installation of the cooling tower circulating water system.			
		Success Criteria	All major pipe sections, fittings, specials, supports, and associated materials have been delivered to the project site, inspected, and accepted. Materials are available to support underground and aboveground piping installation activities.			
		Technical Objective Deliverable(s)	Shipping records, material receiving reports, inspection documentation, material inventory reports, quality documentation, and procurement status reports.			
		Method of Verification	DOE review and acceptance of delivery documentation demonstrating all large-diameter circulating water piping materials have been received and are available for installation.			
		Planned Completion Date	Q1 2028			
8 (Q2 2028)	8.1	Technical Objective Description	SPCC Plan Approval and West Virginia Aboveground Storage Tank (AST) Compliance: This Technical Objective represents completion of the environmental compliance activities associated with oil storage, fuel storage, chemical storage, and regulated aboveground storage tank systems required for project construction and operation. The Technical Objective includes development and approval of the Spill Prevention, Control, and Countermeasure (SPCC) Plan, identification of applicable storage tanks, preparation and submission of required West Virginia AST registrations and notifications, incorporation of secondary containment requirements, spill prevention measures, inspection programs, and emergency response procedures. Completion of this Technical Objective demonstrates that the project has satisfied applicable federal	\$95,683,156	\$30,172,309	\$65,510,848

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
			and state requirements governing oil and chemical storage systems.			
		Success Criteria	The SPCC Plan has been completed and approved, and all applicable West Virginia AST registrations, notifications, and regulatory approvals have been submitted and accepted by the appropriate agency. Spill prevention, containment, inspection, and emergency response requirements have been incorporated into project design and construction planning. No outstanding environmental compliance issues remain that would impact installation or operation of regulated storage systems.			
		Technical Objective Deliverable(s)	Approved SPCC Plan, AST registration and compliance documentation, tank inventory records, secondary containment designs, spill response procedures, inspection and maintenance requirements, site plans, compliance certifications, and supporting regulatory correspondence.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Method of Verification	DOE review and acceptance of the approved SPCC Plan, AST registration and compliance documentation, agency correspondence, and supporting environmental records demonstrating compliance with federal and West Virginia storage tank regulations and readiness to construct and operate regulated storage systems.			
		Planned Completion Date	Q2 2028			
	8.2	Technical Objective Description	Construction & Installation: Construction and Installation Technical Objective reflects completion of construction activities, including cooling tower erection, installation of mechanical systems, piping, structural components, and electrical and instrumentation systems in accordance with approved engineering drawings, specifications, and construction plans/work packages. This Technical Objective also includes completion of procurement and delivery of materials not included within the major equipment procurement packages, including structural steel, reinforcing steel, concrete materials, valves, fittings, pipe supports, electrical bulk materials, cable, conduit, cable tray, grounding materials, instrumentation components, coatings, and miscellaneous mechanical and electrical construction materials required to complete the project scope.			
		Success Criteria	All major systems, equipment, balance-of-plant materials, and bulk commodities have been procured, delivered, installed, inspected, and accepted in accordance with project requirements. Mechanical completion has been achieved for all major systems, material inventories have been verified as sufficient to support project execution, and no outstanding procurement, delivery, or construction issues remain that would impact final system integration, outage tie-ins, commissioning, or startup activities.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Technical Objective Deliverable(s)	Construction completion reports, system installation documentation, procurement status reports, material receiving and inventory verification records, QA/QC inspection and acceptance documentation, preservation records (as applicable), and pre-commissioning checklists demonstrating procurement, delivery, and installation of all balance-of-plant materials and bulk commodities required to complete the project scope.			
