



## FEDERAL FLOW DOWN REQUIREMENTS RIDER (CONSTRUCTION)

Sila Nanotechnologies, Inc. (“**Recipient**”) has entered into a Federal Assistance Agreement (“**FAA**”) with the U.S. Department of Energy (“**Federal Awarding Agency**”) effective October 1, 2023, under Funding Opportunity Announcement (“**FOA**”) No DE-FOA-0002678 (“**Award**”), pursuant to which Recipient must flow down certain terms and conditions of the Award and FAA (the “**Flow Downs**”) to third parties with which Recipient enters into a contract for goods or services funded in part or in whole by the Federal Awarding Agency.

You as Recipient’s service provider or vendor (“**Contractor**”) are designated by Recipient as a Contractor under 2 CFR 200.331 that provides goods and/or services under a contract of the type, nature, and value of the written agreement and/or purchase order to which this Rider is added (individually and collectively, “**Contract(s)**”).

Contractor agrees to comply with the Flow Downs to the extent applicable in its performance of the Contract(s).

1. **Federally Required Contract Provisions.** The Federally Required Contract Provisions found in Appendix II of 2 CFR Part 200 are reproduced at the end of this Rider and hereby incorporated by reference as if fully set forth herein.
2. **Equal Employment Opportunity.** During the performance of the Contract(s), Contractor agrees as follows:
  - (a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - (b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - (c) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including



an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.

- (d) Contractor will (i) send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representatives of Contractor's commitments under this Section 2, and (ii) post copies of the notice in conspicuous places available to employees and applicants for employment.
- (e) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. Contractor is prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.
- (f) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (g) In the event of Contractor's noncompliance with the nondiscrimination clauses of this Rider or with any of the said rules, regulations, or orders, the Contract(s) may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (h) Contractor will include the provisions of Section 1 (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

3. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** The Award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All construction, alteration, or repair work contracts in excess of \$2,000 awarded by Recipient must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must pay wages not less than once a week. The Recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in the Contract(s). Recipient's decision to award a contract or subcontract is conditioned upon Contractor's acceptance of the wage determination. Recipient must report all suspected or reported violations to the Federal Awarding Agency. Contractor must also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Under said Act, Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the



compensation to which he or she is otherwise entitled. Contractor must report all suspected or reported violations to Recipient, and Recipient must report all suspected or reported violations to the Federal Awarding Agency

4. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** All contracts awarded by Recipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). In accordance with 40 U.S.C. 3702 of the Act, Contractor must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
5. **Clean Air Act and Federal Water Pollution Control Act.** If the Contract(s) exceeds one-hundred and fifty thousand dollars (\$150,000) in value, Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to Recipient, to report to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA). Contractor agrees to include these requirements in each subcontract that exceeds one-hundred and fifty thousand dollars (\$150,000) in support of its performance of the Contract(s).
6. **Debarment and Suspension.** Contractor acknowledges that Recipient is prohibited from contracting with any person or entity that is listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By executing the Contract(s), Contractor certifies that it does not appear on the SAM Exclusions List and shall notify Recipient within five (5) business days if it is added. Contractor shall include a requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transactions into which it enters.

7. **Anti-Lobbying (31 U.S.C. 1352).** By executing the Contract(s), Contractor certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of the Contract(s). Contractor shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures will be forwarded to the Federal Awarding Agency.



Contractor must require this certification and the requirement for lower-tier certifications in each subcontract that exceeds one-hundred thousand dollars (\$100,000) in support of its performance of the Contract(s). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures will be forwarded to the Federal Awarding Agency.

8. **Section 889 Compliance.** Contractor shall not provide, as part of performance of the Contract(s), equipment, services, or systems that use covered telecommunications equipment or services, as those terms are defined in Public Law 115-232, section 889, and its implementing regulations at 2 C.F.R. 200.216.
9. **Domestic Preferences for Procurements.** As appropriate, and to the extent consistent with law, Contractor should, to the greatest extent practicable under the Contract(s), provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to: iron, aluminum, steel, cement, and other manufactured products). Contractor shall include this provision in any contracts or agreements in support of performance of the Contract(s). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
10. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.** If Contractor awards or lets any subcontracts, Contractor should ensure when possible that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below. Such consideration means:
  - (a) These business types are included on solicitation lists;
  - (b) These business types are solicited whenever they are potential sources;
  - (c) Dividing total procurement transactions into separate procurements to permit maximum participation by these business types;
  - (d) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
  - (e) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (f) Including this Section 10 in all subcontracts.



