

2. AMENDMENT/MODIFICATION NO. 0330	3. EFFECTIVE DATE 10/01/2024	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
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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
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8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) CONSOLIDATED NUCLEAR SECURITY, LLC Attn: Susan Starr PO Box 2009 Oak Ridge TN 37830	(x)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
	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)  
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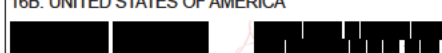
**13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

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).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 43.103(a), Mutual Agreement of the Parties
	D. OTHER (Specify type of modification and authority)

**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.)  
UEI: EWV8QKG1JUV7  
The purpose of this modification is to convert the portion of the contractor's available award fee for managing and operating the Pantex Plant (PX) under CLIN 0001K from October 1, 2024, to October 31, 2024, to fixed fee.  
Payment:  
Fund: 00000 Appr Year: 0000 Allottee: 00 Report  
Entity: 000000 Object Class: 00000 Program:  
0000000 Project: 0000000 WFO: 0000000 Local Use:  
0000000  
Period of Performance: 07/01/2014 to 09/30/2027

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.

15A. NAME AND TITLE OF SIGNER (Type or print) Richard J. Tighe, Ph.D. President and Chief Executive Officer	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) BRITNEY CHAVEZ
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	16B. UNITED STATES OF AMERICA  (Signature of Contracting Officer)
15C. DATE SIGNED 09/24/2024	16C. DATE SIGNED 24 September 2024

1. The following changes are made to Part I – The Schedule, Section B – Supplies or Services and Prices/Costs as a result of this modification:

a. CLIN 0001K is revised as follows:

**CLIN 0001K - MANAGEMENT & OPERATION (M&O) OF Y12/PX (OCT 1, 2022 – SEP 30, 2024); MANAGEMENT & OPERATION OF PX (OCT 1, 2024 – OCT 31, 2024); MANAGEMENT & OPERATION (M&O) OF Y12 (OCT 1, 2024 – SEP 30, 2025) (ADDED 0269, MODIFIED 0291, MODIFIED 0327, MODIFIED 0330)**

*Note:* Site Separation Activities will be considered fully executed only when both parties agree that all deliverables and activities required for each site to operate independently have been completed.

*Services being Acquired under this CLIN:* The Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely completing all work in accordance with Section J, Appendix A, Statement of Work, except for the work covered by CLIN 0001O, CLIN 0002 and CLIN 0003. This CLIN includes construction projects other than: (1) Capital Construction Projects as defined in Clause H-8 of this Contract, and (2) any other construction projects the parties mutually agree will be performed under CLIN 0003.

For the period October 1, 2022 – September 30, 2024, the Fee Rate shall not exceed 3.75% applied to the AFB for M&O Activities and 1% applied to the AFB for Site Separation Activities for a total available fee rate of 4.75%.

~~For the period October 1, 2024 – October 31, 2024, the Fee Rate shall not exceed 4.75% applied to a 1/12 pro-rata share of the AFB attributable to the management and operation of Pantex.~~

~~For the period October 1, 2024 – October 31, 2024, the fee attributable to the management and operation of Pantex is a total Fixed Fee amount of \$3,402,845 based on the application of a combined 4.75% (3.75% for M&O activities and 1% for Site Separation activities) to an estimated 1-month prorated AFB. The estimated prorated AFB is calculated using the Pantex site split representing the President’s Budget Request (i.e., DOE Laboratory Tables) for the applicable contract period (i.e., fiscal year 2025) less an 11.4% exclusion rate for non-fee bearing costs and less the 4.75% fee both of which are included in the site split.~~

For the period October 1, 2024 – September 30, 2025, the Fee Rate shall not exceed 3.75% of the AFB attributable to the management and operation of Y12. Should Site Separation Activities continue during this option’s performance period, an additional monthly prorated fee percent of 1% shall be provided based on a mutually agreed-to schedule duration (e.g., if the parties mutually agree to a three-month completion schedule for Site Separation Activities, the applicable available award fee would be .01\*(3/12)\*AFB).

