

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 26
2. AMENDMENT/MODIFICATION NO. 0291	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY NNSA M&O Contracting Branch NA-PAS-211 Albuquerque Complex P.O. Box 5400 Albuquerque NM 87185-5400	CODE 05115	7. ADMINISTERED BY (If other than Item 6) NNSA Production OFC NA-NPO P.O. Box 2050 Oak Ridge TN 37830	CODE 05047
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) CONSOLIDATED NUCLEAR SECURITY , LLC Attn: Willie Wilson 301 Bear Creek Road OAK RIDGE TN 37830		(x)	9A. AMENDMENT OF SOLICITATION NO.
CODE 078390708			9B. DATED (SEE ITEM 11)
FACILITY CODE		x	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-NA0001942
			10B. DATED (SEE ITEM 13) 01/08/2013

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Schedule

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) Bilateral Agreement

E. IMPORTANT: Contractor is not is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

DUNS Number: 078390708

UEI: EWV8QKG1JUV7

Payment:

Period of Performance: 07/01/2014 to 09/30/2025

Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect.

(Type or print)

Richard J. Tighe, President & Chief Executive Officer

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

Laura G. Gideon

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

Digitally signed by Laura G Gideon
Date: 2023.08.15 11:20:52 -04'00'

16C. DATE SIGNED

(Signature of Contracting Officer)

The purpose of this modification is described below:

1. The following changes are made to Part I – The Schedule, Section B – Supplies or Services and Prices/Costs:

a. The sentence fragment reading “The award fee available under” will be deleted from at the end of the paragraph prior to the table above under the section for CLIN 0001K – MANAGEMENT & OPERATION (M&O) OF Y12/PX (OCT 1, 2022 – SEP 30, 2024); MANAGEMENT & OPERATION (M&O) OF Y12 (OCT 1, 2024 – SEP 30, 2025).

b. The following paragraph is added at the end of B-2(a)(2)(ii):

Fee rates applicable to any option period under FAR 52.217-8, Option to Extend Services, shall be the applicable fee rate that represents the work activity for the extension period. For example, if Site Separation Activities (SSAs) will be performed in the extension period the fee rates shall be equal to the SSA and M&O activity fee rates. If no SSAs will be performed, the fee rates shall only include the M&O activity fee rate.

c. The following language is appended to the end of B-2(a)(5)(ii) as new paragraph (G):

(G) In monthly provisional fee payments equivalent to 3% of the Available Award Fee for the period beginning October 1, 2022.

2. The following changes are made to Part I – The Schedule, Section F – Deliveries or Performance:

a. SECTION F – DELIVERIES OR PERFORMANCE, Clause F-2 Period of Performance is modified as follows:

F-2 PERIOD OF PERFORMANCE

The effective date of the Contract is the award date identified in Section A.

(a) The Contract’s period of performance includes:

Transition Term – the effective date of the Contract through January 18, 2013 and March 3, 2014 through June 30, 2014;

Base Term – July 1, 2014 through Sep 30, 2019; and, if exercised;

Option Term 1 – Oct 1, 2019 through Sep 30, 2021; and, if exercised;

Option Term 2 – Oct 1, 2021 through Sep 30, 2023; and, if exercised*;

Option Term 3 – Oct 1, 2023 through June 30, 2024 (9 month Period)*.

6-month Extension – Oct 1, 2021, through March 31, 2022, exercised.

6-month Extension – April 1, 2022, through Sep 30, 2022, exercised.

Term under CLIN 0001K – Oct 1, 2022- Sep 30, 2024 for both sites and Oct 1, 2024 – Sep 30, 2025 for Y-12, and, if exercised,

Term under CLIN 0001L – Oct 1, 2024-Sep 30, 2025 for Pantex, and, if exercised,

Term under CLIN 0001M – Oct 1, 2025 – Sep 30, 2026 for Y-12, and, if exercised,

Term under CLIN 0001N – Oct 1, 2026 – Sep 30, 2027 for Y-12, if exercised.

*Note: Option Terms 2 and 3 were not exercised.

- b. The period of performance of this Contract will expire Sep 30, 2025, unless sooner reduced, terminated or extended in accordance with the provisions of this Contract. The Contract period of performance may be extended in increments, or portions thereof, for up to an additional period of five years of performance in accordance with Section F, F-5, Evaluation of Performance and Exercise of Option(s). The Contract's maximum period of performance, including the Transition Term and Options, if exercised, shall not exceed ten (10) years, nineteen weeks.
- c. The Transition Term shall be for the transition activities identified in Section J, Appendix C, Transition Plan. The Contractor's responsibility for management and operation of the Sites against the Statement of Work shall commence with the Base Term. The Option Terms 1-3 conditions are set forth in Section F, F-5, Evaluation of Performance and Exercise of Option(s)."

