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PART I – THE SCHEDULE

SECTION B: SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SERVICES BEING ACQUIRED

CONTRACT LINE ITEM NUMBER (CLIN) 0001 TRANSITION PERIOD(MODIFIED P00001)

In accordance with the terms and conditions of this Contract, the Contractor shall provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incidental to, the efficient, effective, and safe transition of Management & Operating (M&O) services at the Pantex Plant (Pantex) near Amarillo, TX, (hereinafter referred to as "Pantex"). All relocation related costs/expenses for the initial proposed Key Personnel team shall be funded only by CLIN 0001 Transition Period regardless of when those costs/expenses are incurred. Relocation expenses shall be consistent with FAR 31.205-35. The transition period is a three-and-a-half-month period of performance with a cost-reimbursement not-to-exceed amount of $13,000,000. Costs associated with relocation of initial proposed Key Personnel team may be incurred up to one year after the end of the transition period.

CLIN 0002 MANAGEMENT AND OPERATION OF THE PANTEX PLANT

In accordance with the terms and conditions of this Contract, the Contractor shall provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incidental to, the efficient, effective, and safe management and operation of Pantex as provided in the Statement of Work.

CLIN 0002A BASE PERIOD (YEARS 1-5) (MODIFIED P00002)

The Base Period is five years of performance on a cost-plus-fixed-fee basis and an award-fee basis. Period of performance is November 1, 2024, to October 31, 2029

CLIN 0002B OPTION PERIOD 1

Option Period 1 is five years of performance on a cost-plus-fixed-fee basis and an award-fee basis.

CLIN 0002C OPTION PERIOD 2

Option Period 2 is five years of performance on a cost-plus-fixed-fee basis and an award-fee basis.

CLIN 0002D OPTION PERIOD 3

Option Period 3 is five years of performance on a cost-plus-fixed-fee basis and an award-fee basis.

CLIN 0003 STRATEGIC PARTNERSHIP PROJECTS

The Contractor shall, in accordance with Section J, Appendix A, Chapter II Work Scope Structure, paragraph 1.3 Strategic Partnership Projects (SPP), and all the other 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 incidental to, the effective, efficient, and safe performance of all SPP efforts as directed by the Contracting Officer.

CLIN 0003A BASE PERIOD (MODIFIED P00001)

The Base Period is five years of performance on a cost-plus-fixed-fee basis. Period of performance is November 1, 2024, to October 31, 2029.

CLIN 0003B OPTION PERIOD 1

Option Period 1 is five years of performance on a cost-plus-fixed-fee basis.

CLIN 0003C OPTION PERIOD 2

Option Period 2 is five years of performance on a cost-plus-fixed-fee basis.

CLIN 0003D OPTION PERIOD 3

Option Period 3 is five years of performance on a cost-plus-fixed-fee basis.

CLIN 0004 CAPITAL CONSTRUCTION PROJECTS

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 incidental to, the efficient, effective, and safe management and/or performance of Capital Construction Projects (as defined in Clause H-18 of this Contract) and, in accordance with H-18(a), other non-line item capital projects by mutual agreement of the parties or as directed by the NNSA to be completed under this CLIN. The Government will separately select individual Capital Construction Projects for inclusion under this CLIN, and negotiate the associated scope, cost/price, and fee (if applicable), based on project risk and complexity subject to the limitations of 48 CFR 915.404-4-71, after award of the Contract. Each Capital Construction Project will be identified hereunder as a Sub-CLIN to CLIN 0004.

B-2 CONTRACT TYPE AND VALUE

(a) This Contract is a performance based contract for the Management and Operation of DOE/NNSA facilities governed by FAR 17.6, DEAR 917.6, and DEAR 970. It is an M&O cost-reimbursement contract with terms for a Fixed Fee (FF) and an Award Fee (AF) for CLIN 0002 and terms for a FF for CLIN 0003. The contract types and values under CLIN 0004 shall be established as each Sub-CLIN is awarded under CLIN 0004. The estimated value of this contract, inclusive of the Transition Period and all Base and Option Periods, is $30.1 billion.

(b) Transition is Cost-Reimbursement for CLIN 0001. No Fee is permitted on CLIN 0001.

(c) The CLIN 0002 annual Total Available Fee (TAF), FF, and AF shall be established unilaterally by NNSA prior to commencement of each applicable Contract Period. The amount will be established using the Annual Controlled Baseline (ACB) process in Section B-8 and the formulas below. FF is FF for the period. The TAF is the product of the fee base multiplied by the TAF% set forth in Table 1 below for the applicable contract period. The fee base, TAF, FF, and AF shall be calculated using the following formulas:

Fee Base = ((CLIN 0002 ACB Attributable to Current Year Funding)*(1-0.15)) / (1 + TAF%)

TAF Amount = Fee Base * TAF% set forth in Table 1

FF Amount = TAF Amount * 15%

AF Amount = TAF Amount - FF Amount

The 0.15 adjustment to the numerator of the fee base formula represents fee base exclusions prescribed by DEAR 970.1504-1-7. This exclusion rate is not subject to future revision based on actual cost experience and is fixed for the life of the Contract.

Uncosted funding balances from legacy management and operating contracts used to fund current work scope under this Contract shall not result in any additional fee entitlement. Pursuant to Section L-11 of the Request for Proposal, Offerors were to factor consideration for potential work scope funded by carry over funding into their proposed fee percentages. Therefore, the Contractor shall not be entitled to any equitable adjustment in available fee during performance for work scope funded by carry over funding from predecessor contracts. Similarly, carry over funding is excluded from consideration in establishing the TAF as shown in the formula above.

Adjustments to the ACB and TAF will be in accordance with Section B, Clause B-8, *Annual Controlled Baseline Applicable to Performance*, subparagraph (c)(2).

Table 1 - CLIN 0002 - Management and Operation of the Pantex Plant

Contract Period*	TAF%	Initial Fee Base	Updated Fee Base	Fixed Fee	Available Award Fee	Total Available Fee	Earned Award Fee	Total Earned Fee
Base Period (Year 1)	2.20%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Base Period (Year 2)	2.30%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Base Period (Year 3)	2.40%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Base Period (Year 4)	2.50%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Base Period (Year 5)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Periods								
Option Period 1 (Year 1) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 1 (Year 2) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 1 (Year 3) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 1 (Year 4) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 1 (Year 5) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 2 (Year 1) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 2 (Year 2) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 2 (Year 3) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 2 (Year 4) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 2 (Year 5) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 3 (Year 1) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 3 (Year 2) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 3 (Year 3) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 3 (Year 4) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Option Period 3 (Year 5) (if exercised)	2.60%	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD
Total		$TBD	$TBD	$TBD	$TBD	$TBD	$TBD	$TBD

*The Contract Periods will be updated to align with the fiscal year(s) after Contract award. There may be Contract Periods shorter or longer than a full year once the realignment occurs, and there may be Contract Periods that for fee purposes cross from the Base Period into an Option Period, or from one Option Period to another. The overall Contract period of performance and the periods of performance for the Base Period and each Option Period will remain unchanged.

(d) The CLIN 0003 (Strategic Partnership Projects (SPP) -- Section J, Appendix A Statement of Work) annual FF shall be established unilaterally by NNSA prior to commencement of each applicable Contract Period. The FF is the product of the fee base multiplied by 2.00%. The fee base shall be calculated using the following formula:

((CLIN 0003 Estimated Budget)*(1-0.15)) / (1 + 0.02)

The 0.15 adjustment to the numerator of the fee base formula represents fee base exclusions prescribed by DEAR 970.1504-1-7. This exclusion rate is not subject to future revision based on actual cost experience and is fixed for the life of the Contract.

Once established, CLIN 0003 FF shall not be subject to revision based on actual cost or budget experience. Table 1 below will be updated through unilateral modifications as applicable.

Table 2 - CLIN 0003 - Strategic Partnership Projects

Contract Period*	Fee Base	Fixed Fee	Total
Base Period (Year 1)	$TBD	$TBD	$TBD
Base Period (Year 2)	$TBD	$TBD	$TBD
Base Period (Year 3)	$TBD	$TBD	$TBD
Base Period (Year 4)	$TBD	$TBD	$TBD
Base Period (Year 5)	$TBD	$TBD	$TBD
Option Periods			
Option Period 1 (Year 1) (if exercised)	$TBD	$TBD	$TBD
Option Period 1 (Year 2) (if exercised)	$TBD	$TBD	$TBD
Option Period 1 (Year 3) (if exercised)	$TBD	$TBD	$TBD
Option Period 1 (Year 4) (if exercised)	$TBD	$TBD	$TBD
Option Period 1 (Year 5) (if exercised)	$TBD	$TBD	$TBD
Option Period 2 (Year 1) (if exercised)	$TBD	$TBD	$TBD
Option Period 2 (Year 2) (if exercised)	$TBD	$TBD	$TBD
Option Period 2 (Year 3) (if exercised)	$TBD	$TBD	$TBD
Option Period 2 (Year 4) (if exercised)	$TBD	$TBD	$TBD
Option Period 2 (Year 5) (if exercised)	$TBD	$TBD	$TBD
Option Period 3 (Year 1)	$TBD	$TBD	$TBD

(if exercised)			
Option Period 3 (Year 2) (if exercised)	$TBD	$TBD	$TBD
Option Period 3 (Year 3) (if exercised)	$TBD	$TBD	$TBD
Option Period 3 (Year 4) (if exercised)	$TBD	$TBD	$TBD
Option Period 3 (Year 5) (if exercised)	$TBD	$TBD	$TBD
Total	$TBD	$TBD	$TBD

*The Contract Periods will be updated to align with the fiscal year after Contract award. There may be Contract Periods shorter or longer than a full year once the realignment occurs, and there may be Contract Periods that for fee purposes cross from the Base Period into an Option Period, or from one Option Period to another. The overall Contract period of performance and the periods of performance for the Base Period and each Option Period will remain unchanged.

(e) Fee Structures for CLIN 0004 Capital Construction Projects. The fee/pricing structure(s), and associated terms and conditions established under CLIN 0004 will be determined when each Sub-CLIN is awarded.

(f) The TAF percentage and portion attributable to FF for CLIN 0002, and the FF percentage for CLIN 0003 will not be negotiated on an annual basis and are established at Contract award.

B-3 CONTRACT FEE STRUCTURES

All Team Members (See G-6, Recognition of Performing Entity and Team Members) shall share in all the fee pools, whether they are subcontractors or members of a joint-venture and/or other teaming arrangement as defined in FAR 9.601. Separate, additional subcontractor fee for teaming partners shall not be considered an allowable cost under the Contract. If a subcontractor, supplier, or lower-tier subcontractor is a wholly-owned by, majority-owned by, or an affiliate of any team member, any fee or profit earned by such entity shall not be considered an allowable cost under this Contract unless otherwise approved by the Contracting Officer. The fee restriction above does not apply to Team Members that are:

(i) small businesses; or
(ii) Protégé firms as part of an approved Mentor-Protégé relationship under the Clause entitled, Mentor-Protégé Program.

The fee restriction above also does not apply when subcontracts are:

(iii) competitively awarded firm-fixed price or firm-fixed unit price subcontracts; or
(iv) competitively awarded subcontracts for commercial items as defined in FAR Subpart 2.1.

(a) CLIN 0001: Transition is cost-reimbursement. No Fee is permitted on CLIN 0001.

(b) CLIN 0002: Management and Operation of Pantex - Fee

The TAF, FF, and Available AF for each Contract Period, if exercised by DOE/NNSA, will be reflected in the tables in Clause B-2, *Contract Type and Value*, paragraph (c), Table 1. The Contractor shall be eligible to earn FF and AF of up to the amount specified for each Contract Period, if exercised by DOE/NNSA, in accordance with paragraph (e)(1) of this clause.

(c) CLIN 0003: SPP - FF

The FF for SPP for the Base Contract Period, and option periods if exercised by DOE/NNSA, will be reflected in Clause B-2, *Contract Type and Value*, paragraph (d), Table 2. It shall be eligible to earn fee in accordance with paragraph (e)(2) of this clause.

(d) CLIN 0004: Capital Construction Projects

The fee/price structure(s), and associated terms and conditions established under CLIN 0004 will be determined when each Sub-CLIN is awarded.

(e) Payment of Fee

(1) CLIN 0002: Fee

(i) FF - The FF for the Base Period of the Contract (and option periods to the extent exercised) for CLIN 0002 shall be paid monthly as a pro rata share of the FF for the Contract Period. 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) AF Determination. The amount of AF earned will be based on the Contractor's performance as evaluated against the criteria established in the Performance Evaluation and Measurement Plan described in B-6 *Performance Evaluation*. The amount of AF earned by the Contractor will be unilaterally determined by NNSA's Fee Determining Official (FDO), who will document their AF determination in a Fee Determination Letter.

(iii) Contractor Notification. Each year, no later than December 15 (or the first business day thereafter, if December 15 is a Saturday, Sunday, or Federal Holiday), the Contracting Officer will notify the Contractor of the amount of AF earned and provide the Fee Determination Letter.

(iv) AF Delay. If the Contracting Officer does not notify the Contractor of the amount of AF earned by the date specified in (iii), the Contractor shall be entitled to interest on the AF earned, following the procedures outlined at 5

C.F.R. § 1315.10. For purposes of this calculation, the payment due date is considered to be the day after the date specified in (iii).

(v) No Allocation to Future Periods. AF not earned during the evaluation period shall not be allocated to future evaluation periods.

(vi) No Draw Down. The Contractor is not authorized to draw down or provisionally bill any portion of AF prior to receipt of the FDO's Fee Determination Letter and authorization from the Contracting Officer via a contract modification.

(2) CLIN 0003: FF

The FF for the Base Period of the Contract (and option periods to the extent exercised) for CLIN 0003 SPP shall be paid monthly as a pro rata share of the FF for the Contract Period. 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.

(3) CLIN 0004: Capital Construction Projects

Cost/Price and cost/price structure (such as Firm Fixed Price, Cost-Plus-Incentive-Fee, or other price structures as agreed) and any applicable special terms and conditions shall be identified for each Capital Construction Project covered by each Sub-CLIN to CLIN 0004.

B-4 OBLIGATION OF FUNDS

Pursuant to this Contract's Section I Clause entitled "DEAR 970.5232-4, *Obligation of Funds*," the total amount obligated by the Government with respect to this Contract is identified in the latest executed funding modification.

B-5 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary to the Contract's Section I Clauses entitled "FAR 52.250-1, *Indemnification Under Public Law 85-804*, Alternate I" and "DEAR 952.250-70, *Nuclear Hazards Indemnity Agreement*," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which DOE/NNSA may legally spend for such purposes.

B-6 PERFORMANCE EVALUATION

On an annual basis, a Performance Evaluation and Measurement Plan (PEMP) will be developed by NNSA for this Contract, which will document strategic performance expectations each year and the process by which the Contractor's performance will be evaluated. The Parties will strive to reach mutual agreement on the performance measures and will work together to establish the

PEMP. In the event the Parties cannot come to agreement, NNSA reserves the right to make the final decision and issue the PEMP unilaterally. The PEMP once finalized, whether bilaterally or unilaterally, will be incorporated into the Contract at Section J, Appendix C, by contract modification. The Contracting Officer may revise the PEMP bilaterally or unilaterally during an evaluation period of performance and will incorporate any revisions through a contract modification. No changes will be made with less than 60 days remaining in the evaluation period. The Contractor will submit a self-assessment for each corresponding interim and final evaluation period under the PEMP.