The award fee **and fixed fee** available under CLIN 0001K is:

Performance Period	AFB (Fee Base)	Available Award Fee (AF)	Fixed Fee	Total Fee Earned
01 Oct 2022 – 30 Sep 2023	\$2,253,962,386	\$107,063,213	N/A	\$95,948,361
01 Oct 2023 – 30 Sep 2024	TBD in accordance with AFB	TBD in accordance with B-10 ANNUAL FEE BASELINE	N/A	
*01 Oct 2024 – 31 Oct 2024 (PX only)	<del>\$79,937,619</del> N/A	<del>\$3,797,037</del> N/A	<del>\$3,402,845</del>	
**01 Oct 2024 – 30 Sep 2025 (Y-12 only)	TBD in accordance with AFB	TBD in accordance with B-10 ANNUAL FEE BASELINE	N/A	

\*NOTE: That portion attributable to PX operation only  
\*\*NOTE: That portion attributable to Y-12 operation only

b. Clause B-2, Contract Fee Structures is revised as follows:

**B-2 CONTRACT FEE STRUCTURES (MODIFIED 0015, 0075, 0121, 0165, 0185, 0193, 0236, 0252, 0269, 0330)**

(a) Fee Structure for CLIN 0001 [MODs 0121, 0165, 0193, 0236, 0252, 0269, 0330]

(1) Definitions.

Total Available Fee = Fixed Fee + Award Fee

(2) The Total Available Fee for the Base Term of the Contract, and the option period(s), if exercised by NNSA, is shown in the tables for CLIN 0001B, 0001C, 0001D, and 0001E, including 0001G, if exercised. The Total Available Fee shall not exceed 3.5% of the FY 2011 budget (\$1.33B for both Pantex Plant and Y-12, and \$1.50B should SRTO option be exercised).

The Total Available Fee for 6-month extension period (October 1, 2021 – March 31, 2022), excluding Strategic Partnership/Other Reimbursable Work, is shown in the CLIN 0001I table. The Total Available Fee shall not exceed the mutually agreed upon amount reflected in the CLIN 0001I table.

The Total Available Fee for 6-month extension period (April 1, 2022 – Sept 30, 2022), excluding Strategic Partnership/Other Reimbursable Work, is shown in the CLIN 0001I table. The Total Available Fee shall not exceed the amount reflected in the CLIN 0001I table.

The Total Available Fee for period of performance beginning October 1, 2022, is shown in the above tables for CLINs 0001K, and, if exercised, 0001L, 0001M, and 0001N, respectively.

(i) Fixed Fee

The Contractor will be paid a Fixed Fee (except as identified in Section B, B-2(a)(4), Strategic Partnership Projects/Other Reimbursable Work Fixed Fee) during the first year of the Base Term in the CLIN 0001B table. No Fixed Fee will be paid for the remaining years of the Contract except as noted below for the two 6-month extension periods from October 1, 2021 - March 31, 2022 and April 1, 2022 – Sept 30, 2022.

The Contractor will be paid a fixed fee for the 6-month extension period (October 1, 2021 – March 31, 2022) as identified in the CLIN 0001I table.

The Contractor will be paid a fixed fee for the 6-month extension period (April 1, 2022 – Sept 30, 2022) as identified in the CLIN 0001I table.

The Contractor will be paid a fixed fee for the management and operation of Pantex during period October 1, 2024 – October 31, 2024, as identified in the CLIN 0001K table in accordance with I-23, DEAR 970.5232-2, Payments and Advances (Oct 2021) Alternate II (Oct 2021) Alternate IV (Dec 2000) (NNSA Class Deviation Feb 2022).

Fee rates used in support of the extension of any Pantex option period under FAR 52.217-8, Option to Extend Services, shall be the applicable fee rate(s) presented in the terms of the applicable CLIN in Section B of the contract.