3. The following changes are made to the clauses in Part I- The Schedule, Section G – Contract Administration Data:

- a) The contact information in G-1 Government Contacts and Correspondence Procedures paragraph (a)(4) is updated as follows:

Procuring Contracting Officer
U.S Department of Energy/NNSA M&O Contracting Branch
C/O NNSA Production Office
P.O. Box 2050
Oak Ridge, TN 37831

- b) The contact information in G-5 Contractor Contact is updated as follows:

Name: [REDACTED]
Position: President and Chief Executive Officer
Company: Consolidated Nuclear Security, LLC
Address: 301 Bear Creek Road, PO Box 2009, Oak Ridge, TN 37831
Phone: [REDACTED]
E-mail: [REDACTED]

4. The following clauses are incorporated into Part I – The Schedule, Section H– Special Contract Requirements

- a. Pursuant to DOE Acquisition Letter 2021-06, three new H clauses related to Supply Chain Management are added as follows:

H-19 DOE-H-2084 MITIGATING SUPPLY CHAIN RISK (OCT 2022)

DOE/NNSA utilizes a Supply Chain Risk Management (SCRM) Program to identify, assess, and monitor supply chain risks of critical vendors. The Government may use any information, public and non-public, including all-source intelligence for its analysis. The Contractor agrees that the Government may, at its own discretion, perform audits of supply chain risk processes or events consistent with other terms in the contract regarding access to records and audits. An onsite assessment may be required. Through the information obtained from a SCRM program, DOE may assess vendors and products through multiple risk lenses such as national security, cybersecurity, compliance, and finance. If supply chain risks are identified and corrective action becomes necessary, mutually agreeable corrective actions will be sought based upon specific identified risks. Failure to resolve any identified risk may result in contract termination.

(End of Clause)

H-20 DOE-H-2085 MITIGATING SUPPLY CHAIN RISK USING ENHANCED
PROCUREMENT AUTHORITY FOR INFORMATION AND COMMUNICATION
TECHNOLOGY (OCT 2022)

(a) *Definitions.* As used in this clause –

Covered article - The term "covered article" includes –

(1) “Information technology” which means –

(i) any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use –

(A) of that equipment, or

(B) of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(ii) computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; however,

(iii) does not include any equipment acquired by a federal contractor incidental to a federal contract.

(2) “Telecommunications Equipment”, which means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(3) “Telecommunications Service”, which means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(4) the processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program; or

(5) hardware, systems, devices, software, or services that include embedded or incidental information technology.

Supply Chain Risk - The term “Supply Chain Risk” means the risk that a person may

sabotage, maliciously introduce unwanted function, extract data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the covered articles or information stored or transmitted on the covered articles.

- (b) The Contractor shall take all prudent actions, and comply with all Government directions (as identified in (c)), to mitigate supply chain risk when providing covered articles or services affecting covered articles to the Government.
- (c) In order to manage supply chain risk, the Government may use the authority provided by 41 U.S.C. 4713 to, among other things, withhold consent for the Contractor to subcontract with a particular source or direct the Contractor to exclude a particular source from consideration for a subcontract under the contract.
- (d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of Clause)

H-21 DOE-H-2086 MITIGATING SUPPLY CHAIN RISK USING ENHANCED
PROCUREMENT AUTHORITY FOR NATIONAL SECURITY SYSTEMS, NUCLEAR
WEAPONS COMPONENTS AND ASSOCIATED ITEM (OCT 2022)

(a) *Definitions.* As used in this clause—

(1) “Covered system” means-

(A) National security systems (as defined at 44 U.S. Code § 3552) and components of such systems;

(B) Nuclear weapons and components of nuclear weapons;

(C) Items associated with the design, development, production, and maintenance of nuclear weapons or components of nuclear weapons;

(D) Items associated with the surveillance of the nuclear weapon stockpile; or

(E) Items associated with the design and development of nonproliferation and counterproliferation programs and systems.

(2) “Covered item of supply” means an item—

(A) that is purchased for inclusion in a covered system; and

(B) the loss of integrity of which could result in a supply chain risk for a covered system.

(3) “Supply Chain Risk” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system or covered item of supply so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of the system or item of supply.