		Method of Verification	DOE review and acceptance of construction completion reports, procurement status reports, material receiving and inventory verification records, QA/QC inspection and acceptance documentation, pre-commissioning checklists, and system readiness reports confirming that all major equipment, balance-of-plant materials, and bulk commodities have been procured, delivered, installed, accepted, and are available to support final system integration, commissioning, and startup activities.			
		Planned Completion Date	Q2 2028			
	8.3	Technical Objective Description	Startup & Commissioning; Startup and Commissioning Technical Objective encompasses system integration during the outage period, including tie-ins, energization, commissioning of mechanical and electrical systems, and performance testing of the cooling tower.			
		Success Criteria	Cooling tower system is fully operational, commissioning activities are complete per the commissioning plan, and performance testing verifies that the system meets design and operational requirements.			
		Technical Objective Deliverable(s)	Commissioning reports, startup and functional test results, and documentation confirming operational acceptance.			
		Method of Verification	DOE review and acceptance of commissioning reports, performance test results, and operational acceptance documentation.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Planned Completion Date	Q2 2028			
9 (Q3 2028)	9.1	Technical Objective Description	As-Built Documentation and Engineering Closeout: This Technical Objective represents completion of all engineering activities required to support final project turnover and closeout. The Technical Objective includes review and incorporation of construction redlines, field modifications, vendor information, commissioning updates, and approved design changes into the final project record documents. Engineering activities also include resolution of outstanding technical issues, completion of construction support activities, final document turnover, project records verification, and preparation of engineering closeout documentation. Completion of this Technical Objective confirms that the final engineering record accurately reflects the constructed facility and that all engineering obligations under the project scope have been fulfilled.	\$4,033,345	\$1,271,857	\$2,761,488
		Success Criteria	All construction redlines, field changes, and approved modifications have been incorporated into final engineering documents. As-built drawings, specifications, calculations, equipment data sheets, vendor documentation, and project databases have been updated to accurately reflect installed conditions. All engineering deliverables have been completed and accepted, outstanding technical issues and engineering action items have been closed, final project records have been transmitted to the Owner, and no remaining engineering scope remains open.			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
		Technical Objective Deliverable(s)	Approved as-built drawing packages, updated specifications, revised design calculations, equipment data sheets, final vendor documentation, construction change records, engineering completion reports, engineering action item closure log, project records index, final document turnover package, lessons learned documentation, and engineering closeout report.			
		Method of Verification	DOE review and acceptance of the final as-built engineering package, engineering closeout report, project turnover documentation, and supporting records demonstrating that all engineering scope has been completed, project records accurately reflect the constructed facility, and engineering responsibilities have been successfully transferred to the Owner.			
		Planned Completion Date	Q3 2028			
	9.2	Technical Objective Description	Final BCA and Final Report: The Final Report Technical Objective signifies completion and submission of the final business case analysis, as per BCA guidance from DOE, and a final report documenting the overall plant modernization program and project outcomes. The report describes implemented modernization measures and resulting impacts, including plant life extension, improved reliability and resilience, overall cost effectiveness of energy generation, and system level benefits. This report will also include lessons learned and root-cause analysis for any issues encountered during project implementation.			
		Success Criteria	Final BCA and Final Report are completed, internally reviewed, formally approved by AEP, and accepted by DOE. The report includes a comprehensive summary of modernization efforts and quantified outcomes; evaluation of life extension benefits and cost effectiveness of continued energy generation; assessment of grid impacts and			