(ii) Award Fee

The Contractor will be paid an Award Fee for accomplishments under the Performance Evaluation and Measurement Plan (PEMP). The Available Award Fee is reflected in the above table for CLINs 0001B, 0001C, 0001D, and 0001E, including 0001G, if exercised.

The Contractor will be paid an Award Fee for the 6-month extension period (October 1, 2021 – March 31, 2022) for accomplishments under the PEMP. The Available Award Fee for the 6-month extension period is reflected in the CLIN 0001I table.

The Contractor will be paid an Award Fee for the 6-month extension period (April 1, 2022 – Sept 30, 2022) for accomplishments under the PEMP. The Available Award Fee for this 6-month extension period is reflected in the CLIN 0001I table.

The Contractor will be paid an Award Fee for period of performance beginning October 1, 2022, for accomplishments under the Performance Evaluation and Measurement Plan (PEMP). The Available Award Fee is reflected in the above tables for CLINs 0001K, and, if exercised, 0001L, 0001M, and 0001N, respectively.

~~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.~~

~~Fee rates used in support of the extension of any Y-12 option period under FAR 52.217-8, Option to Extend Services, shall be the applicable fee rate(s) presented in the terms of the applicable CLIN in Section B of the contract.~~

(3) Cost Savings Incentive Fee

The Contractor will be paid a Cost Savings Incentive Fee under the approved Cost Reduction Proposal (CRP) submitted in accordance with the Contract's Section I Clause entitled "DEAR 970.5215-4, Cost Reduction". In the event savings are not sustained through FY2021, as verified by the Government, the Government is entitled to reimbursement of previously paid CSIF and will obtain it out of future fee. Payment will be made promptly but not later than 90 days after the cost baseline data and adequate records to support validation are supplied to the Government to make a decision on the share of cost savings.

Transition Term: The Contractor may begin cost savings initiatives before the CRP is approved and may be eligible for cost savings incentive fee if the terms of the Contract's Section I Clause entitled "DEAR 970.5215-4, Cost Reduction" can be met. Cost savings initiatives before the CRP is approved could include changes in the full-time equivalent (FTE) baseline during the Transition Term, provided there is a corresponding reduction in costs. Savings will be paid in accordance with the Contract's Section I Clause entitled "DEAR 970.5215-4, Cost Reduction".

6-Month Extension Period (October 1, 2021 – March 31, 2022): The cost saving program, as implemented under CLIN 0001B through CLIN 0001C, ends September 30, 2021. The Contractor will not be eligible to earn CSIF for the 6-month extension period from October 1, 2021 - March 31, 2022, or for any subsequent contract period. During the 6-month extension period from October 1, 2021 - March 31, 2022, the Contractor will be paid a monthly Cost Savings Fixed Fee, as negotiated, and reflected in the CLIN 00001I table above. This amount is in addition to CSIF that may be payable to CNS for FY 2021 after validation by CNS and verification by NNSA in response to the Cost Savings Validation Report. During the 6-month extension period, the Contractor agrees that it shall not take any action that increases cost or staffing levels beyond those levels set forth in the approved FY 2022 Annual Controlled Baseline (ACB), unless approved by the Contracting Officer.

(4) Strategic Partnership Projects/Other Reimbursable Work Fixed Fee [MOD 0165, 0236, 0252, 0269]

The estimated cost and the available Fixed Fee for Strategic Partnership Projects/Other Reimbursable Work during the Base Term of the Contract and for each Option Term will be established by the NNSA prior to the commencement of the applicable year of the Contract and will be incorporated into the CLIN 0001H table through a modification to this Contract. The Fixed-Fee for Strategic Partnership Projects/Other Reimbursable Work will be up to 3% of the estimated cost of each project. If the work sponsor or the Government subsequently orders material changes in the amount or character of the Strategic Partnership Projects/Other Reimbursable Work, an equitable adjustment of the fee, if any, shall be made in accordance with the Contract's Section I Clause entitled "DEAR 970.5243-1, Changes." If the Contractor anticipates the amount of estimated cost to change for Strategic Partnership Projects/Other Reimbursable Work due to new or deleted reimbursable work projects, an adjustment to the estimated cost and Strategic Partnership Projects/Other Reimbursable Work Fixed Fee for reimbursable work shall be submitted for approval by the Contracting Officer. Strategic Partnership Projects Fixed Fee is not a component of Total Available Fee under CLIN's 0001B, 0001C, 0001D, 0001E and 0001G, if exercised.