Evaluation of Capital Construction Projects under CLIN 0004 will be evaluated independent of the PEMP.

B-7 CAPITAL CONSTRUCTION PROJECTS FEE PLAN

A Capital Construction Project Fee Plan will be developed, with Contractor input, for each fee bearing Sub-CLIN awarded under CLIN 0004 and incorporated at Section J, Appendix K, *Capital Construction Fee Plan*. Although the detail and content incorporated into each Fee Plan may vary based on the cost and fee structure for a given Sub-CLIN, each Sub-CLIN Fee Plan shall document the process by which the Contractor's performance will be evaluated; the amount of available fee and, when applicable, the allocation of fee to mutually agreeable project cost and/or schedule milestones; the conditions precedent to the submission of fee payment requests by the Contractor; the Government's fee determination process; and any provisions or conditions that would result in an adjustment to otherwise earned fee. The Parties will work collaboratively to establish mutually acceptable Fee Plans. In the event the Parties cannot come to agreement on the Fee Plan for any Sub-CLIN, the DOE/NNSA reserves the unilateral right to make the final decision, including changes thereto, on all Sub-CLIN contract structures, fee structures, performance objectives, goals, and measures and the methodology used to evaluate Contractor performance.

B-8 ANNUAL CONTROLLED BASELINE APPLICABLE TO PERFORMANCE

(a) Generation of an ACB. The Contractor shall develop an ACB for all NNSA-directed programs. The ACB will include all work and be measured at the program level (e.g., B61-12, W80-4, etc.) by resources category (i.e., labor, material, and other). In accordance with Section F, Clause F-7, *Deliverables During Transition*, the Contractor shall provide written procedures for the ACB. The written procedures shall be referred to as the ACB Process Framework. If approved by the Contracting Officer in writing, activities may be measured below the program level as appropriate in limited circumstances, but not below the budget and reporting (B&R) level. The ACB will be under configuration management and control, with all changes formally documented and accessible to NNSA. The ACB should be maintained in a manner consistent with, and reconcilable to, approved work authorizations, funding levels, and any programmatic reporting including Earned Value Management System (EVMS) or EVMS-like systems. The ACB shall also include cost, scope of work, and schedule and be fully consistent with directive and planning documents, budget requests. The Contractor will submit the ACB annually by August 15th of the preceding year unless another delivery date is agreed to in advance by the Contracting Officer.

(b) Composition of ACB Package.

(1) Composition and Reconciliation. The ACB shall be presented at the level of detail specified in the approved ACB Process Framework. The ACB package shall include a reconciliation of the President's budget request to the ACB that clearly identifies the following reconciling items: Exclusions from the ACB as specified in (b)(2) below.

(2) Exclusions from the ACB. The ACB shall not include:

(A) Carryover, which is defined as the estimated costs of any work that was included in the ACB of a previous Contract Period and uncosted funding balances from legacy management and operating contracts used to fund current work scope;

(B) Estimated costs included in the enacted budget for any work to be performed by a federal entity or DOE/NNSA prime contractor other than Contractor;

(C) Estimated costs of Inter-Contractor Purchases placed with Contractor by other DOE/NNSA prime contractors or their subcontractors;

(D) Prefunding or continuity of operations funding intended for execution and costing in a subsequent contract term;

(E) The cost estimate associated with any scope of work (e.g., Line-Item Construction Projects) for which a separate fee structure is negotiated; and

(F) That portion of the budget attributable to fee.

(c) Calculation of Total Available Fee.

(1) Fee – TAF, FF, and AF shall be calculated using the formulas in Section B-2(c).

(2) Annual ACB Adjustment. The TAF will be adjusted via unilateral modification once each Contract Period at the time the ACB attributable to current year funding is updated to reflect the enacted budget. The adjustment will be made using the fee base formula prescribed in Section B, Clause B-2, *Contract Type and Value*, paragraph (c). No other adjustment shall be made to the Total Available Fee unless it is made in accordance with the requirements of DEAR 970.5243-1 *Changes* **and** the approved year-end September 30th ACB reflects a plus or minus 10 percent change from the ACB based on the enacted budget. The 10 percent change threshold shall apply only to scope changes and not changes caused by cost overruns, changes in the cost of labor, changes in the

cost of materials, or other cost changes without a direct nexus to NNSA-approved changes in scope. CLIN Tables in Section B will be updated through unilateral modifications as applicable.

SECTION C: DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

C-1 STATEMENT OF WORK

The work to be performed is set forth in Section J, Appendix A, *Statement of Work*.

SECTION D: PACKAGING AND MARKING

D-1 PACKAGING AND MARKING

Packaging and marking of items to be delivered shall be in accordance with work authorization requirements or other written direction of the Contracting Officer or the Contracting Officer's Representative (COR).

D-2 SECURITY

The Contractor shall comply with the security requirements for packaging, marking, mailing, and shipping classified materials (if any) as prescribed by applicable U.S. Department of Energy safeguards and security directives.

SECTION E: INSPECTION AND ACCEPTANCE

E-1 FAR 52.246-5 INSPECTION OF SERVICES – COST-REIMBURSEMENT (APR 1984)

(a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by re-performance, the Government may--

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may--

(1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or

(2) Terminate the contract for default.

E-2 ACCEPTANCE

Inspection of all activities and acceptance for all work and effort under this Contract shall be accomplished by the Contracting Officer or other duly authorized representative. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties. Only the Contracting Officer is authorized to accept work which does not comply with the Contract requirements (including requirements of Work Authorizations) or to otherwise waive any applicable requirements. Acceptance of nonconforming work by any other individual shall not constitute acceptance on behalf of the Government.

SECTION F: DELIVERIES OR PERFORMANCE

F-1 FAR 52.242-15 STOP-WORK ORDER (AUG 1989) ALTERNATE I (APR 1984)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

F-2 STOP WORK IN EVENT OF IMMINENT DANGER

The Contractor shall immediately cease any activity that is imminently dangerous to the life or health of the workers, the public, or the environment. In the event of imminent danger, any Federal or Contractor employee is authorized to instruct the Contractor to stop work. The Contracting Officer must be contacted immediately after the event such that a written stop-work order can be issued in accordance with F-1, FAR 52.242-15, Stop-Work Order (AUG 1989), Alternate I (APR 1984). Employees of the Contractor shall be apprised of their right to stop work pursuant to this clause. The Contractor shall include this clause in all subcontracts to be performed at the sites. In the event of a security incident involving an imminent threat to the facility, the Contractor shall perform their security duties and continue until the threat is eliminated, at which point the Contractor shall reconstitute and resume normal security operations subject to this clause.

F-3 PERIOD OF PERFORMANCE (MODIFIED P00001)

The period of performance of this Contract shall expire five years after completion of the Transition Period, unless sooner reduced, terminated or extended in accordance with this Contract. The period of performance may be extended in increments, or portions thereof, for up to an additional fifteen years of performance. The Contract's maximum period of performance, including the Transition period and Option Period(s), if exercised, shall not exceed 20 years and three-and-a-half-month. The period of performance of this Contract consists of:

(1) Transition Period: A period of three-and-a-half-month beginning on the Notice to Proceed date issued by the Contracting Officer. Costs associated with relocation of initial proposed Key Personnel team may be incurred up to one year after the end of the transition period.

(2) Base Period: A period of five years beginning after completion of the Transition Period and issuance of Authorization to Begin Performance by the Contracting Officer.

(3) Option Period(s): Beginning after completion of the Base Period, Three (3) five (5)-year options for a possible total of 15 option years, if exercised:

Option Period 1: If exercised, five years from the end of the Base Period.

Option Period 2: If exercised, five years from the end of Option Period 1.

Option Period 3: If exercised, five years from the end of Option Period 2.

F-4 PRINCIPAL PLACE OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations within and outside the United States, with the principal location of performance being at the Pantex Plant near Amarillo, Texas.

F-5 EVALUATION OF PERFORMANCE AND EXERCISE OF OPTION(S)

The decision to extend this Contract via the exercise of an option will be a unilateral decision made by NNSA. Exercise of any option shall be in accordance with Section I clause FAR 52.217-9, *Option to Extend the Term of the Contract*. Other factors considered are described at FAR Part 17.207, *Exercise of Options*, which must be met before any option can be exercised. At a minimum, the NNSA will consider the following in determining whether to extend the Contract:

(1) The Contractor's overall performance, taking into consideration performance evaluations pursuant to the Contractor Performance Assessment Reporting System (CPARS); and

(2) The considerations under DEAR 970.1706-1(b) for exercising options under M&O contracts.

F-6 DELIVERABLES

The primary deliverables under this Contract are described in Section J, Appendix A, *Statement of Work*. To ensure that effective and efficient management systems exist for the management and operation of Pantex, this Contract also requires the delivery of documents, plans, and reports for the Contracting Officer's review and approval. The Contractor shall manage all deliverables required throughout this Contract.

F-7 DELIVERABLES DURING TRANSITION (MODIFIED P00001)

In addition to the transition deliverables identified elsewhere in this Contract (e.g. other transition deliverables in Section J, Appendix S, *Human Resources*), the following deliverables shall be submitted during the Transition Period:

(a) Transition Plan

The Contractor shall provide, for approval by the Contracting Officer, a Transition Plan within 10 calendar days after the start of the Transition Period. The Transition Period is specified in Section F, Clause F-3, *Period of Performance*. Upon written approval by the Contracting Officer, the Transition Plan, shall be incorporated into Section J, Appendix J, *Transition Plan*.

(b) Key Personnel Cost Estimate

The Contractor shall propose initial total Key Personnel compensation costs for each of its Key Personnel for the first year of the Base Period of the Contract within 10 calendar days after the start of the Transition Period. The Contracting Officer will approve Key Personnel compensation costs for the first year of the Base Period. For each proposed Key Personnel, the Contractor shall submit the compensation for the new Key Person in accordance with Section J, Appendix S, *Human Resources*, Section 3.2.3.

(c) Conflict of Interest Compliance and Management Plan

The Contractor shall submit a Conflict of Interest Compliance and Management Plan (Plan) to the Contracting Officer for approval within 60 days after the start of the Transition Period. The Plan shall address the Contractor's approach for adhering to Section I clause DEAR 952.209-72, *Organizational Conflicts of Interest* (AUG 2009), Alternate I, and describe its procedures for aggressively self-identifying and resolving both organizational and employee conflicts of interest. The Plan shall also include the information required by DEAR 970.5227-3, *Technology Transfer Mission (AUG 2019) Alternate II* (Dec 2000) (NNSA CLASS DEVIATION JAN 2021) (DOE CLASS DEVIATION JAN 2022) (d). The overall purpose of the Plan is to demonstrate how the Contractor will assure that its operations meet the highest standards of ethical conduct, and how its assistance and advice are impartial and objective. Within 30 days of submission, the Contracting Officer will approve or reject the Plan.

(d) Community Commitment Plan

The Contractor shall deliver within 105 calendar days after the start of the Transition Period of the Contract, a Community Commitment Plan that has been discussed between the Contractor and the community in accordance with Section H, Clause H-28, *Community Commitment Plan*.

(e) Diversity Plan

The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 78 days after the start of the Transition Period. The Diversity Plan shall contain the elements set forth in DEAR 970.5226-1, *Diversity Plan*. Section J, Appendix L *Diversity Plan Guidance* provides guidance to assist the Contractor in understanding the information being sought by the DOE/NNSA for each of the diversity elements within the DEAR clause.

(f) Interface Management Plan

Section J, Appendix A, *Statement of Work*, Chapter I, Section 4.7, requires that the Contractor provide an “Interface Management Plan” for Contracting Officer’s approval within 75 calendar days after the start of the Transition Period. Upon written approval by the Contracting Officer, the Interface Management Plan, shall be incorporated into Section J, Appendix Q, *Interface Management Plan*.

(g) Cybersecurity and Information Technology (IT) Management and Operations Plan

The Contractor shall deliver within 105 calendar days after the start of the Transition Period, a Cybersecurity and IT Management and Operations Plan detailing the strategy for implementing and maintaining the lifecycle of site IT and Operational Technologies to support NNSA mission needs while best incorporating cybersecurity protections in a manner that facilitates and safeguards Government technology capabilities in accordance with contractual requirements. Upon written approval by the Contracting Officer, the Plan may be incorporated into Section J of the Contract as a separate Appendix.

(h) Annual Controlled Baseline

The ACB requirements as described in Section J Appendix A, *Statement of Work,* Chapter I, Section 3.2 and elsewhere in the Contract require the development and submission of various deliverables related to the ACB.

(1) Within 90 calendar days after the start of the Transition Period, the Contractor shall provide for the Contracting Officer's approval the Contractor's draft written procedure for development and submission of the ACB, including a formal change control processes and approval thresholds.
(2) Within 180 calendar days after the start of the Transition Period, the Contractor shall provide for Contracting Officer approval the final written procedure for development and submission of the ACB.

(i) Work/Service Agreements

The contractor shall provide within 105 days of the start of the Transition Period executed Work/Service Agreements (e.g., Transition Service Agreements) for IT/Cyber security capabilities to include network applications and data migration. Work/Service Agreements shall continue until transition for each area under a Work/Service Agreement is completed.

SECTION G: CONTRACT ADMINISTRATION DATA

G-1 GOVERNMENT CONTACTS & CORRESPONDENCE PROCEDURES

(a) The NNSA Field Office Manager, Pantex Field Office (PFO), is the Contractor's primary point of contact for all operational and policy matters, except as identified in paragraphs (b) through (f) below, regarding performance of this Contract under CLIN 0001, 0002, and 0003. The PFO Administrative Contracting Officer (ACO) is the Contractor's primary point of contact for all contractual matters related to CLIN 0001, 0002, and 0003. The Pantex Field Office Manager and ACO can be reached at:

Pantex Field Office
Attn: PFO Manager
P.O. Box 30030
Amarillo, TX 79120

Pantex Field Office
Attn: PFO ACO
P.O. Box 30030
Amarillo, TX 79120

(b) The Deputy Associate Administrator for Design and Construction is responsible for oversight and management of all capital projects conducted at Pantex. The Construction Contracting Officer (CCO) at Pantex is primarily responsible for all contractual and administrative matters related to CLIN 0004. The cognizant CCO for the administration of each Sub-CLIN will be identified therein. The Deputy Associate Administrator, and CCO can be reached at:

Deputy Associate Administrator
Construction Contracting Officer
U.S. Department of Energy/NNSA
1000 Independence Ave, SW
Washington, DC 10585

(c) The Procuring Contracting Officer (PCO) is responsible for all contractual actions required to be taken by the Government under the terms of this Contract. The PCO can be reached at:

Procuring Contracting Officer
U.S Department of Energy/NNSA
M&O Contracting Branch (NA-PAS-211)
NNSA Albuquerque Complex
24600 20th St SE
Kirtland Air Force Base
Albuquerque, NM, 87117-5507
Phone: (505) 845-5172

(d) The Patent Counsel for items concerning patent, intellectual property, technology transfer, copyright, open source, licenses and technical data issues is identified below. Correspondence being sent to the DOE/NNSA Patent Counsel should be addressed to:

U.S. Department of Energy, NNSA Patent Counsel
Office of General Counsel (NA-GC)
NNSA Albuquerque Complex
24600 20th St SE
Kirtland Air Force Base
Albuquerque, NM, 87117-5507

(e) The Contractor may use the Organizational Property Management Officer as a point of contact for guidance and assistance involving personal property requirements. The Contracting Officer shall be contacted for any matter that involves a change in any of the express terms and conditions of the Contract. Correspondence being sent to the Organizational Property Management Officer should be addressed to:

U.S. Department of Energy/National Nuclear Security Administration
Organizational Property Management Officer (OPMO)
Personal Property Albuquerque
NNSA Albuquerque Complex
24600 20th St SE
Kirtland Air Force Base
Albuquerque, NM, 87117-5507

(f) Technical and Administrative Correspondence: Technical and Administrative Correspondence concerning performance of this Contract shall be addressed to the responsible NNSA Pantex Contracting Officer's Representative (COR), with an information copy to the Contracting Officer. CORs are listed in Section J, Appendix G.