## 11. Maintenance, Retention, and Access to Records.

- (a) Contractor shall establish and utilize generally accepted accounting principles in the maintenance of all records relating to the Contract(s). Such practices shall comply with the general acceptable accounting principles and shall fully and accurately reflect, track, and document Contractor's financial activities.
- (b) Contractor shall establish and maintain separate accounting records for Contractor's activities in meeting its obligations pursuant to the Contract(s) with sufficient documentation to identify the associated expenditures (e.g. detailed invoices, cancelled checks, payroll journals, bank statement reconciliations, etc.) and establish that such expenditures are allowable, necessary, and reasonable under the Contract(s), the Award, and any directives issued by the Federal Awarding Agency.
- (c) Contractor shall furnish Recipient and the Federal Awarding Agency with any and all data needed for the purpose of monitoring, evaluation, auditing, and quality assurance. This data shall include information on the services provided or work performed, and any other data that may be required by Recipient and the Federal Awarding Agency, in its sole discretion, to adequately evaluate Contractor's performance under the Contract(s).
- (d) All records that were created, utilized, or maintained for the purpose of fulfillment of Contractor's obligations pursuant to the Contract(s), whether paper or electronic ("**Relevant Records**"), shall be retained by the respective record holder for a period of five (5) years after termination of the Contract(s), including any extensions or renewals of the Contract(s).
- (e) In the event of litigation, claims, or audit findings, all Relevant Records shall be retained for a period of five (5) years after the resolution of any such event.
- (f) Contractor shall permit Recipient, the Federal Awarding Agency, the Comptroller General of the United States, or any of their authorized representatives to access, review, or reproduce any and all Relevant Records.
- (g) Contractor shall ensure that the provisions of this Section 11 are incorporated into any agreements into which it enters that are related to the Contract(s) and the Award.

**12. Access Restrictions.** Contractor (including its employees, directors, officers, managers, agents, contractors, or other representatives, and includes the respective successors or assigns of the foregoing) shall not disclose any information that is not publicly available (including technical data, subject inventions, or any other information that is not publicly available or required to be made public under applicable law or regulation) developed under the Federal Awarding Agency-funded project with any Contractor subsidiary, affiliate, investor, supplier, licensee at any tier, battery manufacturer for Contractor end customers, or joint development partner that: (1) has a place of incorporation or a principal place of business in a Foreign Country of Risk (for entities) or (2) is a national of a Foreign Country of Risk (for individuals). Contractor shall also ensure that its subsidiaries or affiliates under its control adhere to this same restriction. Contractor shall provide on an annual basis and upon request of Recipient, a certificate of compliance with this Section 12 to Recipient.