(b) The Contractor shall take all prudent actions, and comply with all Government directions (as identified in (c)), to mitigate supply chain risk when providing covered systems or covered items of supply to the Government, and services affecting covered systems or covered items of supply.

(c) In order to manage supply chain risk, the Government may use the authority provided by 50 U.S.C. 2786, to, among other things, withhold of consent for the Contractor to subcontract with a particular source or direct the Contractor to exclude a particular source from consideration for a subcontract under the contract. When the Government exercises this authority, it will only provide the Contractor with information pertaining to the basis of the action to the extent necessary to carry out the action. No action taken by the Government pursuant to 50 U.S.C. § 2786 shall be subject to review in any Federal court.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of Clause.)

b. Pursuant to Policy Flash Posted - PF 2023-24 Conference Management Clause Update, Clause H-11 NNS-H-1036 CONFERENCE MANAGEMENT (SEP 2015) is replaced in its entirety with the following:

H-11 DOE-H-2068 CONFERENCE MANAGEMENT (MAR 2023)

The Contractor agrees that:

(a) The contractor shall ensure that contractor-sponsored conferences, and contractor participation in DOE conferences sponsored by a Departmental Element, reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the contractor shall ensure its sponsored conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.

(b) For the purposes of this clause, “conference” is first defined by the Federal Travel Regulation (FTR) as “[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term 'conference' also applies to training activities that are considered

to be conferences under 5 C.F.R 410.404.” Additionally, the Department’s conference activity reporting guideline expands the FTR conference definition to disregard attendee travel as a determining factor, i.e., reporting can be required without the existence of attendee travel.

- (c) Contractor-sponsored conferences include those events that meet the Department’s expanded conference definition, and a DOE contractor holds the role of primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates, and conference participation.
- (d) Merely providing the contractor’s facility space for a conference, or contractor staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote contractor sponsorship.
- (e) The contractor will provide information on conferences they plan to sponsor, when expected costs exceed \$100,000 in net costs to the Department, in the Department’s Conference Management Tool (CMT), including:
 - 1) Conference title, description, and date
 - 2) Location and venue
 - 3) Description of any unusual expenses (e.g., promotional items)
 - 4) Description of contracting procedures used (e.g., competition for space/support)
 - 5) Costs for space, food/beverages, audio visual, travel/per diem, attendee registration costs
 - 6) Number of attendees
- (f) The contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed \$100,000 until notified of approval by the contracting officer and approved by the corresponding federal executive oversight entity.
- (g) For DOE-sponsored conferences (i.e., sponsored by a Departmental Element), the contractor will not expend funds on the proposed conference that exceeds \$100,000 in net estimated DOE cost, until it is approved in the CMT by the management of the Departmental Element sponsoring the conference,
 - 1) DOE-sponsored conferences include events that meet the Department’s expanded conference definition, and a Departmental Element holds the role of primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates and conference participation.
 - 2) Merely providing Federal facility space for a conference, or Federal staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote DOE sponsorship.
 - 3) The contractor will provide cost and attendance information on their participation in all DOE- sponsored conferences in the DOE Conference Management Tool.

- (h) For conferences sponsored by a non-DOE external entity, the contractor shall develop and implement a process to ensure costs related to such conferences are tracked, allowable, allocable, reasonable, and further the mission of DOE/NNSA.
- (i) Contractors are not required to enter participation or cost information on conferences sponsored by a non-DOE external entity in DOE'S Conference Management Tool.

(End of Clause)

5. The following changes will be implemented in Part II – CONTRACT CLAUSES, Section I– Contract Clauses:

- a. Per Policy Flash 2023-28 - Federal Acquisition Circular 2023-04; the following changes will be made to the table at I-1 FAR CLAUSES INCORPORATED BY REFERENCE:
 - i. Update 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (Dec 2013) to 52.244-6 SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (Jun 2023), and
 - ii. Add Clause 52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (Jun 2023).
- b. Clause I-22 DEAR 970.5227-12 PATENT RIGHTS- MANAGEMENT AND OPERATING CONTRACTS FOR PROFIT, CONTRACTOR, PATENT WAIVER (AUG 2002) ALTERNATE I (NNSA CLASS DEVIATION OCT 2011) is replaced in its entirety by the following:

I-22. DEAR 970.5227-12 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (AUG 2002) ALTERNATE I (DEVIATION JAN 2022)

(a) Definitions.

- (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.
- (3) Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).