(g) Marking: To promote timely and effective administration, correspondence submitted under this Contract shall contain a subject line commencing with the Contract Number, as illustrated:

SUBJECT: Contract Number 89233224CNA000004, Subject Topic (insert subject topic after Contract Number, e.g., "Request for subcontract placement approval").

G-2 CONTRACTING OFFICER AUTHORITY

Notwithstanding any of the other clauses of this Contract, a Contracting Officer is the only individual who has the authority on behalf of the Government, among other things, to take the following actions under the Contract:

(a) Assign additional work within the general scope of the Contract.
(b) Issue a change in accordance with the clause entitled, *Changes*.
(c) Change the cost or price of the Contract.
(d) Change any of the terms, conditions, specifications, or services required by the Contract.
(e) Accept non-conforming work.
(f) Waive any requirement of the Contract.

G-3 CONTRACTING OFFICER'S REPRESENTATIVE

Pursuant to the clause at DEAR 952.242-70 entitled, Technical Direction, the Contracting Officer's Representative's official delegation of authority will be provided to the Contractor in writing. This delegation will describe the COR's authorities in detail. However, it is emphasized that only the Contracting Officer has the authority to modify the terms of the Contract, therefore, in no event will any understanding, agreement, modification, change order, or other matter deviating from the terms of the basic Contract between the Contractor and any other person be effective or binding on the Government. When/If, in the opinion of the Contractor, an effort outside the existing scope of the Contract is requested, the Contractor shall promptly notify the Contracting Officer in writing, before proceeding with the COR direction. No action shall be taken by the Contractor unless the Contracting Officer notifies the Contractor in writing that the Contracting Officer has determined the effort is in the existing scope of the Contract or the Contracting Officer modifies the Contract to include the effort.

If an effort under this Contract requires that an Alternate COR is to perform duties in the absence of the responsible COR, all responsibilities and functions assigned to the COR shall be the responsibility of the Alternate COR acting on behalf of the COR.

G-4 CONTRACTOR CONTACT

The Contractor shall identify to the Contracting Officer the point of contact who has the authority and is responsible for managing, administering, and negotiating changes to the terms and conditions of this Contract as well as executing Contract modifications on behalf of the Contractor.

Name:	Heatherly H. Dukes
Position:	Manager, Board of Managers
Company:	PanTeXas Deterrence, LLC
Address:	800 Main Street
	Lynchburg, Virginia 24504
Phone:	803-226-1519
E-mail:	hhdukes@bwxt.com

G-5 PERFORMANCE GUARANTEE(S)

The Contractor is required to be a separate corporate entity organized solely to perform the work under the Contract and which is totally responsible for all Contract activities. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, where more than one company is involved in a business relationship created for the purpose of performing under the resultant Contract, shall guarantee performance as evidenced by the Performance Guarantee Agreement(s) incorporated in Section J, Appendix I, *Performance Guarantee Agreement(s)*. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement(s) enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

G-6 RECOGNITION OF PERFORMING ENTITY AND TEAM MEMBERS

(a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this Contract was based.

The performing entity is PanTeXas Deterrence, LLC. This entity is comprised of: BWXT Technical Services Group, Inc., Fluor Federal Services, Inc., SOC LLC, and The Texas A&M University System.

(b) Accordingly, the Contractor and the Government agree that the Contractor shall take no action to replace the components of the entity named in paragraph (a) of this clause without the prior written approval of the Contracting Officer.

(c) The following entities are Team Members for the purpose of B-3 Contract Fee Structures.

Parent Organizations:

- BWXT Technical Services Group, Inc.
- Fluor Federal Services, Inc.
- SOC LLC
- The Texas A&M University System

Team Member Subcontractors:

- Los Alamos Technical Associates, Inc.
- TechSource, Inc.
- Mission Assurance Alliance, LLC

G-7 RESPONSIBLE CORPORATE OFFICIAL

Notwithstanding G-5, *Performance Guarantee(s)*, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor. Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name:	Kevin M. McCoy
Position:	President, Government Operations
Company:	BWX Technologies, Inc.
Address:	800 Main Street
	Lynchburg, Virginia 24504
Phone:	434-522-3830
E-mail:	kmmccoy@bwxt.com

G-8 INVOICING FOR TRANSITION PRICE AND CONTRACT CLOSEOUT

(a) The Contractor shall submit vouchers for Transition electronically through the Oak Ridge Payment Services Team Vendor Inquiry Payment Electronic Reporting System (VIPERS) for payment for work performed under CLIN 0001, *Contract Transition Period.* VIPERS allows vendors to check the payment status of any voucher submitted to the DOE. To obtain access to and use VIPERS, please visit the web page at https://vipers.doe.gov/. The Contractor shall

contact the Contracting Officer if the Contractor is unable to submit invoices electronically.

(b) For the purposes of the Transition Period, FAR 52.216-7, as supplemented by DEAR 952.216-7, is incorporated by reference, and the Contractor shall invoice for work performed in accordance with FAR 52.216-7 and DEAR 952.216-7, and as directed by the Contracting Officer following the procedures at paragraph (a) of this clause. All costs with the exception of relocation costs must be invoiced within 60 days after the end of transition period. Relocation costs of initial proposed Key Personnel must be invoiced within one year after the end of the transition period.

(c) The Contractor shall submit vouchers for contract closeout electronically through VIPERS, or as directed by the Contracting Officer.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H-1 CONTINUATION OF PREDECESSOR CONTRACTOR'S OBLIGATIONS AND TRANSFER OF OBLIGATIONS TO SUCCESSOR CONTRACTOR

(a) Existing contractual agreements and regulatory obligations entered into under Contract No. DE-NA0001942 will continue during performance of this Contract. Immediately after award, the Contractor shall enter good faith negotiations with the predecessor contractor and the Contracting Officer to execute a tri-party agreement that transfers, assigns, and/or identifies responsibilities for existing obligations. Absent agreement to the contrary (via the tri-party agreement), the Contractor shall assume all existing contractual, commercial, regulatory, and other similar obligations incurred under the predecessor contract, and shall be fully responsible and accountable under this Contract for the performance of such obligations. Examples of existing obligations include, but are not limited to:

(1) Subcontracts and purchase orders;
(2) Agreements and memoranda of understanding with research organization, universities, and colleges;
(3) Strategic Partnership Project Agreements;
(4) Collection of unpaid accounts receivables;
(5) Real Property Leases, Land Use Permits;
(6) Environmental and other permits and licenses;
(7) Mutual Aid and emergency response agreements;
(8) Ongoing litigation and claims by or against the predecessor contractor;
(9) Collective Bargaining Agreements; and,
(10) Other similar agreements.

(b) Additionally, unless otherwise stated in this Contract, management systems, plans, permits, procedures, and other agreements that exist on the effective date of the Contract will continue until the Contractor addresses the applicable requirements contained in this Contract. For changes that require NNSA approval, the Contractor shall not implement a change until it is formally approved by the Contracting Officer.

(c) The Contractor agrees that all obligations entered into under this Contract shall be transferrable and assignable to the successor contractor as directed by the Contracting Officer. The Contractor shall enter good faith negotiations with any successor contractor and the Contracting Officer to execute a tri-party agreement that transfers, assigns, and/or identifies responsibilities for existing obligations. If, at the completion or termination of this Contract, the Contracting Officer does not direct the Contractor to transfer or assign obligation(s) to the successor contractor, the Contractor shall be liable, responsible, and accountable for closing out and liquidating such obligations, or for taking such other action as the Contracting Officer may direct. The Contractor shall remain liable to the Government and responsible for any unallowable costs which it incurred, or caused to be incurred, in performance of this Contract, regardless of whether they arise out of, or relate to, any obligations transferred or assigned to the successor contractor or to another entity.

H-2 SMALL BUSINESS SUBCONTRACTING PLAN

The Small Business Subcontracting Plan is incorporated under Section J, Appendix E, *Small Business Subcontracting Plan*. The Contractor shall submit annual subcontracting goals 60 days prior to the beginning of each fiscal year during the term of this Contract, or by such other date as authorized in writing by the Contracting Officer.

H-3 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR

The Representations, Certifications, and Other Statements of Offeror completed by the Contractor dated September 28, 2023, are hereby incorporated into this Contract by reference.

H-4 ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

The Contractor and the Contractor's parent(s) and affiliate(s), if any, shall comply with the provisions of the approved OCI Management Plan (Plan) in the performance of the Contract. Any deviations or amendments to the Plan shall require the express written approval, in advance, from the Contracting Officer. The Contractor shall submit to the Contracting Officer annual OCI Disclosure Update Statements beginning November 1st of each year after Contract award. Notwithstanding the annual disclosure requirement, any change in relevant facts since the last OCI Disclosure Update Statement shall be disclosed to the Contracting Officer pursuant to Section I clause DEAR 952.209-72, *Organizational Conflicts of Interest, Alternate I*, paragraph (c)(1), *Disclosure After Award*. Initial notification to the Contracting Officer shall be accomplished as soon as the facts are known with a full disclosure within 60 days of the initial notification, unless otherwise directed by the Contracting Officer.

H-5 LOBBYING RESTRICTION

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H-6 FLOWDOWN OF RIGHTS TO PROPOSAL DATA

The Contractor shall include the clause at FAR 52.227-23 “Rights of Proposal Data (Technical)” in any subcontract awarded based on consideration of a technical proposal.

H-7 PRIVACY ACT RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Contract’s “Privacy Act” clause to include:

DOE System No.	Title
DOE-5	Former Contractor Employees
DOE-31	Firearms Qualifications Records
DOE-33	Personnel Medical Records

DOE-35	Personnel Radiation Exposure
DOE-38	Occupational and Industrial Accident Records
DOE-43	Personnel Security Clearance Files
DOE-45	Weapon Data Access Control System
DOE-48	Security Education and/or Infraction Reports
DOE-50	Human Reliability Program (HRP)
DOE-51	Employee and Visitor Access Control System
DOE-77	Physical Fitness Records

H-8 TRANSITION

The predecessor Contractor's management systems that exist on the date of Contract award will continue until the Contractor addresses the applicable requirements contained in the Contract. For changes that require NNSA approval, the Contractor will not implement a change until it is formally approved by the Contracting Officer.

During the Transition Period, the Contractor shall perform the activities and provide the documents identified in Section F-7, *Deliverables During Transition* and Section J, Appendix J, *Transition Plan*. The Contractor's responsibility for management and operation of Pantex shall commence with the Base Period.

H-9 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 contactor 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.

H-10 FEDERAL FLEET MANAGEMENT SYSTEM

When the Contracting Officer has issued the Contractor authorization to obtain interagency fleet management system vehicles in performance of the Contract, the Contractor shall follow the requirement of the Federal Fleet Management System known as FedFMS. The Contractor shall provide the information needed to satisfy the reporting requirement as stated in FedFMS on a monthly basis using the Fleet Management Information System. The Contractor shall also address any of the data gaps/incomplete records that already exist.

H-11 ACCOUNTABILITY

The Contractor is responsible for the quality of its products and services and for assessing its operations, programs, projects and business systems and identifying deficiencies and implementing needed improvements in accordance with the terms and conditions of this Contract, regardless of whether NNSA has evaluated the Contractor's performance in any area of the Contract. The Contractor is encouraged to collaborate with its parent organization(s) (as applicable) to ensure corporate leadership, the parent's systems, processes and independent assessments are used to assess the Contractor's performance. The purpose of NNSA oversight is for assessing the Contractor's performance in meeting its obligations under this Contract, in addition to measuring progress toward NNSA missions. The Contractor's accountability described in this clause is not reduced by the fact that NNSA conducts oversight activities.

H-12 NNSA OVERSIGHT

At all times during the term of this Contract, NNSA will continue, preserve and maintain its right to determine the level of NNSA oversight of all Contractor activities under this Contract. In addition to the rights and remedies provided to the Government under provisions of this Contract, the Contractor shall fully cooperate with NNSA oversight personnel, NNSA subject matter experts in the performance of their assigned oversight functions and shall provide complete access to facilities, information, and Contractor personnel.

H-13 CLAUSE UPDATES AND IMPLEMENTATION SECTION TO FAR CLAUSES

(a) The Contractor agrees that the Contracting Officer may, from time to time and at any time, unilaterally modify the Contract to revise, add or delete Section H clauses, and FAR or DEAR clauses due to changes in the law or regulations or policy resulting from the approval of new deviations.

(b) The following Implementation of Section I Clauses applies:

(a) For purposes of implementation of Paragraph (d) of DEAR 970.5232-3, *Accounts, Records, and Inspection,* the Parties agree that Contractor official procurement file records are Contractor-owned records. Associated official financial records that are stand alone, separate and apart from the official procurement file records remain government-owned records.

(b) For the purposes of implementation of paragraph (b) (1) of I-24 DEAR 970.5204-3, *Access to and Ownership of Records,* the Parties agree to the following:

(1) *"Employee relations records"* include records pertaining to qualifications or suitability for employment of any employee, applicant, or former employee, allegations, investigations, and resolution of employee misconduct, discipline, or charges of discrimination, negotiations, arbitration or grievance proceedings with any labor organization in connection with any labor contract, or affirmative action plan and related records.

(2) *"Employee assistance program records"* include psychological/psychiatric records and files maintained on individual employees, applicants, and former employees of the Contractor.

(3) *"Internal corporate governance records"* and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e. the contractor's corporate headquarters) means records directly related to the operations of the Contractor's Board of Directors and parent entity.

H-14 CONFIDENTIALITY OF INFORMATION

(a) To the extent that the work under this Contract requires that the Contractor be given access to or be furnished with confidential or proprietary business, technical, or financial information or data belonging to other entities that is confidential or proprietary, the Contractor shall, after receipt thereof, treat such information in confidence and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized in writing by the Contracting Officer. Unless covered by other existing confidentiality requirements, the foregoing obligations shall not apply to:

(1) Information or data that is in the public domain at the time of receipt by the Contractor;

(2) Information or data that is published or otherwise subsequently becomes part of the public domain through no fault of the Contractor;

(3) Information or data in possession of the Contractor prior to receipt, either directly or indirectly, from the Government; and

(4) Confidential or proprietary information or data owned by a third party that has expressly authorized unlimited distribution.