A Fixed Fee for the 6-month extension period (October 1, 2021 – March 31, 2022) will be paid monthly at the amounts reflected in the in CLIN0001J table. Strategic Partnership Projects Fixed Fee is not a component of Total Available Fee under CLIN's 0001B, 0001C, or CLIN 0001I.

A Fixed Fee for the 6-month extension period (April 1, 2022 – Sept 30, 2022) will be paid monthly at the amounts reflected in the in CLIN0001J table. Strategic Partnership Projects Fixed Fee is not a component of Total Available Fee under CLIN’s 0001B, 0001C, or CLIN 0001I.

A Fixed Fee for period of performance beginning October 1, 2022, will be paid monthly at the amounts reflected in the CLIN 0001O table and, if exercised, 0001P, 0001Q, and 0001R, respectively. Strategic Partnership Projects Fixed Fee is not a component of Total Available Fee under CLINs 0001B, 0001C, 0001I, 0001K, 0001L (Option), 0001M (Option), or 0001N (Option).

(5) Provisional Payment of Fee [MODs 0193, 0236, 0252]

(i) The Fixed Fee for the Base Term of the Contract shall be paid monthly at the rate of one-twelfth (1/12) of the annual Fixed Fee per month. Such payment amounts are to be drawn down by the Contractor from the Contract’s special financial institution account in monthly installments on the last day of each month.

For the 6-month period (October 1, 2021 – March 31, 2022) the fixed fee shall be paid monthly as shown in CLIN 0001I and CLIN 0001J tables. Such payment amounts are to be drawn down by the Contractor from the Contract’s special financial institution account in monthly installments on the last day of each month.

For the 6-month period (April 1, 2022 – Sept 30, 2022) the fixed fee shall be paid monthly as shown in CLIN 0001I and CLIN 0001J tables. Such payment amounts are to be drawn down by the Contractor from the Contract’s special financial institution account in monthly installments on the last day of each month.

(ii) The Award Fee is authorized for draw down by the Contractor from the Contract’s special financial institution account as follows:

(A) In monthly provisional fee payments equivalent to 3% of the Available Award Fee (with the understanding that the Contractor is authorized to draw down 51% of the total Available FY 2019 Award Fee on a provisional basis),or

(B) Upon completion of milestones or any other methodology as set forth in the Performance Evaluation and Measurement Plan and its supporting documentation; and

(C) The balance, if any, upon issuance of the Contracting Officer’s notification in accordance with Section B, B-7, Performance Evaluation and Measurement Plan.

(D) If the provisional payments made above exceed the Award Fee earned or the Contractor fails to fully accomplish the objective/incentive for which it has received milestone completion or provisional payments, the Contracting Officer will determine if the Contractor is to refund all or part of the provisional fee it has received. Any refund made shall include interest. Interest will be paid at the published prime rate of the financial institution (depository) in which the special account is established or at the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) whichever is higher, which is applicable to the period in which any unearned payments were made. Interest paid resulting from this clause is an unallowable cost.

(E) The Contractor shall remit any balance due payable to the Government in accordance with directions to be provided by the Contracting Officer.

(F) For the 6-month extension period (October 1, 2021 – March 31, 2022), the contractor is authorized to draw down 50% of total monthly available Award Fee per month shown in CLIN 0001I. Such payment amounts are to be drawn down by the Contractor from the Contract’s special financial institution account in monthly installments on the last day of each month.