- (4) 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.*).
 - (5) Made, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.
 - (6) Patent Counsel means *the National Nuclear Security Administration (NNSA)* Patent Counsel assisting the contracting activity.
 - (7) 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.
 - (8) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, 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)*) shall also occur during the period of contract performance.
 - (9) Weapons-Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.
- (b) Allocation of Principal Rights.
- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.
 - (2) Advance class waiver of Government rights to the Contractor. DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, *including weapons-related subject inventions*, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. *The Contractor does not have a right to retain title to any weapons-related subject inventions prior to being granted title by NNSA under the Class Waiver. In its*

elections of weapons-related subject inventions, the NNSA alone will make the determination that the subject invention is in fact a weapons-related subject invention, and that rights to the Contractor may be granted, based on specific procedural requirements that the Contractor must meet, as enumerated in the Class Waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

- (3) Government license. With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has 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.
- (4) Foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE/NNSA, and DOE/NNSA may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (5) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.
 - (i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:
 - (A) uranium enrichment technology;
 - (B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and
 - (C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).
 - (ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject

inventions:

- (A) DOE Steel Initiative and Metals Initiative;
 - (B) U.S. Advanced Battery Consortium;
 - (C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI);
 - (D) *Solid State Energy Conversion Alliance (SECA) if the Contractor is a participant in the "Core Technology Program"; and*
 - (E) *Solid State Lighting Program (SSLP) if the Contractor is a participant in the "Core Technology Program."*
- (iii) Inventions subject to "Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies" (S&E DEC) issued 6/7/2021 must comply with paragraph (j) U.S. Competitiveness requirements to the maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel in writing.
- (iv) DOE/NNSA reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE/NNSA exceptional circumstance subject inventions.
- (6) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements *identified at <http://www.state.gov/documents/organization/123747.pdf>*. DOE/NNSA reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.
- (7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE/NNSA pursuant to

subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE/NNSA may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

- (8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE/NNSA, and DOE/NNSA may grant or refuse to grant such a request by the Contractor employee-inventor.
 - (9) Government assignment of rights in Government employees' subject inventions. If a DOE *or* NNSA employee is a joint inventor of a subject invention to which the Contractor has rights, DOE *or* NNSA, *as applicable*, may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE *or* NNSA employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE *or* NNSA employee.
 - (10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.
- (c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor.
- (1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the contracting officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the

Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE/NNSA shall be in the form of a written report and shall include:

- (i) the contract number under which the subject invention was made;
- (ii) the inventor(s) of the subject invention;
- (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
- (iv) the date and identification of any publication, on sale or public use of the invention;
- (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
- (vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
- (vii) all sources of funding by Budget and Resources (B&R) code; and
- (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE/NNSA under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of *42 U.S.C. 5908*.

- (2) Publication after disclosure. After disclosure of the subject invention to the DOE/NNSA, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

- (3) Election by the Contractor under an advance class waiver. If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE/NNSA within two (2) years of the date of the disclosure of the subject invention to DOE/NNSA, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 *U.S.C. 102(b)*, the period for election may be shortened by DOE/NNSA to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.
- (4) Filing of patent applications by the Contractor under an advance class waiver. If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under 35 *U.S.C. 102(b)*, whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.
- (5) Submission of patent information and documents. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:
 - (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
 - (ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
 - (iii) The patent number, issue date, and a copy of any issued patent claiming

the subject invention.

- (6) Contractor's request for an extension of time. Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE/NNSA.
 - (7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR Part 40.
- (d) Conditions When the Government May Obtain Title Notwithstanding an Advance Class Waiver.
- (1) Return of title to a subject invention. If the Contractor requests that DOE/NNSA acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE/NNSA may acquire such title or rights from the Contractor, or DOE/NNSA may decide against acquiring such title or rights from the Contractor, at DOE/NNSA's sole discretion.
 - (2) Failure to disclose or elect to retain title. Title vests in DOE/NNSA and DOE/NNSA may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.
 - (3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE/NNSA's written request for title, the Contractor continues to retain title in that country.
 - (4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey

title to the subject invention to DOE/NNSA.