(b) The Contractor agrees to enter into an agreement, identical in all material respects to the requirements of paragraph (a) above, with each entity supplying such confidential or proprietary information or data to the Contractor under this Contract and to supply a copy of such agreement to the Contracting Officer. Upon request of the Contracting Officer, the Contractor shall furnish the Government with reports that specify any information or data received as confidential or proprietary and that identify the entity or entities who supplied the Contractor with such information or data.

(c) The Contractor shall obtain the written agreement of each employee permitted access to or furnished with confidential or proprietary business, technical, or financial information or data, whereby the employee agrees that such information or data that the Contractor is obligated to treat in confidence will not be discussed, divulged or disclosed except to those persons within the Contractor's organization directly concerned with the performance of this Contract or to Government representatives. Notwithstanding the foregoing Contractor-employee agreement, upon request of the Contracting Officer, the Contractor agrees to obtain from each employee a confidentiality agreement acceptable to the Contracting Officer.

(d) Upon request of the Government, the Contractor shall execute a DOE/NNSA-approved agreement with any party whose facility or proprietary data the Contractor is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities.

(e) This clause, including this paragraph (d) shall be included in subcontracts if there is a requirement or there becomes a requirement that the subcontractor be given access to or be furnished with confidential or proprietary business, technical, or financial information or data.

H-15 NNSA PRIME CONTRACTS

(a) In accordance with the Contract's Section I Clause entitled "DEAR 970.5243-1, *Changes*," the Contracting Officer may identify any of the work contemplated by Section J, Appendix A *Statement of Work*, of this Contract to be performed either by another Contractor directly contracted by the DOE/NNSA or by Government employees. The Contractor agrees to provide site access to such other contractors and to accommodate, to cooperate and coordinate with, and to provide reasonable support to such contractors and/or Government employees as necessary and/or as directed by the Contracting Officer. Notwithstanding any other provision of this Contract, the Contractor shall not perform any inherently governmental function, as set forth in 48 C.F.R. Subpart 7.5. The Contractor shall not commit or permit any act or omission which will interfere with the performance of work performed by any other contractor and/or by Government employees, and the Contractor shall be liable for any added costs resulting from such acts or omissions (such as delay costs) whether such costs are incurred by the Government, or another DOE/NNSA Contractor performing DOE/NNSA contract work. The following shall apply to work identified for performance by another contractor:

(1) The Government and the Contractor will confer in advance on the strategy for changing responsibility for the work and will do so with the objective of minimum disruption to the site operations.

(2) The Government may designate the Contractor as the Technical Monitor (not authorized to accept or provide technical direction) for such Contracts that are directly related to the scope of this Contract. The Contractor agrees to perform such monitoring duties as shall be further described in the designation for each such Contract. No designation shall include, and the Contractor shall not perform any function determined to be inherently Governmental. These functions include, but are not limited to:

(i) Award, modification, change, or termination of a Government contract.

(ii) Receipt, processing or adjudication of any claims, invoices, or demands for payment of any form.

(3) The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer's Representative, any performance of a designated Contract that may not be in compliance with its terms and conditions, but the Contractor is not authorized to take any other action regarding such noncompliance.

(4) Additionally, the NNSA agrees to insert the clause below entitled "*Other Government Contractors Performing Work at the Pantex Plant*," substantially as written here, in all

relevant NNSA Prime Contracts as follows:

OTHER GOVERNMENT CONTRACTORS PERFORMING WORK AT THE PANTEX PLANT

In addition to this Contract, (Insert Contract Number), the Government may undertake or award other contracts for additional work or services at the Pantex Plant. The Contractor agrees to fully cooperate with the M&O Contractor, other contractors, and Government employees, and carefully coordinate its own work with other work being performed at the site as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees at the site and the Contractor shall be liable for any added costs resulting from such acts or omissions (such as delay costs), whether such costs are incurred by the Government, another contractor, or other parties.

The Government may designate the M&O Contractor to be the Technical Monitor for any right, duty or interest in this Contract. If the M&O Contractor is designated, a copy of the designation letter will be provided to the Contractor by the Government. The Contractor further agrees to fully cooperate with the M&O Contractor for all matters under the terms of the designation.

(b) In the cases where the Government directly contracts with other entities and retains administration, the Contractor shall fully cooperate with these other entities and provide reasonable support as required.

(c) Adjustments shall be made to the Contractor's Subcontracting Plan to recognize the changes to the subcontracting base and goals, if appropriate.

H-16 INSTRUCTIONS FOR UPDATING FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI) INFORMATION (JUN 2011)

(a) In order to submit periodic updates or to report changes to Foreign Ownership, Control or Influence information as required by DEAR 952.204-2, *Security*, the Contractor shall use the DOE FOCI electronic submission system located at https://foci.anl.gov.

(b) New users, when registering to update information under this Contract, should select "NNSA Albuquerque Complex - Office of Partnership and Acquisition Services (NA-PAS)" as the FOCI Office that will review the FOCI Submission.

(c) All FOCI documentation/forms shall be completed within the eFOCI system. NOTE: A completed SF 328, Certificate Pertaining to Foreign Interests, executed in accordance with the instructions on the certification section of the SF328, shall be printed, signed and uploaded into the eFOCI system. The SF 328 is required for first time submissions, any time there are changes to the SF 328, and at the request of the Cognizant Security Authority (CSA). Specific problems maneuvering through the fields within the eFOCI system can be clarified by contacting the eFOCI help desk at (630) 252-6566 or fociserver@anl.gov.

H-17 PARENT ORGANIZATION(S)

The Parent Organization(s) Plan and any updates required by the Contracting Officer shall be submitted pursuant to this clause and Section J, Appendix A, *Statement of Work*, Chapter I, Section 4.4.3, *Parent Organization(s)*, and may be attached and incorporated into the Contract at Section J. Elements of the Parent Organization(s) Plan may be incorporated into the Performance Evaluation and Measurement Plan (PEMP).

(a) *Plan*

The Contractor shall develop, at a date established by the Contracting Officer with input from the Contractor, a multi-year Parent Organization(s) Plan that addresses Pantex Plant Stewardship, Oversight, Reachback, and Systems. The Contractor shall update its Parent Organization(s) Plan on an annual basis, and shall submit to the Contracting Officer for approval prior to implementation with an explanation of estimated costs by year. The Parent Organization(s) Plan should be vetted with the Plant leadership before submission to the Contracting Officer.

Pantex Plant Stewardship. As noted in the Statement of Work, the Contractor shall secure Parent Organization(s)'s commitments on an annual basis, however, the duration of commitments may be for more than one year and can be for the entire duration of the Contract, to the extent consistent with FAR subpart 31.2 as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR) and the terms of the Contract. This part of the Contractor's Parent Organization(s) Plan shall also provide a narrative that explains how the Statement of Work requirements for Pantex Plant Stewardship are met.

Oversight. As part of its Parent Organization(s) Plan, the Contractor shall detail (1) its Parent Organization(s)'s planned oversight efforts and expected accomplishments by year, to continuously support the M&O Contractor, and (2) how it will provide annual feedback and metrics to the NNSA on how the Parent Organization(s) oversight was value added (e.g., accomplishments, how oversight improved performance, etc.).

Reachback. In its Parent Organization(s) Plan, the Contractor shall detail how it plans to use reachback to its Parent Organization(s) to address unique tasks and challenging issues related to mission work at Pantex, provide surge support and subject matter experts, and provide any other workforce reachback as needed to enhance Contract performance.

Systems. The Contractor shall address generally how it anticipates using its Parent Organization(s) systems during Contract performance if at all. Prior to using any Parent Organization systems, the Contractor shall submit a plan (separate from its annual Parent Organization(s) Plan) and cost estimate for review and approval by the Contracting Officer 60 days prior to proposed implementation. The Contractor shall ensure that Government and Contractor data in any Parent Organization system(s) or service(s) adopted or adapted for Contract performance be readily transferable to a successor contractor. Though discussion of Parent Organization systems is in the "Oversight" paragraph of Section J, Appendix A, Statement of Work, Chapter I, Section

4.4.3, Parent Organization(s), the Contractor's Parent Organization(s) Plan may address Parent Organization systems in relation to Pantex Plant Stewardship and Parent Organization Reachback as well to the extent the Contractor intends to apply Parent Organization systems in relation to those Contract requirements.

(b) *Reports*

The Contractor shall provide periodic reports of Parent Organization(s) Plan activities conducted, results achieved, and costs incurred as required by the Contracting Officer, but not less than annually.

(c) *Costs of Parent Organization(s) Plan Activities*
As defined in Section J, Appendix A, *Statement of Work*, Chapter I, Section 4.4.3, *Parent Organization(s),* the parent organization plan is a responsibility of the Contractor. The costs of activities associated with the development and implementation of the Parent Organization(s) Plan shall be subject to FAR subpart 31.2 as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR), and the terms of the Contract.

Any utilization of a Parent Organization expert or other employee of a Parent Organization detailed, seconded, or otherwise assigned to work under the M&O contract (i.e., Parent Organization Reachback), except for subcontracts approved by the Contracting Officer to be placed with the Parent Organization on an arm's length basis, shall be consistent with DEAR 970.3102-3-70, and Section J, Appendix D, Personnel Appendix. Indirect burden allocated to the labor of a Parent Organization utilized employee shall be limited to those indirect costs the employee's labor would otherwise have been allocated, and in no case shall the costs exceed the cost of what the Contractor would pay if the loaned employee were a Contractor employee. For example, if the employee performs G&A functions for the Parent Organization, the reimbursable indirect burden while performing work under the M&O contract shall be limited to those indirect costs allocable to G&A functions. No fee is permitted on reach back activities.

The cost limitations set forth above shall not be exceeded without prior Contracting Officer approval. The Parties agree that the costs may be reviewed further for appropriateness and scope. In addition, the Parties agree that a tracking process, acceptable to the Contracting Officer, providing sufficient detail for reasonable accountability, shall be implemented. The Parties agree to negotiate in good faith any adjustments to these amounts as a result of empirical information from any such tracking system or reviews.

(d) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any Contractor- owned software and systems brought in and used. Said license shall be limited to the continued nuclear production work by successor contractors.

H-18 CONSTRUCTION PROJECTS

For each construction project performed under CLIN 0004, the Contractor agrees that the NNSA will incorporate appropriate Sub-CLIN specific construction terms and conditions into the M&O

Contract concurrent with the award of each Sub-CLIN for the completion of that project that are not otherwise contained in the M&O Contract. The Sub-CLIN will also include specific work requirements (e.g. project title, description of work, delivery schedule (to include major milestones and/or completion dates), in accordance with DOE O 413.3B (or successor) and other applicable DOE Orders. When deemed appropriate, the NNSA may also identify requirements applicable to construction work performed under CLIN 0002 (e.g., portions of DOE O 413.3B, or successor).

(a) Capital Construction Projects are defined as line item design and construction, or major equipment installation projects subject to line item appropriations. These projects by definition exceed the minor construction threshold, which is currently established as $30M but may be changed by Congressional action. This CLIN/Sub-CLIN structure may also be applied to non-line item capital projects by mutual agreement of the Parties or as directed by NNSA.

(b) The Construction Contracting Officer (CCO) may, in their sole discretion, direct the Contractor to manage and/or perform Capital Construction Projects, or any portion thereof, under CLIN 0002 and 0004 as they arise. The Contractor agrees to enter into good-faith negotiations with the Government to establish mutually agreeable terms and conditions that will apply to each Capital Construction Project. However, if the Parties cannot reach mutual agreement, the Construction Contracting Officer may (1) withdraw the direction to manage and/or perform a particular Capital Construction Project or, (2) direct the Contractor to proceed with the management and/or performance of the Capital Construction Project in accordance with specified terms and conditions via a unilateral contract modification. If the Parties are unable to agree on an equitable adjustment, the matter shall be treated as a dispute under the *Disputes* Clause of this Contract and the Contractor shall diligently proceed with the performance or management of the Capital Construction Project pending the final outcome of the dispute.

(c) Construction projects shall be performed or managed by the Contractor as directed by the Government. Such construction projects may be assigned by Work Authorizations under CLIN 0002 or a sub-CLIN under CLIN 0004 which may include construction-related clauses prescribed in the FAR and/or the DEAR in effect at the time of the issuance of the Work Authorization (if not already included in this Contract). The Contractor agrees to comply with such clauses.

For construction projects performed under CLIN 0002, appropriate construction terms and conditions necessary for the completion of that project, and not otherwise contained in the M&O Contract, will be incorporated into the Contract or a Work Authorization, as appropriate. The Work Authorization will also include specific work requirements in accordance with applicable DOE Orders and the Contract's Section I clause entitled "DEAR 970.5211-1, *Work Authorization.*"

(d) The Government reserves the right to have other contractors or government entities (e.g. U.S. Army Corps of Engineeers (USACE)) perform or manage any or all construction projects, including Capital Construction Projects, or any portion thereof at the Plant. The Contractor agrees to provide site access to such other contractors or government entities and to cooperate with, accommodate, and to provide such logistical support to such other contractors or government entities as needed and/or as directed by the Construction Contracting Officer. Added project costs resulting from the Contractor's failure to cooperate with any such other contractors (such as delay costs), regardless of whether incurred by the Contractor or such other

contractor(s) or by the Government, shall be borne by the Contractor and shall not be an allowable cost of this Contract. Activities conducted pursuant to this paragraph and associated costs are within the scope of CLIN 0002.

H-19 LABORATORY, PLANT, AND SITE STRATEGIC PLANNING GUIDANCE

The Contractor shall submit to NNSA a laboratory, plant, or site strategic plan annually in accordance with the annual strategic planning guidance and the terms and conditions of the contract, or as directed by the Contracting Officer. The laboratory, plant, or site M&O leadership team shall present the site's plan and engage in discussions with senior NNSA and other M&O leadership as well as with key stakeholders (e.g., DOE and interagency partners) annually, if required in the annual strategic planning guidance, and as directed by the Contracting Officer.

H-20 ORGANIZATIONAL CULTURE

The Contractor shall cultivate an organizational culture that effectively manages disciplined operations, while proactively balancing the conduct of operations in every aspect of executing the Statement of Work (e.g. integrating technical safety, Nuclear Explosive Safety, and criticality safety requirements with a production environment; effective IT/Cybersecurity; and integrating construction and operations in a high hazard environment). This balance should allocate resources and leadership focus to ensure mission deliverables and desired outcomes are achieved in a timely manner with operations that are safe, secure, and efficient; and it should ensure the continuity of leadership and technical capability necessary to reduce risk in Cybersecurity and IT program management. In addition to the focus areas and attributes described in Department of Energy Guide 450.4-1C, *Integrated Safety Management System*, Attachment 10, the Contractor shall include organizational culture improvement as part of its strategic planning activities.

H-21 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (NOV 2017)

(a) Definitions. As used in this clause—

"First-tier subcontract" means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect cost.