DE-FE0032774 Wheeling Power Technical Objective Table						
Technical Objective	Technical Objective Sub-package		Description	Cost	Federal Cost Share	Non-Federal Cost Share
			operational improvements; and a lessons learned section incorporating root cause analysis of challenges encountered and mitigation strategies applied. All required sections must be complete, accurate, and suitable for public release when applicable, and for DOE reporting purposes.			
		Technical Objective Deliverable(s)	Final BCA and Final Report, as-built documentation, summary of performance metrics, and lessons learned report with root cause analysis.			
		Method of Verification	DOE review and acceptance of the final BCA and Final Report as well as any supporting documentation.			
		Planned Completion Date	Q3 2028			
Total Project Costs				\$161,732,436	\$51,000,000	\$110,732,436

Note: DOE and/or its contractors will verify Technical Objective completion prior to payment to ensure all scope, success criteria, and deliverables are satisfactorily completed. At the discretion of DOE, Technical Objective completion verification may include but not be limited to the review of deliverables, site visits, walkdowns, and factory and site acceptance testing.

ASSISTANCE AGREEMENT			
1. Award No. DE - FE0032774		2. Modification No.	3. Effective Date 09/01/2026
		4. CFDA No. 81.089	
5. Awarded To WHEELING POWER CO Attn: Jennifer Sunchuk 1 RIVERSIDE PLZ COLUMBUS OH 432152355		6. Sponsoring Office Fossil Energy and Carbon Management FECM-1 U.S. Department of Energy 1000 Independence Avenue, S.W. Washington DC 20585	
		7. Period of Performance 09/01/2026 through 09/30/2028	
8. Type of Agreement ☐ Grant ☐ Cooperative Agreement ☒ Other	9. Authority Defense Production Act Big Beautiful Bill (P.L. 119-21)		10. Purchase Request or Funding Document No. 26FE002243
11. Remittance Address WHEELING POWER CO Attn: Wheeling Power Company 388 Greenwich Street New York NY 10013		12. Total Amount Govt. Share: \$51,000,000.00 Cost Share : \$110,732,436.00 Total : \$161,732,436.00	
		13. Funds Obligated This action: \$51,000,000.00 Total : \$51,000,000.00	
14. Principal Investigator Grant Patch	15. Program Manager Richard M. Bergen Phone: 304-285-1316		16. Administrator Golden Field Office U.S. Department of Energy Golden Field Office 15013 Denver West Parkway Golden CO 80401
17. Submit Payment Requests To VIPERS https://vipers.doe.gov Any questions, please contact by call/email 888-251-3557 or payments@hq.doe.gov		18. Paying Office VIPERS https://vipers.doe.gov Any questions, please contact by call/email 888-251-3557 or Payments@hq.doe.gov	
		19. Submit Reports To See Attachment 1 Articles	
20. Accounting and Appropriation Data 07801-2025-31-232421-25500-1611541-00000000-00000000-00000000			
21. Research Title and/or Description of Project Mitchell Mechanical Draft Cooling Tower Modernization Project			
For the Recipient		For the United States of America	
22. Signature of Person Authorized to Sign		25. Signature of Grants/Agreements Officer <i>Latida V. Crawford</i>	
23. Name and Title	24. Date Signed	26. Name of Officer Virginia L. Crawford	27. Date Signed 09/04/2026

CONTINUATION SHEET		REFERENCE NO. OF DOCUMENT BEING CONTINUED			PAGE OF	
		DE - FE0032774			2 3	
NAME OF OFFEROR OR CONTRACTOR						
WHEELING POWER CO						
ITEM NO (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	
	UEI: PXY1JRBLEJV9 This Defense Production Act Award outlines the rights and obligations of the parties and consists of the following documents, including all articles therein: Assistant Agreement: Attachment 1: Articles Attachment 2: Technical Objectives Table DOE Award Administrator: Karen Harting Email: karen.harting@hq.doe.gov DOE Agreements Technical Representative: Mike Bergen E-mail: richard.bergen@netl.doe.gov Phone: (304) 285-1316 Awardee Business Contact: Scott Osterholt Phone: [REDACTED] Email: [REDACTED] Awardee Principal Investigator: Grant Patch Phone: [REDACTED] Email: [REDACTED] ASAP: NO Extent Competed: COMPETED Davis-Bacon Act: yes PI: Grant Patch Delivery Location Code: 892410 Office of Clean Energy Demonstratio U.S. Department of Energy 1000 Independence Avenue, SW Forrestal Building , CD-1 Washington DC 20585 USA Fund: 07801 Appr Year: 2025 Allottee: 31 Report Entity: 232421 Object Class: 25500 Program: 1611541 Project: 00000000 WFO: 00000000 Local Use: 00000000 CUI//SP-PROCURE					
00001	FE0032774 - Harting Requisition to (1) initiate a new award for Continued...				51,000,000.00	

CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED DE- FE0032774	PAGE OF 3 3
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NAME OF OFFEROR OR CONTRACTOR
WHEELING POWER CO

ITEM NO (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	Wheeling Power Company - FE0032774 (Mitchell Mechanical Draft Cooling Tower Modernization Project) from 7/31/2026 - 9/30/2028 and (2) obligate federal funding in the amount of \$51,000,000. Embedded Lease: No "Electronic signature or signatures as used in this document means a method of signing an electronic message that-- (A) Identifies and authenticates a particular person as the source of the electronic message; (B) Indicates such person's approval of the information contained in the electronic message; and, (C) Submission via FedConnect constitutes electronically signed documents." The total amount of award: \$51,000,000.00. The obligation for this award is \$51,000,000.00.				

VERIFICATION

The undersigned, Amy J. Elliott, being duly sworn, deposes and says she is the Vice President of Regulatory and External Affairs for Kentucky Power, that she has personal knowledge of the matters set forth in the foregoing responses and the information contained therein is true and correct to the best of her information, knowledge, and belief.

Amy J. Elliott

Amy J. Elliott

Commonwealth of Kentucky)

County of Boyd)

Case No. 2026-00001

Subscribed and sworn to before me, a Notary Public in and before said County and State, by Amy J. Elliott, on September 17, 2026

Marilyn Michelle Caldwell
Notary Public

My Commission Expires May 5, 2027

Notary ID Number KYNP71841

