

## ATTACHMENT 2

### Selectee or Recipient Request for Extended Period of Data Protection

*This form should be signed by an authorized official of the selectee or recipient and directed to the DOE/NNSA Grants Officer. All text in blue should be replaced with the appropriate information and removed before the document is finalized.*

#### 1. Background

This form is intended to facilitate a selectee's/recipient's request for approval of an extended data protection period for Protected Data. Protected Data means technical data or commercial or financial data first produced in the performance of the award or agreement 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 award or agreement.

To be eligible for extended data protection, the award must fall under the Energy Policy Act of 1992 and 2005 (EPAct)<sup>1</sup> or Other Transaction Authority under 42 U.S.C. § 7256(g). For awards under EPAct authority, an extended period of data protection (for more than five years and not to exceed thirty years after development of information) is authorized if DOE/NNSA “determines that the nature of the information protected against dissemination, including nuclear technology, could reasonably require an extended period of that protection to reach commercialization,” in accordance with 15 U.S.C. § 3710a(c)(7)(B)(ii). For other transaction agreements, an extended period of data protection (for more than five years and for up to thirty years after the date on which the information is developed) is only authorized “if the Secretary determines that the nature of the technology under the transaction, including nuclear technology, could reasonably require an extended period of protection from disclosure to reach commercialization” in accordance with 42 U.S.C. § 7256(g)(5)(A)(ii).

To facilitate the DOE/NNSA determination, selectees/recipients must provide a written justification identifying the categories of Protected Data that could reasonably require an extended period of protection to reach commercialization and specific reasons for the extended protection period.

If the inclusion of proprietary information is required to provide the justifications required by this form, the selectee/recipient should include such proprietary information as an attachment to this form with a suitable proprietary marking. Such marked proprietary information will be protected in accordance with 18 U.S.C. § 1905.

#### 2. Award Information and Description of Anticipated Work

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<sup>1</sup> See individual program authorizations and/or Sec. 902(a) of EPACT which states states:“(a) IN GENERAL.—In order to achieve the purposes of this title, the Secretary shall conduct a balanced set of programs of energy research, development, demonstration, and commercial application with the general goals of— (1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies; (2) promoting diversity of energy supply; (3) decreasing the dependence of the United States on foreign energy supplies; (4) improving the energy security of the United States; and (5) decreasing the environmental impact of energy-related activities.”

*Please identify the financial assistance award or agreement number(s) included in this request and provide a brief description of the Statement of Project Objectives (SOPO) anticipated to be conducted under each award/agreement. The SOPO may be attached to this request.*

**3. Description of Categories of Protected Data, Requested Protection Period, and Justification**

This extended data protection request must demonstrate to the satisfaction of DOE that the requested protection period of the information/technology could be reasonably required for commercialization. The justification may address factors such as the maturity of the technology, development timeframe, market and economic considerations, competitiveness concerns, technical issues, national and economic security issues, e.g., the risk of malign foreign actors acquiring such information (and thus negatively impacting the ability of the recipient to commercialize the technology), or any other reason why the requested period of protection is reasonably required for commercialization.

*In a table or similar format as illustrated below, please describe the categories of Protected Data and identify the corresponding requested protection period along with a brief justification. Additional justification can be provided in the next section. Alternatively, extended protection period can be applied to all categories.*

| Requested Protection Period<br>(Not to exceed 30 years) | Description of the Protected Data | Justification |
|---|-----------------------------------|---------------|
|   |                                   |               |
|   |                                   |               |

**4. Additional Justification**

*Please provide any additional justification to support the request that the Protected Data and data protection periods above could be reasonably required to reach commercialization. Selectees/Recipients may include a technology commercialization plan to support their request, which may include contractual obligations to support the justification. For example, the commercialization plan may include one or more of the following: a commitment for first commercial deployment in the U.S., annual software utilization reporting, annual commercialization reporting, a commitment to publish in the open scientific literature, and an agreement to assign any related intellectual property to DOE if substantial commercialization efforts cease.*

**5. Other Considerations**

*Please address how DOE and the public’s interests are appropriately balanced, given DOE’s limited rights to disclose, publish, and disseminate such Protected Data during the extended data protection period. For example, what other data do you plan to make available to the public*

*immediately? For protection period requests of twenty years or more, please address how you will comply with the patent clause of the award (e.g., invention disclosure obligations) and related Government rights and interests such as U.S. manufacturing obligations.*

**6. Request**

For the reasons stated above, the selectee/recipient requests an extended period of data protection for the identified Protected Data.

**SELECTEE/RECIPIENT REQUESTOR:**

*This form should be signed by an authorized official of the selectee or recipient.*

NAME

TITLE

ENTITY NAME

DATE

NOFO NUMBER

APPLICATION NUMBER

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**7. Attachment**

[INSERT]

**DOE/NNSA APPROVAL SHEET**

**SELECTEE/RECIPIENT REQUESTOR:**

ENTITY NAME

APPLICATION NUMBER

NOFO NUMBER

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**CONCURRENCE:**

\_\_\_\_\_  
[NAME] \_\_\_\_\_ DATE  
[TITLE: TECHNOLOGY OFFICE DIRECTOR, PROJECT DIRECTOR, PROGRAM DIRECTOR, OR OTHER APPROPRIATE MEMBER OF PROGRAM LEADERSHIP]<sup>2</sup>

\_\_\_\_\_  
[NAME] \_\_\_\_\_ DATE  
[TITLE: SECRETARY/AUTHORIZED DELEGATE]<sup>3</sup>

\_\_\_\_\_  
[NAME] \_\_\_\_\_ DATE  
COGNIZANT DOE PATENT COUNSEL

**DOE APPROVAL:**

Approve  Decline

Comments:

\_\_\_\_\_  
[NAME] \_\_\_\_\_ DATE  
GRANTS OFFICER

Dispositions of all extended data protection requests should be retained in the award case file.

<sup>2</sup> The appropriate level of the Program concurrence will vary with the nature of the request.

<sup>3</sup> Only required for Extended Data Protection Requests for OT Agreements under 42 U.S.C. § 7295(g)(5).