- (5) Termination of advance class waiver. DOE/NNSA may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE/NNSA, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.
- (e) Minimum Rights of the Contractor.
- (1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE/NNSA may grant or refuse to grant such a request by the Contractor. If DOE/NNSA grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
 - (2) Transfer of a Contractor license. DOE/NNSA shall approve any transfer of the Contractor's license in a subject invention, and DOE/NNSA may determine that the Contractor's license is non-transferable, on a case-by-case basis.
 - (3) Revocation or modification of a Contractor license. DOE/NNSA may revoke or modify the Contractor's domestic license 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 in 37 CFR Part 404 and DOE/NNSA licensing regulations. DOE/NNSA may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE/NNSA may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.
 - (4) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE/NNSA shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE/NNSA for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the

right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE/*NNSA* licensing regulations.

- (f) Contractor Action to Protect the Government's Interest.
- (1) Execution and delivery of title or license instruments. The Contractor agrees to execute or have executed, and to deliver promptly to DOE *or NNSA* all instruments necessary to accomplish the following actions:
 - (i) establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;
 - (ii) convey title in a subject invention to DOE/*NNSA* pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or
 - (iii) enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.
 - (2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor 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) Contractor procedures for reporting subject inventions to DOE/*NNSA*. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE/*NNSA*. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.
 - (4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any

action required by the corresponding patent office.

- (5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy/*National Nuclear Security Administration*. The Government has certain rights in the invention."
 - (6) Avoidance of Royalty Charges. If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.
 - (7) DOE/*NNSA* approval of assignment of rights. Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE/*NNSA*.
 - (8) Small business firm licensees. The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.
 - (9) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.
- (g) Subcontracts.
- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
 - (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting

Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.

- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations or small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.
 - (4) DOE/NNSA and subcontractor contract. With respect to subcontracts at any tier, DOE/NNSA, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE/NNSA with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
 - (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
 - (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
 - (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (h) Reporting on Utilization of Subject Inventions. Upon request by DOE *or* NNSA, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its

licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE *or* NNSA. Upon request by DOE *or* NNSA, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE *or* NNSA, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE *and* NNSA agree not to disclose such information to persons outside the Government, to the extent permitted by law.

- (i) Preference for United States Industry. Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention 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, DOE *or* NNSA may waive the requirement for such an agreement upon a showing by the Contractor 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) U.S. Competitiveness. The Contractor 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 Contractor 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 Contractor 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. Should the Contractor or other such entity receiving rights in the invention(s): (1) undergo a change in ownership amounting to a controlling interest, or (2) sell, assign, or otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.
- (k) March-In Rights. With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE *or* NNSA may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, 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. If the Contractor, assignee or exclusive licensee refuses such a request, DOE/*NNSA* has the right to grant such a license itself if DOE/*NNSA* determines that-

- (1) Such action is necessary because the Contractor 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 that are not reasonably satisfied by the Contractor, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor 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.
- (l) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.
- (m) Reports.
- (1) Interim reports. Upon DOE's *or NNSA's* request, the Contractor shall submit to DOE *or NNSA*, no more frequently than annually, a list of subject inventions disclosed to DOE/*NNSA* during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE/*NNSA* in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.
 - (2) Final reports. Upon DOE's *or NNSA's* request, the Contractor shall submit to DOE *or NNSA*, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(n) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility

- (1) to practice or have practiced by or for the Government at the facility, and
- (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(o) Atomic Energy.

- (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
- (2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(p) Classified Inventions.

- (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
- (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.
- (q) Examination of Records Relating to Inventions.
- (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
 - (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE/NNSA, and the Contracting Officer believes the unreported invention may be a subject invention, DOE *or* NNSA may require the Contractor to submit to DOE *or* NNSA a disclosure of the invention for a determination of ownership rights.
 - (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.
 - (4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE *or* NNSA, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.
- (r) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE/NNSA in accomplishing patent- related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (s) Educational Awards Subject to 35 U.S.C. 212. The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

- (t) Annual Appraisal by *NNSA* Patent Counsel. *NNSA* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE and *NNSA* policy.
- (u) Publication. *It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE or NNSA or the Contractor, timely notification of the release of scientific and technical publications shall be provided to the Contractor personnel responsible for patent matters. Contractor delivery of this data and information to the Patent Counsel shall be considered met if the required data and information is entered into an appropriate database of listed publications and the Patent Counsel has "read-only" access to the database. A copy of this data and information must be made available to the Contracting Officer upon request.*
- (v) Termination of Contractor's Advance Class Waiver. If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE or *NNSA* relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE or *NNSA* shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

(End of Clause)

- c. Clause I-36 FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (OCT 2021) (Deviation) is hereby removed as Executive Order 14042 has been revoked.

All other Terms and Conditions remain unchanged by this modification.