For the 6-month extension period (April 1, 2022 – Sept 30, 2022), the contractor is authorized to draw down 50% of total monthly available Award Fee per month shown in CLIN 0001I. Such payment amounts are to be drawn down by the Contractor from the Contract’s special financial institution account in monthly installments on the last day of each month.

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

(iii) The Contractor is authorized semi-annual provisional payments of the Cost Savings Incentive Fee. The Contractor is authorized to be paid on March 31 and September 30 of each year of the 24-month fee sharing period. Each semiannual provisional CSIF payment may be up to 50% of the fee associated with the sustainment of savings validated by NNSA and up to 25% of the CSIF associated with that year's claimable savings from the approved CRP. If the provisional payment results in overpayment, the Contracting Officer will determine if the Contractor is to refund all or part of the provisional fee it has received. Any refund made shall include interest. Interest will be paid at the published prime rate of the financial institution (depository) in which the special account is established or at the interest rate established by the Secretary of Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) whichever is higher, which is applicable to the period in which any unearned payments were made. Interest paid for this clause is an unallowable cost.

For the 6-month extension period (October 1, 2021 – March 31, 2022), the contractor is authorized to draw the Cost Savings Fixed Fee monthly as shown in the CLIN 0001I table. Such payment amounts are to be drawn down by the Contractor from the Contract's special financial institution account in monthly installments on the last day of each month.

(6) Unearned Fee

NNSA HQ will determine how unearned fee is reinvested in the Nuclear Security Enterprise. Unearned fee will not be available for future performance periods.

(7) Except for the conditions identified in this clause, there shall be no adjustment in the amount of the Contractor's fee by reason of differences between the FY11 budgeted cost for performance of the work under this Contract and the actual cost of performance of that work.

(b) Fee Structures for CLIN 0002 [MODs 0015, 0075]

(1) Definitions

Available Fee = Unrealized Cost Objective Fee + Schedule Objective Fee.

(2) The Available Fee or Fixed Fee for CLIN 0002 scope is shown at the SUB-CLIN level for each discrete scope of work, with specific details of the fee structure included in Section J, Appendix B-2, UPF Fee Plan and Supplementary Annexes.

(3) Notwithstanding the Contract's Section I Clause entitled "DEAR 970.5243-1, Changes," the Contractor's proposed fee percentage (5%) is not subject to adjustment but will be used by the Government for establishing the target performance objective, in accordance with Section J, Appendix B-2, UPF Fee Plan and Supplementary Annexes.

(4) SUB-CLIN Contract Values

(i) The estimated values in the SUB-CLIN level will be updated by the Contracting Officer by bilateral Contract modification as required to reflect any negotiated changes to the UPF Fee Plan and Supplementary Annexes.

(ii) The estimated contract price values in the SUB-CLIN level will be updated with the final contract price values by the Contracting Officer via a bilateral Contract modification after the final fee determinations are made by the Government.

(5) Provisional Payment of Fee

(i) Provisional payment of fee for CLIN 0002 shall be requested by the Contractor and approved by the Contracting Officer in accordance with Section J, Appendix B-2, UPF Fee Plan and Supplementary Annexes.

(ii) The balance of Available Fee or Fixed Fee, if any, will be paid upon issuance of the Contracting Officer's notification in accordance with Section J, Appendix B-2, UPF Fee Plan and Supplementary Annexes.

(A) If the provisional payments made above exceed the Total Earned Fee in CLIN 0002, or the Contractor fails to fully accomplish the performance objectives for which it has received provisional payments, the Contracting Officer will determine if the Contractor is to refund all or part of the provisional fee it has received.

(B) The Contractor shall remit any balance due payable to the Government in accordance with Section J, Appendix B-2, UPF Fee Plan and Supplementary Annexes.

(6) Earned Payment of Fee

(i) Earned Fee is due the Contractor by virtue of its meeting the stated performance objectives for completing the CLIN 0002 Contract requirements and deliverables entitling it to fee, in accordance with Section J, Appendix B-2, UPF Fee Plan and Supplementary Annexes.