### 13. Performance of Work in the United States.

- (a) **Requirement.** All work performed under the Award must be performed in the United States unless the Federal Awarding Agency Contracting Officer provides a waiver to the Recipient. This requirement does not apply to the purchase of supplies and equipment; however, the Contractor should make every effort to purchase supplies and equipment within the United States. Contractor agrees not to perform any work or source any supplies or equipment outside of the United States without the permission of Recipient. The Contractor must flow down this requirement to its own subcontractors and sub-suppliers.
- (b) **Failure to Comply.** If Contractor fails to comply with the Performance of Work in the United States requirement, Recipient may deny payment for the work conducted outside the United States. Contractor agrees that its performance of work outside of the United States without Recipient either receiving a waiver from the Contracting Officer or granting Contractor permission to do so may result in denial of compensation for such work.
- (c) **Waiver for Work Outside the U.S.** All work performed under the Award must be performed in the United States. However, the Contracting Officer may approve the Recipient to perform a portion of the work outside the United States under limited circumstances. The Recipient must obtain a waiver from the Contracting Officer prior to conducting any work outside the U.S. To request a waiver, the Recipient must submit a written waiver request to the Contracting Officer, which includes the information as required in the FOA that the Award was selected under. Contractor agrees to provide Recipient with all reasonable support in Recipient's waiver application and not to perform any such work outside of the United States until Recipient has received such waiver or has granted Contractor permission to proceed. Notwithstanding any provision to the contrary, partial or complete denial of Recipient's waiver application shall not result in a denial of payment to Contractor for any such work performed so long as Recipient has granted permission to Contractor to perform such work outside of the United States.
- (d) For the rationale, the Recipient must demonstrate to the satisfaction of the Contracting Officer that the performance of work outside the United States would further the purposes of the FOA that the Award was selected under and is in the economic interests of the United States. The Contracting Officer may require additional information before considering such request. Contractor agrees to provide Recipient with all reasonable support in Recipient's demonstration of the foregoing to the Contracting Officer.
- (e) Contractor has not requested a waiver of requirements set forth above regarding the Performance of Work in the United States.

### 14. Foreign National Participation – Approval Required (March 2023)

- (a) If Contractor (including any of its subcontractors) anticipates involving foreign nationals in the performance of the Contract(s), Contractor must provide Recipient with specific information about each foreign national to ensure compliance with the requirements for foreign national participation and access approvals. The volume and type of information required may depend on various factors associated with the Award.





- (b) Approval for foreign nationals in Principal Investigator/Co-Principal Investigator roles, from countries of risk (i.e., China, Iran, North Korea, and Russia), and from countries identified on the U.S. Department of State's list of State Sponsors of Terrorism (<https://www.state.gov/state-sponsors-of-terrorism/>) must be obtained from the Federal Awarding Agency before they can participate in the performance of any work under the Contracts.
- (c) A "foreign national" is defined as any person who is not a United States citizen by birth or naturalization. The Federal Awarding Agency may elect to deny a foreign national's participation in the Award. Likewise, the Federal Awarding Agency may elect to deny a foreign national's access to the Federal Awarding Agency's sites, information, technologies, equipment, programs, or personnel.

## **15. Export Control**

- (a) The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that governs exports that are collectively referred to as "Export Controls." Contractor is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under the Contract(s), including subcontractor work.
- (b) Contractor must immediately report to Recipient any export control violations related to the project funded under the Award, at Contractor or subcontractor level, and provide the corrective action(s) to prevent future violations. Contractor agrees to abide by all Export Controls regulations currently in place and, upon becoming so aware, Contractor agrees to timely notify Recipient of any such violations and institute any such required corrective actions.

## **16. Environmental, Safety and Health Performance of Work at Federal Awarding Agency Facilities.**

- (a) With respect to the performance of any portion of the work under the Award which is performed at a Federal Awarding Agency-owned or controlled site, the Contractor agrees to comply with all State and Federal Environmental, Safety and Health (ES&H) regulations and with all other ES&H requirements of the operator of such site.
- (b) Prior to the performance on any work at a Federal Awarding Agency-owned or controlled site, the Recipient shall contact the site facility manager for information on the Federal Awarding Agency and site-specific ES&H requirements and provide the foregoing information to the Contractor. Contractor shall act in compliance with the same.
- (c) The Contractor is required to flow down the provisions of this Section 16 to its subcontractors and sub-suppliers.

**17. Uniform Guidance.** Contractor is required to be compliant with 2 CFR Part 200, 2 CFR Part 910, 10 CFR Part 600 to the extent they are expressly required to be flowed down or are applicable to a "Contractor" as defined by 2 CFR 200.331 providing engineering, procurement, and construction management services under a contract of the type, nature, and value of the Contract(s).

**18. Modifications.** Contractor agrees to work with Recipient in good faith to make any additional amendments to the Agreement as may be required by the Federal Awarding Agency.



## **Federally Required Contract Provisions**

### Appendix II to Part 200 –

#### Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under a Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (E) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (F) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (G) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award





exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(H) See § 200.323.

(I) See § 200.216.

(J) See § 200.322.