"Management and Operating Contractor Subcontract Reporting Capability (MOSRC)" means a DOE system and associated processes to collect key information about Management and Operating Contractor first-tier subcontracts for reporting to the Small Business Administration.

"Transaction" means any contract, order, agreement, other agreement, or modification thereof (other than one involving an employer-employee relationship) entered into by the Contractor acquiring supplies and services (including construction) required solely for performance of the prime contract.

(b) *Reporting*. The Contractor shall collect and report data via MOSRC necessary for DOE to meet its agency reporting requirements, as determined by the Small Business Administration, in accordance with the most recent reporting instructions at https://www.energy.gov/management/downloads/mosrc-reporting-instructions. The Contractor shall report first-tier subcontract data in MOSRC. Classified subcontracts shall not be reported. Subcontracts with Controlled Unclassified Information marking shall not be reported if restricted by its category. Contact your Contracting Officer if uncertain of information reporting requirements. The MOSRC reporting requirement does not replace any other reporting requirements (e.g. the Electronic Subcontracting Reporting System or the FFATA Subcontracting Reporting System.

H-22 THIRD PARTIES

Nothing contained in this Contract or its modifications shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This clause is not intended to limit or impair the rights which any person may have under applicable Federal Statutes.

H-23 STANDARDS MANAGEMENT

(a) Benchmark with Industry. The Contractor shall regularly benchmark with industry to identify best commercial standards and best business practices that will improve site operations with the goal of improving performance effectively and efficiently without compromising Integrated Safety Management (ISM) and Integrated Safeguards and Security Management (ISSM).

(b) Proposal of Alternative. Where best commercial standards or best business practices are identified that will improve site operations consistent with paragraph (a) above, the Contractor may, at any time during performance of this Contract, propose an alternative procedure, standard, or assessment mechanism (collectively referred to herein as "alternative") for a Directive or DOE/NNSA requirement by submitting to the Contracting Officer a signed proposal(s) that describes (1) the nature and scope of alternative and Contractor system of oversight, (2) the anticipated benefits, including any cost benefits to be realized in performance under the Contract, (3) a schedule for implementation of the alternative is an effective, efficient means to meet the Directive without compromising ISM and ISSM, and (4) any additional information required by NNSA. NNSA will evaluate the Contractor's proposal, and the Contractor will not implement a proposed change until it is formally approved by the NNSA and communicated to the Contractor by the Contracting Officer.

(c) Deficiency and Remedial Action. If, during performance of this Contract, NNSA determines that a previously approved alternative is not satisfactory, the Contracting Officer will require the Contractor to prepare a corrective action to be taken, and, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the Directive or DOE/NNSA requirement.

(d) Law and Regulations Exempted. The process described in this clause shall not affect the Application of otherwise applicable laws and regulations of the United States, including DOE regulations.

H-24 PERFORMANCE BASED MANAGEMENT SYSTEM

This Contract is a management and operating performance-based contract, which holds the Contractor accountable for performance. This Contract uses performance measures as described in Contract Clause B-6 entitled "*Performance Evaluation*."

H-25 CONTRACTOR PERFORMANCE EVALUATIONS

In accordance with Federal Acquisition Regulation (FAR) Subpart 42.15, the NNSA will prepare and submit past performance evaluations to the Past Performance Information Retrieval System (PPIRS). Evaluation reports will be documented not later than 120 days after the end of an evaluation period by using the Contractor Performance Assessment Reporting System (CPARS) which has connectivity with PPIRS. Contractor must register in CPARS in order to view/comment on their performance reports.

H-26 ADVANCE UNDERSTANDING REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS

Allowable costs under this Contract shall be determined according to the requirements of the Contract's Section I clause entitled "*Payments and Advances*." For purposes of effective Contract implementation, certain general types of cost are being specifically identified below as allowable (to the extent reasonable and allocable to the contract and in accordance with other applicable requirements and limitations) and/or unallowable under this Contract to the extent indicated:

(a) ITEMS OF ALLOWABLE COSTS:

(1) Personnel costs in accordance with Section J, Appendix S, *Human Resources*, and Appendix D, *Personnel Appendix* attached to this contract.

(b) ITEMS OF UNALLOWABLE COSTS:

(1) Premium Pay for wearing radiation-measuring devices for Plant and all-tier cost-type subcontract employees.

(2) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically provided in the Contract or specifically agreed to in writing by the Contracting Officer.

(3) Facilities capital cost of money for the Contractor including its "Contractor teaming arrangement" as defined in FAR 9.601.

(4) Meals, snacks, refreshment and catering services, except those allowable under NAP 520.1 Management and Operating Contractor Business Meals and Light Refreshments or as otherwise specifically agreed to in writing by the Contracting Officer.

(5) Compensation of a Senior Executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy, are unallowable.

(6) Key Personnel Bonuses (such as incentives, variable pay, sign-on, retention).

(7) Costs that are unallowable under other contract terms shall not be allowable as compensation for personnel services.

H-27 ALTERNATIVE DISPUTE RESOLUTION

(a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of contractual issues in controversy by mutual agreement are essential to the successful and timely completion of contract requirements. Accordingly, DOE and the Contractor shall use their best efforts to informally resolve any contractual issue in controversy by mutual agreement. Issues of controversy may include a dispute, claim, question, or other disagreement. The parties agree to negotiate with each other in good faith, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties.

(b) If a mutual agreement cannot be reached through negotiations within a reasonable period of time, the parties may use a process of alternate dispute resolution (ADR) in accordance with the clause at FAR 52.233-1, *Disputes*. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision, but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible in evidence in any subsequent litigation proceedings.

(c) Either party may request that the ADR process be used. The Contractor shall make a written request to the Contracting Officer, and the Contracting Officer shall make a written request to the appropriate official of the Contractor. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process, and officials of both parties who have the authority to resolve the issue must participate in the agreed upon process.

(d) ADR procedures may be used at any time that the Contracting Officer has the authority to resolve the issue in controversy. If a claim has been submitted by the Contractor, ADR procedures may be applied to all or a portion of the claim. If ADR procedures are used subsequent to issuance of a Contracting Officer's final decision under the clause at FAR 52.233-1, *Disputes*, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the Contracting Officer's final decision and does not constitute reconsideration of the final decision.

e) If the Contracting Officer rejects the Contractor's request for ADR proceedings, the Contracting Officer shall provide the Contractor with a written explanation of the specific reasons the ADR process is not appropriate for the resolution of the dispute. If the Contractor rejects the Contracting Officer's request to use ADR procedures, the Contractor shall provide the Contracting Officer with the reasons for rejecting the request.

H-28 COMMUNITY COMMITMENT PLAN

The Community Commitment Plan shall be consistent with the intent of DEAR 970.5226-3, "Community Commitment". The Community Commitment Plan shall describe the Contractor's planned activities as to how it will be a constructive partner to the communities in the State of Texas. The Contractor is encouraged to consider specific performance goals around maximizing Strategic Partnerships with Texas' systems of higher education. Reasonable costs associated with the development of the plan will be considered allowable, while costs associated with implementing the Plan are unallowable.

H-29 DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM PRIORITY RATING

(a) Rated Contract. As indicated in Block 1 of SF33, this contract is a DX and DO rated order certified for national defense use (subject to limitations in (b) below) and you are required to follow all the provisions of the Defense Priorities and Allocations System ("DPAS") regulations (15 CFR §§ 700, *et seq*.). In the event that any provision of the DPAS regulations conflict with any provision of this clause, the DPAS regulations control.

(b) Scope of DPAS Rating. Though this contract is rated as DX and DO, only those portions of this contract for materials (including equipment), services, or facilities necessary for the national defense, as outlined in (b)(1) and (b)(2), are considered rated. The authority granted under this clause is not applicable to Strategic Partnership Projects (SPP).

(1) DO. Items and related services in support of programs approved for priorities and allocations support by the Secretary of Defense with respect to military production and construction, military assistance to any foreign nation, space, stockpiling, and directly related activities are rated as DO-E2 upon establishment of a required delivery date (see (c)).

(2) DX. Items and when applicable, related services in support of programs designated by the Secretary of Defense to be of the Highest National Priority as described in the DoD List of DX-Rated Programs (*e.g*., the: Intercontinental Ballistic Missile, Minuteman III; and Fleet Ballistic Missile Weapons System, Trident System) are rated as DX-A2 upon establishment of a required delivery date or dates (see (c)).

(c) Required Delivery Dates. If not expressly identified in this contract, the required delivery date for rated items and related services is as specified in writing by the cognizant NNSA Program Office or Field Office.

(d) Placing Priority Ratings on Subcontracts.

(1) Subcontracts that May be Rated. When placing subcontracts that directly support a rated portion of this contract, the Contractor may, if necessary, place rated subcontract orders for:

(i) Items (as defined in 15 CFR § 700.8) which will be physically incorporated into other items to fill a rated portion of this contract, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(ii) Containers or other packaging materials required to make delivery of the finished items required under a rated portion of this contract;

(iii) Services, other than contracts of employment, needed to fill a rated portion of this contract;

(iv) Maintenance and repair and/or operating supplies (as defined in 15 CFR § 700.8) needed to produce the finished items to fill rated orders.

(2) Subcontracts that Shall Not be Rated. Notwithstanding (d)(1), subcontracts may not be rated to obtain:

(i) Any items that (i) are commonly available in commercial markets for general consumption; (ii) do not require major modification when purchased for approved program use; and (iii) are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements; or

(ii) Any items to be used primarily for administrative purposes, such as for personnel or financial management.

(iii) Delivery of items or services on a date earlier than needed;

(iv) A greater quantity of the item than needed, except to obtain a minimum procurable quantity;

(v) Any of the following items, unless a specific priority rating authority has been obtained from a Delegate Agency or Department of Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order;

(B) Production or construction equipment or items to be used for the manufacture of production equipment.

(vi) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(e) Records and Reporting Requirements.

(1) Record Retention. Notwithstanding any other provision of this contract, the Contractor shall maintain and preserve for at least three years, accurate and complete records related to any priority rated subcontract.

(2) Reporting. On a semi-annual basis, the Contractor shall provide to the Contracting Officer a summary of all rated subcontract orders placed in the preceding six-months by the Contractor. This information shall be contained in a sortable Microsoft® Excel spreadsheet with the following information (contained in separate columns):

(i) Subcontract identification number
(ii) Description of items or services acquired
(iii)Priority rating assigned to the subcontract (i.e., DO-E2).
(iv)Detailed justification for the priority rating assigned.

H-30 STRATEGIC PURCHASING

(a) The Contractor shall participate with NNSA and other NNSA contractors as part of an "enterprise organization" taking advantage of the many benefits that can be achieved through strategic purchasing. Strategic purchasing can result in better pricing, better products, more timely delivery, reduced administrative costs and lead times for both the Contractor and the NNSA, greater standardization and interchangeability across the NNSA complex, and increased award to small business entities.

(b) The Contractor shall cooperate with NNSA and other NNSA contractors in identifying requirements under this Contract that are suitable for strategic purchasing and shall facilitate the identification of work to be directly acquired by NNSA to support the objectives discussed below. The Contractor shall use the contracting vehicles identified by the NNSA as strategic purchases and any strategic sourcing vehicle available to NNSA and DOE contractors to meet all suitable requirements under this Contract unless the cost of using such contracting vehicles is shown to be excessive, does not provide the best value and or impacts the Contractor's schedule. The Contractor may propose alternative acquisition strategies to the Contracting Officer.

H-31 PARTNERING AND CONTRACT MAINTENANCE

As requested from time to time by the Contracting Officer, and at a frequency no less than once every five years, the Contractor and the NNSA shall review the Contract requirements together for the purpose of identifying areas of the Contract (e.g. clauses, directives, etc.) that may be improved. Improvements include additions, revisions, or deletions of Contract language or requirements documents that create efficiencies and/or streamline processes. This partnering process of reviewing the Contract is not intended to take the place of the Contractor's responsibilities under H-23 Standards Management. Any modifications to the Contract resulting from this process will be by mutual agreement of the Parties. This clause in no way impairs the NNSA's ability to modify the Contract unilaterally pursuant to other clauses in the Contract.

H-32 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.

H-33 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.

H-34 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.

H-35 KEY PERSONNEL

(a) REPLACEMENT OF KEY PERSONNEL UNDER SERVICE AGREEMENT. Unless approved in advance, in writing, by the Contracting Officer, should any Key Personnel be removed, replaced, or diverted by the Contractor for reasons under the Contractor's control (other than in accordance with the Contract's Section I clause entitled "DEAR 970.5203-3, Contractor's Organization (DEC 2000) (Class Deviation), paragraph (c)"), beginning on the first day of the Contract Base Period through the first three years of the Base Period under the Contract, or within three years of being placed in the position, the Contractor shall forfeit three years of the DOE/NNSA reimbursable annual salary and relocation or similar costs as well as associated burdens, for that position for each occurrence. Such forfeited costs shall be considered unallowable costs under this Contract and shall be considered a debt due to the Government within 30 days of the effective date any Key Personnel is removed, replaced, or diverted from the key position.

(b) REPLACEMENT OF KEY PERSONNEL DURING CONTRACT PERFORMANCE. In addition to the requirements outlined in Section I DEAR Clause 952.215-70, the Contractor shall submit the proposed compensation for the proposed Key Person following requirements in Section J, Appendix S, *Human Resources*, Section 3.2.3.

(c) ADDITION OF NEW KEY PERSONNEL POSITIONS DURING CONTRACT PERFORMANCE.
During Contract performance the Contractor may, if approved by the Contracting Officer, add new Key Personnel positions if necessary to achieve mission objectives. At least 60 days before the proposed effective date of the action, the Contractor shall submit a request to the Contacting Officer with an accompanying justification that includes: a description of the proposed Key Personnel position (including the role, responsibilities and lines of authority), the Contractor's rationale for the new Key Personnel position, and the benefits

the Government will achieve through approval of the new Key Personnel position. If the request for the new Key Personnel position is approved, the Contractor shall submit the compensation for the new Key Person in accordance with Section J, Appendix S, *Human Resources*, Section 3.2.3.

(d) KEY PERSONNEL EMPLOYER. Key Personnel shall be employees of the Contractor and shall not be on assignment (i.e., seconded) from another organization.

(e) LIMITS ON REIMBURSEMENT OF KEY PERSONNEL COMPENSATION. The reimbursed salary of the Contractor's top official will serve as the maximum allowable salary reimbursement level. Notwithstanding any other term or condition set forth in the Contract, the compensation reimbursed by the Government for each of the Contractor's Key Personnel shall not exceed the Office of Federal Procurement Policy (OFPP) Executive Compensation cap per fiscal year, adjusted annually based on the Employment Cost Index (ECI), as determined by Section 702(a)(1) of the Bipartisan Budget Act of 2013, P.L. 113-6 (December 26, 2013), codified at 41 U.S.C. § 4304(a)(16). Any bonuses paid to Key Personnel are considered unallowable costs (see H-26(b)).