(ii) All fee is 100% at risk until earned. How and when fee is earned will be negotiated and captured in each Annex. All fee is subject to the terms and conditions of this Contract, including any special contract requirements, in accordance with Section J, Appendix B-2, UPF Fee Plan and Supplementary Annexes.

(iii) All negotiated fee associated with the cost performance objective shall be provisional through the end of the project and/or contract, until a Final Fee Determination is made, in accordance with Section J, Appendix B-2, UPF Fee Plan and Supplementary Annexes.”

(c) Fee Structures for CLIN 0003 Capital Construction Projects [MOD 0185]

The fee structure(s), and associated terms and conditions established under CLIN 0003 will be determined when each Sub-CLIN is awarded.

2. The following changes are made to Part II – Contract Clauses, Section I – Contract Clauses as a result of this modification:

a. Clause I-23, DEAR 970.5232-2, Payment and Advances is updated as follows:

**I-23, DEAR 970.5232-2, PAYMENTS AND ADVANCES (OCT 2021) ALTERNATE II (OCT 2021) ALTERNATE IV (DEC 2000) (NNSA CLASS DEVIATION FEB 2022) (REPLACED 0255, MODIFIED 0330)**

(a) Payment of Total Available Fee: Base Fee, Fixed Fee, and Performance Fee.

(1) The base fee and/or fixed fee amounts, if any, are payable in equal monthly installments. Total available fee amount earned is payable following the Government’s Determination of Total Available Fee Amount Earned. Base fee and fixed fee amounts and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No base fee or fixed fee amounts or total available fee amount earned payments may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.

(2) *Provisional fee.* Additionally, if the Contracting Officer authorizes provisional payment of fee and for only as long as the Contracting Officer authorizes it, the Contractor may withdraw from funds advanced on the last working day of each month a provisional fee equal to ~~\*\*\*TBD\*\*\*~~ **3** percent of the annual available award fee amount. The Contracting Officer may for any reason withdraw his/her authorization allowing the Contractor's withdrawal of provisional fee if at any time in his/her judgement the Contractor will not earn the provisional fee. The Contracting Officer’s decision to authorize the Contractor’s withdrawal of provisional fee or to withdraw such authorization is solely within the Contracting Officer’s discretion. Following the Government’s determination of total available fee amount earned, the Contractor may withdraw from funds advanced the amount by which earned fee exceeds provisional fee; and must immediately return to funds advanced the amount by which provisional fee exceeds earned fee.

(b) *Payments on account of allowable costs.* The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds.

(c) *Timing of payments.* Funds for payments of allowable costs, including payments for pension plan contributions, shall be drawn from the special financial institution account when those payments are made, not when the costs are accrued.

(d) *Special financial institution account-use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix P. The contractor will follow current procedures and requirements for establishing and managing the special financial institution account that are stated in the Department's Financial Management Handbook and relevant Department of Treasury rules.

(e) *Use of the special financial institution account for unallowable costs.* Government funds in the special financial institution account shall be used only for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer.

(f) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(g) *Financial settlement.* The Government shall promptly pay to the Contractor the unpaid balance of allowable costs and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after—

(1) Compliance by the Contractor with DOE/NNSA's patent clearance requirements; and

(2) The furnishing by the Contractor of—

(i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement which shall also include a schedule reconciling the allowable costs by fiscal year to the payments made by fiscal year;

(iii) The accounting for Government-owned property required by the clause entitled "Property"; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, 48 CFR 970.5228-1, "Insurance— Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(i) Any claim which the Government may have against the Contractor in connection with this contract; and

(ii) Deductions due under the terms of this contract and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(h) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(i) *Discounts.* The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

(j) *Collections.* All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.

(k) Direct payment of charges. The Government reserves the right, upon 10 days' written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor.

(1) *Determining allowable costs.* Regardless of contract type, the Contracting Officer shall determine allowable costs in accordance with 48 CFR 31.2 and 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

(End of clause)