H-36 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS

The Contractor agrees that:

a) No cost associated with implementation or enforcement of nondisclosure policies, forms or agreements shall be allowable under this contract if such policies, forms or agreements do not contain the following provisions: ‘‘These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.’’

b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

H-37 PERSONAL PROTECTIVE EQUIPMENT (PPE) STRATEGIC RESERVE

The Contractor shall maintain the Site NNSA Strategic Reserve of critical PPE and cleaning consumables for all onsite federal employees, M&O contractor and subcontractor (if applicable) employees, and routine visitors to support continuity of critical mission work including Primary Mission Essential Functions (PMEFs), Mission Essential Functions (MEFs), and Essential Supporting Activities (ESAs), sufficient to sustain normal operations for a minimum of 120 days or as directed by the Contracting Officer. The Contractor shall provide PPE inventory data into the SAFER-PPE reporting tool monthly or as directed by the Contracting Officer.

H-38 SAFEGUARDING COVERED NNSA INFORMATION, CLOUD COMPUTING SERVICES, AND CYBERSECURITY INCIDENT REPORTING

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

"Authorizing official," as defined by the National Institute of Standards and Technology (NIST) (https://csrc.nist.gov/glossary/term/authorizing_official), means the senior Federal official or executive with the authority to formally assume responsibility for operating an information system at an acceptable level of risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation.

"Cloud computing," as used in this provision, means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

"Compromise" means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

"Contractor/corporate-owned records" means records not identified as Federal records (such as company proprietary information, records unrelated to the work performed under a federal contract, and other similar records) that belong to the contractor. Contractor/corporate-owned records are defined in the contract and/or through the Access to an Ownership of Records clause (48 CFR 970.5204.3). Privacy Act Systems of Record [Federal Acquisition Regulation (FAR) 52-224-2] are NOT contractor-owned records.

"Covered contractor information system" means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered NNSA Information.

"Covered NNSA Information" means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at https://www.archives.gov/cui/registry/category-list.html, that requires safeguarding or

dissemination controls pursuant to and consistent with law, regulations, Department of Energy Order 471.7, and Governmentwide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of NNSA in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

"Cybersecurity incident" means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

"Forensic analysis" means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

"Government data" means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

"Government-related data" means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include contractor's business records (e.g., financial records, legal records, etc.) or data such as operating procedures, software coding or algorithms that are not uniquely applied to the Government data.

"Information technology" has the meaning assigned in section 11101 of title 40, including cloud computing services of all types.

"Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

"Malicious software" means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

"Media" means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered NNSA Information is recorded, stored, or printed within a covered contractor information system.

"Spillage" security incident that results in the transfer of classified or controlled unclassified information onto an information system not accredited (i.e., authorized) for the appropriate security level.

(b) The Contractor shall provide security on all covered contractor information systems. To provide security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements delineated in paragraphs (m) through (v).

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the Contractor shall ensure that all covered contractor information systems comply with the security requirements identified in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement the security requirements identified in NIST SP 800-171, as soon as practicable, but not later than twelve months after award; all software updates and patches shall be installed as soon as practicable or as applicable based on dependent application updates.

(B) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered NNSA Information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) (https://www.fedramp.gov/cloud-service-providers/), and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cybersecurity incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cybersecurity incident damage assessment.

(3) Apply other information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, when the Contractor determines these measures are required to provide security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures shall be addressed in a system security plan..

(c) *Cybersecurity incident reporting requirement.*

(1) When the Contractor discovers a cybersecurity incident that affects a covered contractor information system and/or the covered NNSA Information residing therein; or affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered NNSA Information, including but not limited to, identifying compromised computers, servers, specific data, and user

accounts. This review shall also include analyzing covered Contractor information system(s) that were part of the Cybersecurity incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered NNSA Information, or the Contractor's ability to provide operationally critical support; and

(ii) Report Cybersecurity incidents to the NNSA Information Assurance Response Center (IARC) in accordance with the IARC Cybersecurity Incident Reporting Standard Operating Procedure (IARC-SOP-24601) which can be requested from the IARC at iarc@nnsa.doe.gov.

(2) *Cybersecurity incident report*. The cybersecurity incident report shall be treated as covered NNSA information created by or for the IARC.

(d) *Malicious software*. When the Contractor discovers and isolates malicious software in connection with a reported cybersecurity incident, the Contractor shall submit the malicious software to the IARC in accordance with instructions provided by IARC or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) *Media preservation and protection*. When a Contractor discovers a cybersecurity incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least one year from the submission of the cybersecurity incident report to allow NNSA to request the media.

(f) *Access to additional information or equipment necessary for forensic analysis*. Upon request by NNSA, the Contractor shall provide NNSA with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cybersecurity incident damage assessment activities*. If NNSA elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *NNSA safeguarding and use of contractor/corporate-owned records*. The Government shall protect against the unauthorized use or release of information obtained from the Contractor (or derived from information obtained from the contractor) under this clause that includes contractor/corporate-owned records including such information submitted in accordance with paragraph (c), unless otherwise required by law. To the maximum extent practicable, the Contractor shall identify and mark contractor/corporate-owned records. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor/corporate-owned records that are included in such authorized release, seeking to include only the information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of Contractor/corporate-owned records not created by or for NNSA.* Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that is not created by or for NNSA is authorized to be released outside of NNSA—

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cybersecurity incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cybersecurity situational awareness; or

(5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract in accordance with paragraph (w), *Limitations on the Use or Disclosure of Third-Party Contractor Reported Cybersecurity Incident Information*.

(j) *Use and release of Contractor attributional/proprietary information created by or for NNSA.* Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that is created by or for NNSA (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of NNSA for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements*. The safeguarding and cybersecurity incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cybersecurity incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Cloud computing security requirements*. The requirements of this paragraph (m) through (v) are applicable when using cloud computing to provide information technology services in the performance of the contract.

(1) The Contractor shall implement and maintain administrative, technical, and physical safeguards and controls in accordance with the latest versions of DOE Order 205.1 and NNSA SD 205.1, unless notified by the Contracting Officer that this requirement has been waived by the NNSA Chief Information Officer.

(2) The Contractor shall maintain all Government data that is not physically located on NNSA premises within the United States or outlying areas (as defined by 48 C.F.R. § 2.101), unless the Contractor receives written notification from the Contracting Officer to use another location.

(n) *Limitations on access to, and use and disclosure of Government data and Government-related data.*

(1) The Contractor shall not access, use, or disclose Government data unless specifically authorized by the terms of this contract or a task order or delivery order issued hereunder.

(i) If authorized by the terms of this contract or a task order or delivery order issued hereunder, any access to, or use or disclosure of, Government data shall only be for purposes specified in this contract or task order or delivery order.

(ii) The Contractor shall ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.

(iii) These access, use, and disclosure prohibitions and obligations shall survive the expiration or termination of this contract.

(2) The Contractor shall use Government-related data only to manage the operational environment that supports the Government data and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.

(o) *Cloud computing services Cybersecurity incident reporting*. The Contractor shall report all Cybersecurity incidents that are related to the cloud computing service provided under this contract to the NNSA IARC in accordance with IARC Cybersecurity Incident Reporting Standard Operating Procedure (IARC-SOP-24601), which is available through contact with the IARC at iarc@nnsa.doe.gov.

(p) *Malicious software within the cloud computing environment*. The Contractor that discovers and isolates malicious software in connection with a reported Cybersecurity incident shall submit the malicious software to the IARC in accordance with instructions provided by IARC or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(q) *Media preservation and protection within the cloud computing environment*. When a Contractor discovers a Cybersecurity incident has occurred within the cloud computing environment, the Contractor shall preserve and protect images of all known affected information systems identified in the IARC Incident Reporting Form (see paragraph (o) of this clause) and all relevant monitoring/packet capture data for at least one year from the submission of the IARC Incident Reporting Form to allow NNSA to request the media.

(r) *Access to additional information or equipment necessary for forensic analysis*. Upon request by NNSA, the Contractor shall provide NNSA with access to additional information or equipment that is necessary to conduct a forensic analysis.

(s) *Cybersecurity incident damage assessment activities*. If NNSA elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (q) of this clause.

(t) *Records management and facility access.*

(1) The Contractor shall provide the Contracting Officer all Government data and Government-related data in the format specified in the contract.

(2) The Contractor shall dispose of Government data and Government-related data in accordance with the terms of the contract and provide the confirmation of disposition to the Contracting Officer in accordance with contract closeout procedures.

(3) The Contractor shall provide the Government, or its authorized representatives, access to all Government data and Government-related data, access to Contractor personnel involved in

performance of the contract, and physical access to any Contractor facility with Government data, for the purpose of audits, investigations, inspections, or other similar activities, as authorized by law or regulation.

(u*) Notification of third-party access requests*. The Contractor shall notify the Contracting Officer promptly of any requests from a third party for access to Government data or Government-related data, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or local agency.

The Contractor shall cooperate with the Contracting Officer to take all measures to protect Government data and Government-related data from any unauthorized disclosure.

(v) *Spillage*. Upon notification by the Government of a spillage, or upon the Contractor's discovery of a spillage, the Contractor shall cooperate with the Contracting Officer to address the spillage in compliance with the IARC Cybersecurity Incident Reporting Standard Operating Procedure (IARC-SOP-24601), which is available through contact with the IARC at iarc@nnsa.doe.gov.

(w) *Limitations and restrictions on the use or disclosure of third-party contractor reported cybersecurity information*. The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract that is information obtained from a third-party's reporting of a Cybersecurity incident pursuant to paragraphs (c) through (l):

(1) The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Government in support of the Government's activities related to paragraphs (c) through (l) and shall not be used for any other purpose.

(2) The Contractor shall protect the information against unauthorized release or disclosure.

(3) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.

(4) Information provided by a third-party contractor reporting a Cybersecurity incident shall be subject to equivalent protection for use and non-disclosure obligations as those referred to in paragraph (w)(3) of this clause (with the exception that all information must be both useable and disclosable to the Government).

(5) A breach of these obligations or restrictions may subject the Contractor to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States.

(x) *Subcontracts*. The Contractor shall—

(1) Include this clause, including paragraph (x), in subcontracts, or similar contractual instruments, for services that include support for the Government's activities related to safeguarding covered NNSA information, cloud services, and Cybersecurity incident reporting, including subcontracts for commercial products or commercial services, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered NNSA Information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to provide incident report information to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cybersecurity incident to NNSA as required in paragraph (c) of this clause.

H-39 DEFINITION OF UNUSUALLY HAZARDOUS OR NUCLEAR RISK AND OTHER TERMS AS USED IN FAR CLAUSE 52.250-1, INDEMNIFICATION UNDER PUBLIC LAW 85-804 (ALTERNATE I – APR 1984) (ADDED MOD P00002)

(a) The term "a risk defined in this contract as unusually hazardous or nuclear" as used in FAR Clause 52.250-1 means the risk of legal liability to third parties (including legal costs as defined in paragraph jj. of Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2014, notwithstanding the fact that the claim or suit may not arise under section 170 of said Act, 42 U.S.C. § 2210) arising from actions or inactions in the course of the following work performed by the Contractor under this contract:

(1) Research, design, testing, evaluation, production, assembly/disassembly, repair, maintenance, and storage of United States-owned nuclear weapons, as requested by the Department of Defense (DOD) under DOE's Stewardship role for the United States nuclear weapons stockpile.

(2) Participation in activities in support of a nonproliferation, counterproliferation, or counterterrorism effort on behalf of the United States, outside of the United States, as described below in (i) and (ii):

(i) DOE's Accident Response Group (ARG)

ARG is a deployable capability to manage the technical resolution of accidents or significant incidents involving U.S. nuclear weapons that are in DOE custody at the time of an accident or incident. The ARG will also provide timely, worldwide support to DOD in resolving accidents and significant incidents involving U.S. nuclear weapons in DOD custody.

(ii) DOE's Joint Technical Operations Team (JTOT)

JTOT is a joint DOE/DOD/Federal Bureau of Investigation (FBI) team. The DOE part of this team is capable of: (1) providing technical operations advisory support and advanced technical assistance to the Coordinating Agency, FBI, and/or DOD; (2) providing an Emergency Response Home Team to provide extended technical support to other deployed operations; (3) performing a nuclear safety review for safe-to-ship determination to transfer a weapon of mass destruction to an appropriate disposal location; and (4) accepting custody of nuclear or radiological weapons of mass destruction on behalf of DOE and providing for the final disposition of the device.

(3) Support of other United States-sponsored activities outside the United States, as requested or approved by the President of the United States, the Secretary of Energy,

the Deputy Secretary of Energy, or the Under Secretary for Nuclear Security and provided that the request or approval specifically makes the indemnity provided by this clause applicable thereto, involving:

(i) Transparency monitoring activities;

(ii) Inspection, packaging, transportation, and storage of weapons usable nuclear material;

(iii) Nuclear materials protection, control and accountability programs known as the Material Protection Control and Accounting Systems;

(iv) Maintenance and repair of nuclear weapons conducted outside the United States, including the safe secure dismantlement of weapons outside of the United States;

(v) Responses to imminent terrorist or nuclear proliferation threats regardless of location outside the United States;

(vi) Dismantlement or conversion to non-military purposes of nuclear weapons, nuclear weapon components or nuclear materials which could be readily utilized either for the production or the fabrication of nuclear weapons without substantial further effort;

(vii) Development of the technology as part of Government programs for nuclear weapons deployment, nuclear weapons storage and stockpile stewardship, nuclear weapons transportation, nuclear weapons demilitarization/sanitization, nuclear weapons dismantlement or nuclear weapons disposition to the extent such work involves nuclear weapons located outside the United States, and provided in all cases that the requesting or approving official determines that such work is of a kind uniquely performed at the Government-owned nuclear weapons facilities or uniquely managed or over seen by the contractor-managers of such facilities; and

(viii) Other nonproliferation work relating to weapons-useable nuclear material.

(4) As requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary, or the Under Secretary for Nuclear Security, nonproliferation, emergency response, antiterrorism activities, or critical national security activities that involve the use, detection, identification, assessment, control, containment, assembly, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices; provided that the activity relates to materials that are weapons usable or otherwise have the potential for mass destruction and further provided that the request or approval specifically makes the indemnity provided by this clause applicable to that particular activity.

(b) The unusually hazardous or nuclear risks described above are indemnified to the extent that they are not covered by the Price-Anderson Act, Section 170d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2210(d)), or where the indemnification provided by the Price-Anderson Act is limited by the restriction on public liability imposed by section 170e. of the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2210(e)), to an amount which is not sufficient to provide complete indemnification for the legal liability to which the contractor is exposed.

(c) Additional Definition of Terms

(1) As used in this H-39 clause, the term "nuclear materials" means source, special nuclear, or byproduct materials as those terms are defined in Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2014.

(2) As used in Clause I-14, entitled FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984) (ALTERNATIVE I) (APR 1984)

(i) the term "Contractor," except as used in paragraphs (a) and (e) of I-14 FAR 52.250-1 means:

(A) PanTeXas Deterrence, LLC (PanTeXas Deterrence or PXD),

(B) PanTeXas Deterrence member organizations: BWX Technologies, Inc. (BWXT), Fluor Federal Services, Inc. (FFS), SOC LLC (SOC), The Texas A&M University System (TAMUS), and the corporate successors or corporate affiliates of each, and

(C) Employees, officers, and directors of (A) and/or (B) above named or threatened to be named as defendants in lawsuits or litigation threatened or initiated by third parties which seek to impose or establish, or which could result in, a risk which is defined in this contract as unusually hazardous or nuclear, on account of actions or inactions of PanTeXas Deterrence, or on account of the actions or inactions undertaken by the corporations or individuals identified in subparagraphs (a), (b), or (c) of FAR clause 52.250-1 for, and on behalf of, or with respect to, PanTeXas Deterrence, under this Contract;

(ii) the term "Contractor" as used in paragraphs (a) and (e) of FAR 52.250-1, Clause I-14 means PanTeXas Deterrence, LLC;

(iii) the term "Contractor's business" means the management and operation of the Pantex Plant (Pantex) for the DOE/NNSA under this contract;

(iv) the terms "Contractor's operations at any one plant or separate location in which this contract is being performed" and "a separate and complete major industrial operation in connection with the performance of this contract" mean the Pantex Plant facility located in Amarillo, Texas;

(v) term “agency head” as used in this clause means the Secretary of Energy; and

(vi) the term “corporate affiliate” as used in this clause means companies that own or control any of the member organizations of PXD, or any companies, other than PXD, that are owned or controlled by the member organizations of PXD.

PART II – CONTRACT CLAUSES

SECTION I: CONTRACT CLAUSES

A. FAR CLAUSES INCORPORATED BY REFERENCE

The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1). The following FAR clauses are hereby incorporated by reference:

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.203-3	Gratuities	Apr 1984
52.203-5	Covenant Against Contingent Fees	May 2014
52.203-6	Restrictions on Subcontractor Sales to the Government	Jun 2020
52.203-7	Anti-Kickback Procedures	Jun 2020
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	May 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	May 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	Jun 2020
52.203-13	Contractor Code of Business Ethics and Conduct	Nov 2021
52.203-14	Display of Hotline Poster(s) *(b)(3) Required poster is: DOE Hotline Poster obtained from http://energy.gov/ig/downloads/office-inspector-general-hotline-poster*	Nov 2021
52.203-16	Preventing Personal Conflicts of Interest	Jun 2020
52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights	Jun 2020
52.203-18	Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Arrangements or Statements - Representation	Jan 2017
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreement or Statements	Jan 2017
52.204-3	Taxpayer Identification	Oct 1998
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	May 2011
52.204-6	Unique Entity Identifier	Oct 2016
52.204-7	System for Award Management	Oct 2018
52.204-9	Personal Identity Verification of Contractor Personnel	Jan 2011

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	Jun 2020
52.204-12	Unique Entity Identifier Maintenance	Oct 2016
52.204-13	System for Award Management Maintenance	Oct 2018
52.204-14	Service Contract Reporting Requirements	Oct 2016
52.204-18	Commercial and Government Entity Code Maintenance	Aug 2020
52.204-19	Incorporation by Reference of Representations and Certifications	Dec 2014
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	Nov 2021
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	Nov 2021
52.204-27	Prohibition on a ByteDance Covered Application	June 2023
52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	Nov 2021
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	Oct 2018
52.209-10	Prohibition on Contracting with Inverted Domestic Corporations	Nov 2015
52.210-1	Market Research	Nov 2021
52.211-5	Material Requirements	Aug 2000
52.211-15	Defense Priority and Allocation Requirement	Apr 2008
52.215-2	Audit and Records – Negotiation	Jun 2020
52.215-8	Order of Precedence -- Uniform Contract Format	Oct 1997
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data	Aug 2011
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data-Modifications	Jun 2020

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.215-12	Subcontractor Certified Cost or Pricing Data	Jun 2020
52.215-13	Subcontractor Certified Cost or Pricing Data -- Modifications	Jun 2020
52.215-15	Pension Adjustments and Asset Reversions	Oct 2010
52.215-17	Waiver of Facilities Capital Cost of Money	Oct 1997
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	Jul 2005
52.215-19	Notification of Ownership Changes	Oct 1997
52.215-22	Limitations on Pass-Through Charges – Identification of Subcontract Effort	Oct 2009
52.215-23	Limitations on Pass-Through Charges	Jun 2020
52.219-1	Small Business Program Representations	Oct 2022
52.219-8	Utilization of Small Business Concerns	Oct 2022
52.219-9	Small Business Subcontracting Plan – Alt II (Nov 2016)	Oct 2022
52.219-16	Liquidated Damages -- Subcontracting Plan	Sep 2021
52.219-28	Post-Award Small Business Program Representation	Mar 2023
52.222-1	Notice to the Government of Labor Disputes	Feb 1997
52.222-2	Payment for Overtime Premiums *(a) The use of overtime is authorized under this contract if the overtime premium does not exceed [to be inserted after award, consistent with Personnel Appendix] or the overtime premium is paid for work-*	Jul 1990
52.222-3	Convict Labor	Jun 2003
52.222-4	Contract Work Hours and Safety Standards Act -- Overtime Compensation	May 2018
52.222-6	Construction Wage Rate Requirements	Aug 2018

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.222-7	Withholding of Funds	May 2014
52.222-8	Payrolls and Basic Records	Jul 2021
52.222-9	Apprentices and Trainees	Jul 2005
52.222-10	Compliance with Copeland Act Requirements	Feb 1988
52.222-11	Subcontracts (Labor Standards)	May 2014
52.222-12	Contract Termination – Debarment	May 2014
52.222-13	Compliance With Construction Wage Rate Requirements and Related Regulations	May 2014
52.222-14	Disputes Concerning Labor Standards	Feb 1988
52.222-15	Certification of Eligibility	May 2014
52.222-16	Approval of Wage Rates	May 2014
52.222-21	Prohibition of Segregated Facilities	Apr 2015
52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (b) Minority Goal: *[TBD post-award as construction is initiated]*; Female Goal: *[TBD post-award as construction is initiated]* (e) *[TBD post-award as construction is initiated]*	Feb 1999
52.222-26	Equal Opportunity	Sep 2016
52.222-27	Affirmative Action Compliance Requirements for Construction	Apr 2015
52.222-29	Notification of Visa Denial	Apr 2015
52.222-30	Construction Wage Rate Requirements – Price Adjustment (None or Separately Specified Method)	Aug 2018
52.222-31	Construction Wage Rate Requirements – Price Adjustment (Percentage Method)	Aug 2018

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.222-32	Construction Wage Rage Requirements – Price Adjustment (Actual Method)	Aug 2018
52.222-34	Project Labor Agreement	May 2010
52.222-35	Equal Opportunity for Veterans	Jun 2020
52.222-36	Equal Opportunity for Workers With Disabilities	Jun 2020
52.222-37	Employment Reports on Veterans	Jun 2020
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	Dec 2010
52.222-50	Combating Trafficking in Persons	Nov 2021
52.222-54	Employment Eligibility Verification	May 2022
52.222-55	Minimum Wages for Contract Workers Under Executive Order 14026	Jan 2022
52.222-62	Paid Sick Leave Under Executive Order 13706	Jan 2022
52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts	Sep 2013
52.223-5	Pollution Prevention and Right-to-Know Information, Alternate I (May 2011)	May 2011
52.223-6	Drug Free Workplace	May 2001
52.223-10	Waste Reduction Program	May 2011
52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons	Jun 2016
52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners	Jun 2016
52.223-13	Acquisition of EPEAT® -Registered Imaging Equipment, Alternate I (Oct 2015)	Jun 2014
52.223-14	Acquisition of EPEAT – Registered Televisions, Alternate I (Jun 2014)	Jun 2014

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.223-15	Energy Efficiency in Energy-Consuming Products	May 2020
52.223-16	IEEE 1680 Standard for Environmental Assessment of Personal Computer Products, Alternate I (Jun 2014)	Oct 2015
52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts	Aug 2018
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	Jun 2020
52.223-19	Compliance With Environmental Management Systems	May 2011
52.223-20	Aerosols	Jun 2016
52.223-21	Foams	Jun 2016
52.224-1	Privacy Act Notification	Apr 1984
52.224-2	Privacy Act	Apr 1984
52.224-3	Privacy Training	Jan 2017
52.225-1	Buy American—Supplies	Oct 2022
52.225-3	Buy American – Free Trade Agreement – Israeli Trade Act	Dec 2022
52.225-8	Duty Free Entry	Oct 2010
52.225-13	Restriction on Certain Foreign Purchases	Feb 2021
52.225-25	Prohibition on Contracting With Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications	Jun 2020
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	Jun 2000
52.227-1	Authorization and Consent	Jun 2020
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	Jun 2020
52.227-10	Filing of Patent Applications -- Classified Subject Matter	Dec 2007

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.227-23	Rights to Proposal Data (Technical) *Except for data contained on pages N/A* *Proposal dated September 28, 2023*	Jun 1987
52.228-2	Additional Bond Security	Oct 1997
52.228-5	Insurance – Work on a Government Installation	Jan 1997
52.228-11	Individual Surety – Pledge of Assets	Feb 2021
52.228-12	Prospective Subcontractor Requests for Bonds	Dec 2022
52.228-14	Irrevocable Letter of Credit	Nov 2014
52.228-15	Performance and Payment Bonds – Construction	Jun 2020
52.229-3	Federal, State, and Local Taxes *(Applies to fixed price work only)*	Feb 2013
52.229-8	Taxes -- Foreign Cost-Reimbursement Contracts *(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of [the foreign country(ies) referenced in the applicable Work Authorization or as specified by the Contracting Officer], or from which the Contractor or any subcontractor under this contract is exempt under the laws of [the Country(ies) referenced in the applicable Work Authorization or as specified by the Contracting Officer], shall not constitute an allowable cost under this contract.*	Mar 1990
52.230-2	Cost Accounting Standards	Jun 2020
52.230-6	Administration of Cost Accounting Standards	Jun 2010
52.232-5	Payments Under Fixed-Price Construction Contracts	May 2014
52.232-10	Payments under Fixed-Price Architect-Engineer Contracts	Apr 2010
52.232-16	Progress Payments, Alternate I (Mar 2000)	Nov 2021
52.232-17	Interest	May 2014
52.232-18	Availability of Funds	Apr 1984
52.232-23	Assignment of Claims	May 2014

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.232-24	Prohibition of Assignment of Claims	May 2014
52.232-26	Prompt Payment for Fixed-Price Architect and Engineering Contracts	Jan 2017
52.232-27	Prompt Payment for Construction Contracts	Jan 2017
52.232-33	Payment by Electronic Funds Transfer – System for Award Management	Oct 2018
52.232-39	Unenforceability of Unauthorized Obligations	Jun 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	Mar 2023
52.233-1	Disputes, Alternate I (Dec 1991)	May 2014
52.233-3	Protest After Award, Alternate I (Jun 1985)	Aug 1996
52.233-4	Applicable Law for Breach of Contract Claim	Oct 2004
52.234-4	Earned Value Management System	Nov 2016
52.236-2	Differing Site Conditions	Apr 1984
52.236-3	Site Investigation and Conditions Affecting the Work	Apr 1984
52.236-5	Material and Workmanship	Apr 1984
52.236-6	Superintendence by the Contractor	Apr 1984
52.236-7	Permits and Responsibilities	Nov 1991
52.236-8	Other Contracts	Apr 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	Apr 1984
52.236-10	Operations and Storage Areas	Apr 1984
52.236-11	Use and Possession Prior to Completion	Apr 1984

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.236-12	Cleaning Up	Apr 1984
52.236-13	Accident Prevention	Nov 1991
52.236-14	Availability and Use of Utility Services	Apr 1984
52.236-15	Schedules for Construction Contracts	Apr 1984
52.236-18	Work Oversight in Cost-Reimbursement Construction Contracts	Apr 1984
52.236-19	Organization and Direction of the Work	Apr 1984
52.236-21	Specifications and Drawings for Construction	Feb 1997
52.236-23	Responsibility of the Architect – Engineer Contractor	Apr 1984
52.236-24	Work Oversight in Architect-Engineer Contracts	Apr 1984
52.236-25	Requirements for Registration of Designers	Jun 2003
52.236-26	Preconstruction Conference	Feb 1995
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	Apr 1984
52.237-3	Continuity of Services	Jan 1991
52.239-1	Privacy and Security Safeguards	Aug 1996
52.242-1	Notice of Intent to Disallow Costs	Apr 1984
52.242-3	Penalties for Unallowable Costs	Dec 2022
52.242-5	Payments to Small Business Subcontractors	Jan 2017
52.242-13	Bankruptcy	Jul 1995
52.242-14	Suspension of Work	Apr 1984

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.244-2	Subcontracts *(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:* All subcontracts shall be placed in accordance with the Contractor's approved purchasing system.	Jun 2020
52.244-5	Competition in Subcontracting	Dec 1996
52.244-6	Subcontracts for Commercial Products and Commercial Services	Jun 2023
52.245-1	Government Property	Sep 2021
52.246-4	Inspection of Services – Fixed Price	Aug 1996
52.246-5	Inspection of Services – Cost Reimbursement	Apr 1984
52.246-12	Inspection of Construction	Aug 1996
52.246-21	Warranty of Construction	Mar 1994
52.246-26	Reporting Nonconforming Items	Nov 2021
52.247-1	Commercial Bill of Lading Notations *(a) Transportation is for the [U.S. Department of Energy, National Nuclear Security Administration]…* *(b) Transportation is for the [U.S. Department of Energy, National Nuclear Security Administration]…pursuant to cost-reimbursement contract No.* 89233224CNA000004 *. This may be confirmed by contacting [the Contracting Officer].*	Feb 2006
52.247-63	Preference for U.S.-Flag Air Carriers	Jun 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	Nov 2021
52.248-3	Value Engineering – Construction	Oct 2020
52.249-2	Termination for the Convenience of the Government (Fixed Price), Alternate I (Sep 1996)	Apr 2012
52.249-10	Default (Fixed Price Construction)	Apr 1984
52.249-14	Excusable Delays	Apr 1984

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.251-1	Government Supply Sources	Apr 2012
52.251-2	Interagency Fleet Management System Vehicles and Related Services	Jan 1991
52.253-1	Computer Generated Forms	Jan 1991

B. DEAR CLAUSES INCORPORATED BY REFERENCE

The references cited herein are from the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9). The following DEAR clauses are hereby incorporated by reference:

DEAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
952.203-70	Whistleblower Protection for Contractor Employees	Dec 2000
952.204-70	Classification/Declassification	Sep 1997
952.204-71	Sensitive Foreign Nations Controls	Mar 2011
952.204-75	Public Affairs	Dec 2000
952.204-77	Computer Security	Aug 2006
952.208-7	Tagging of Leased Vehicles	Apr 1984
952.208-70	Printing	Apr 1984
952.209-72	Organizational Conflicts of Interest, Alternate I (Aug 2009)	Aug 2009
952.211-71	Priorities and Allocations (ATOMIC ENERGY)	Apr 2008
952.215-70	Key Personnel *(b) [See Section J, Appendix F – List of Key Personnel]*	Dec 2000
952.217-70	Acquisition of Real Property	Mar 2011
952.223-75	Preservation of Individual Occupational Radiation Exposure Records	Apr 1984
952.223-78	Sustainable Acquisition Program	Oct 2010
952.226-74	Displaced Employee Hiring Preference	Jun 1997
952.227-82	Rights to Proposal Data *Except for technical data contained on N/A pages of the contractor's proposal dated September 28, 2023.*	Apr 1994
952.235-71	Research Misconduct	Jul 2005
952.236-71	Inspection in Architect-Engineer Contracts	Apr 1994
952.242-70	Technical Direction	Dec 2000
952.247-70	Foreign Travel	Jun 2010
952.251-70	Contractor Employee Travel Discount	Aug 2009
970.5203-2	Performance Improvement and Collaboration	May 2006

DEAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
970.5204-1	Counterintelligence	Dec 2010
970.5208-1	Printing	Dec 2000
970.5211-1	Work Authorization	May 2007
970.5215-1	Total Available Fee: Base Fee Amount and Performance Fee Amount, Alternate II (Dec 2000)	Dec 2000
970.5215-1	Total Available Fee: Base Fee Amount and Performance Fee Amount, Alternate IV (Dec 2000)	Dec 2000
970.5217-1	Strategic Partnership Projects Program (Non-DOE Funded Work)	Apr 2015
970.5222-1	Collective Bargaining Agreements-Management and Operating Contracts	Dec 2000
970.5222-2	Overtime Management	Dec 2000
970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution	Dec 2000
970.5223-3	Agreement Regarding Workplace Substance Abuse Programs at DOE Sites	Dec 2010
970.5223-4	Workplace Substance Abuse Programs at DOE Sites	Dec 2010
970.5223-6	Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management	Oct 2010
970.5223-7	Sustainable Acquisition Program, Alternate I (Oct 2010)	Oct 2010
970.5225-1	Compliance with Export Control Laws and Regulations (Export Clause)	Nov 2015
970.5226-1	REMOVED (P00010)	
970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	Dec 2000
970.5226-3	Community Commitment	Dec 2000
970.5227-4	Authorization and Consent	Aug 2002
970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement	Dec 2000
970.5227-6	Patent Indemnity-Subcontracts	Dec 2000
970.5227-8	Refund of Royalties	Aug 2002
970.5228-1	Insurance-Litigation and Claims	Jul 2013
970.5229-1	State and Local Taxes	Dec 2000
970.5231-4	Preexisting Conditions, Alternate II (Dec 2000)	Dec 2000

DEAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
970.5232-1	Reduction or Suspension of Advance, Partial, or Progress Payments	Dec 2000
970.5232-4	Obligation of Funds	Dec 2000
970.5232-5	Liability with Respect to Cost Accounting Standards	Dec 2000
970.5232-6	Strategic Partnership Project Funding Authorization	Apr 2015
970.5236-1	Government Facility Subcontract Approval	Dec 2000
970.5242-1	Penalties for Unallowable Costs	Aug 2009
970.5243-1	Changes	Dec 2000
970.5245-1	Property	Aug 2016

C. FAR AND DEAR CLAUSES INCORPORATED IN FULL TEXT

I-1 FAR 52.202-1 DEFINITIONS (JUN 2020) (AS MODIFIED BY DEAR 952.202-1)

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless-

(a) The solicitation, or amended solicitation, provides a different definition;
(b) The contracting parties agree to a different definition;
(c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies;
(d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures; or
(e) The word or term defines an acquisition-related threshold, and if the threshold is adjusted for inflation as set forth in FAR 1.109(a), then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment; see FAR 1.109(d).

(End of Clause)

I-2 FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)

(a) Definitions. As used in this clause–

"Covered contractor information system" means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

"Federal contract information" means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public websites) or simple transactional information, such as necessary to process payments.

"Information" means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

"Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

"Safeguarding" means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of Clause)

I-3 FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (AUG 2018)

(a) Definitions.

"Bureau of Land Management," as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

"Federal helium supplier" means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office's Authorized List of Federal Helium Suppliers available via the Internet at https://www.blm.gov/programs/energy-and-minerals/helium/partners

"Major helium requirement" means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) Requirements --

(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier --

(i) The name of the supplier;

(ii) The amount of helium purchased;

(iii) The delivery date(s); and

(iv) The location where the helium was used.

(c) *Subcontracts* --The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

(End of Clause)

I-4 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within **30 days** of contract expiration*;* provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least **120 days** before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall **not exceed 20 years and four months**.

(End of Clause)

I-5 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021), ALTERNATE I (JUL 1995)

(a) *"Hazardous material,"* as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material *(If none, insert None)*	**Identification No.**

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered non-responsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to --

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h) (1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or

on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

(End of Clause)

I-6 FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, **30** days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either

(1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or

(2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.

Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall --

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of Clause)

I-7 FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS (MAY 2008)

(a) Definitions. As used in this clause—

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to **the Contracting Officer**.

(End of Clause)

I-8 FAR 52.223-11 OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016)

(a) Definitions. As used in this clause–

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR Part 82 subpart G with supplemental tables of alternatives available at (http://www.epa.gov/snap/).

Hydrofluorocarbons means compounds that only contain hydrogen, fluorine, and carbon.

Ozone-depleting substance, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(c) *Reporting*. For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall–

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by–

(i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);

(ii) Contract number; and

(iii) Equipment/appliance;

(2) Report that information to the Contracting Officer for FY16 and to www.sam.gov , for FY17 and after–

(i) Annually by November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(d) The Contractor shall refer to EPA's SNAP program (available at http://www.epa.gov/snap) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at http://www.epa.gov/snap .

(End of clause)

I-9 FAR 52.225-9 BUY AMERICAN–CONSTRUCTION MATERIALS (OCT 2022)

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

Commercially available off-the-shelf (COTS) item-

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The

term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means-

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if–

(A)The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of

foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

Foreign construction material means a construction material other than a domestic construction material.

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference. (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:

_____[Contracting Officer to list applicable excepted materials or indicate "none"]

(3) The Contracting Officer may add other foreign construction material to the list in

paragraph (b)(2) of this clause if the Government determines that-

(i)The cost of domestic construction material would be unreasonable.

(A*) For domestic construction material that is not a critical item or does not contain critical components.*

(1)The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2)For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that is manufactured in the United States and does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(A)(1) of this clause.

(3)The procedures in paragraph (b)(3)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.

(B) *For domestic construction material that is a critical item or contains critical components.* (1)The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

(2)For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest foreign offer of construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(B)(1) of this clause.

(3)The procedures in paragraph (b)(3)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American statute.* (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) Request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
Item 1			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[* *Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].*

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

(End of clause)

I-10 FAR 52.225-11 BUY AMERICAN ACT - CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (DEC 2022)

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

Caribbean Basin country construction material means a construction material that–

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

Commercially available off-the-shelf (COTS) item-

(1) Means any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into a construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means-

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means-

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029.

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

Foreign construction material means a construction material other than a domestic construction material.

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign. *Free Trade Agreement country construction material* means a construction material that-

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

Least developed country construction material means a construction material that-

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

Least developed country construction material means a construction material that-

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements. *United States* means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that-

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C.1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade

Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: **None**

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable.

(A) For domestic construction material that is not a critical item or does not contain critical components. (1) The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(A)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.

(B) For domestic construction material that is a critical item or contains critical components. (1) The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description Unit of Measure Quantity Price (Dollars)*

Item1:

Foreign construction material _____ _____ _____

Domestic construction material _____ _____ _____

Item2:

Foreign construction material _____ _____ _____

Domestic construction material _____ _____ _____

** Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].*

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

(End of Clause)

I-11 FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

(a) The Contractor shall-

(1) Certify any proposal to establish or modify final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance

with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

(End of clause)

I-12 FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid–

(1) By the Contractor under a cost-reimbursement contract; and

(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $100. Bills under $100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Contractors shall submit the above referenced transportation documents to— DOE Automated Transportation System in accordance with DOE Orders.

(End of clause)

I-13 FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004) (AS MODIFIED BY DEAR 970.4905-1)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if --

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within

10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. *"Default"* includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government --

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor

(i) is not required to extend credit to any purchaser and

(ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h) (4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation as supplemented in subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor --

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

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

(1) All unliquidated advance or other payments to the Contractor, under the terminated

portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of Clause)

I-14 FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984) ALTERNATE I (APR 1984) (SEE NOTE)**

NOTE**: This clause becomes applicable when the Offeror/Contractor submits an acceptable request for indemnification and receives approval from the Secretary of Energy.

(a) "Contractor's principal officials," as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing --

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Public Law 85-804 (50 U.S.C 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against --

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and

(3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage

(1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and

(2) is not compensated for by insurance or otherwise.

Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

(d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for --

(1) Government claims against the Contractor (other than those arising through subrogation); or

(2) Loss or damage affecting the Contractor's property.

(e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.

(f) The rights and obligations of the parties under this clause shall survive this contract's

termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall --

(1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may be reasonably be expected to involve indemnification under this clause;

(2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;

(3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.

(h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance. The Government's obligations under this clause are --

(1) Excepted from the release required under this contract's clause relating to allowable cost; and

(2) Not affected by this contract's Limitation of Cost clause or Limitation of Funds clause.

(End of Clause)

I-15 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulations	*https://www.acquisition.gov/browse/index/far*
Federal Acquisition Forms	*http://www.gsa.gov/forms/farnumer.htm*

Department of Energy Acquisition Regulations	*http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation* *or* *https://www.acquisition.gov/dears*

(End of Clause)

I-16 FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2020)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter
1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any **Department of Energy Acquisition Regulation** (48 CFR **Chapter 9**) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of Clause)

I-17 DEAR 952.204-2 SECURITY (AUG 2016)

(a) *Responsibility*. It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) *Regulations*. The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.

(c) *Definition of Classified Information*. The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information,* as amended, or prior executive orders, which is identified as *National Security Information*.

(d) *Definition of Restricted Data*. The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) *Definition of Formerly Restricted Data*. The term *"Formerly Restricted Data"* means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information-- (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(f) *Definition of National Security Information*. The term "*National Security Information*" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

(g) *Definition of Special Nuclear Material*. The term "s*pecial nuclear material*" means-- (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Access authorizations of personnel.*

(1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

(2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.

(i) A review must-- verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.

(ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another

Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those-- (A) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (B) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

(iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

(v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

(vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:

A. The date(s) each Review was conducted;

B. Each entity that provided information concerning the individual;

C. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

D. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

E. The results of the test for illegal drugs.

(i) *Criminal liability*. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

(j) *Foreign Ownership, Control, or Influence.*

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. The Contractor will submit Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. When completed the Contractor must print and sign one copy of the SF328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

(k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as

defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(l) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(End of Clause)

I-18 DEAR 952.219-70 DOE MENTOR-PROTÉGÉ PROGRAM (MAY 2000) (DEVIATION)

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small business concerns, Historically Black Colleges and Universities and Minority Institutions, and other minority institutions of higher learning in enhancing their capabilities to perform contracts and subcontracts for DOE and other Federal agencies. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the Contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the agreement. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

(End of Clause)

I-19 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (AUG 2016)

(a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) *Definitions.* The definitions set out in the Act shall apply to this clause.

(c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time

require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d) (1) *Indemnification.* To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) (1) *Waiver of defenses.* In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which—

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive—

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to—

(1) Negligence;

(2) Contributory negligence;

(3) Assumption of risk; or

(4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, *offsite* as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above—

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident

intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) *Notification and litigation of claims.* The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.

(j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in subcontracts.* The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

(End of Clause)

I-20 DEAR 970.5203-1 MANAGEMENT CONTROLS (DOE CLASS DEVIATION OCT 2021)

(a) The Contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by contractor management to reasonably ensure that:

(1) Mission and functions assigned to the contractor are properly executed;

(2) Systems and controls employed by the contractor are documented and satisfactory to DOE;

(3) All levels of management are accountable for effective management systems and internal controls within their areas of assigned responsibility;

(4) Provide reasonable assurance that Government resources are safeguarded against theft, fraud, waste, and unauthorized use;

(5) Promote work and worker safety;

(6) Promote efficient and effective operations including consideration of outsourcing of functions;

(7) Reduce or eliminate operational risks to Government facilities;

(8) All obligations and costs incurred are allowable in accordance with the intended

purposes and the terms and conditions of the contract;

(9) All revenues, expenditures, transactions and assets are properly record, manage, and report;

(10) Financial, statistical and other necessary reports are maintained in an accurate, reliable, and timely manner, with proper accountability and management controls;

(11) Systems are periodically reviewed to provide reasonable assurance that the objectives of the systems are being accomplished and that its controls are working effectively;

(12) Such systems shall be an integral part of the Contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility;

(13) The Contractor shall, As part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed by the Contracting Officer, the Contractor shall supply to the Contracting Officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 48 CFR 970.5232-3, Accounts, records, and inspection; and

(b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

(End of clause)

I-21 DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000) (CLASS DEVIATION)

(a) Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer (1) a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur; and, (2) a chart showing the name and organization of the Contractor's Parent Organization's responsible official for administering the Contractor's Parent Organization's Oversight Plan, and shall furnish supplemental information to reflect any changes as they occur.

(b) Supervisory representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site, and any

work off-site, at all times. For purposes of this contract, the President & General Manager is the resident supervisory representative of the contractor.

(c) Control of employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the Contracting Officer may require, with the approval of the Administrator of the NNSA or the Secretary of Energy, the Contractor to remove the employee from work under the contract. This includes the right to direct the Contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies. Furthermore, nothing contained in this paragraph (c) shall in any way impair the statutory or contractual collective bargaining rights of union- represented contractor employees.

(d) Standards and procedures. The Contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the Contracting Officer.

(e) Nothing in this clause or its implementation is intended to conflict with 42 U.S.C. §7274p, or to otherwise affect the scientific integrity of persons required to provide independent technical judgments to provide the President or the Congress assurances on the safety, security, reliability, or effectiveness of the US nuclear weapons stockpile.

(End of Clause)

I-22 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000) (CLASS DEVIATION)

(a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency.

(b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, and National Nuclear Security Administration Policy Letters identified in the contract's Section J Appendix entitled *"List of Applicable Directives"* (the List). Except as otherwise provided for in paragraph (d) of this clause, the Contracting Officer may, from time to time and at any time, revise the List by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising the List, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise the List and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting

Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise the List and so advise the Contractor not later than 30 days prior to the effective date of the revision of the List. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of the List pursuant to the clause of this contract entitled, "*Changes*."

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "*Integration of Environment, Safety, and Health into Work Planning and Execution*." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into the List as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by the List. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(End of Clause)

I-23 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (CLASS DEVIATION)

(a) *Government-owned records*. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "*Records Management*." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "*Privacy Act*."

(b) *Contractor-owned records*. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records.

(2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) *Contract completion or termination*. Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of

this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(d) *Inspection, copying, and audit of records*. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) *Applicability*. This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) *Records maintenance and retention*. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) *Subcontracts*.

(1) The contractor shall include the requirements of this clause in all subcontracts that contain the *Radiation Protection and Nuclear Criticality* clause at 952.223-72 , or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or

(D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.

(End of Clause)

I-24 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES— FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALTERNATE II (AUG 2009) (NNSA CLASS DEVIATION JUN 2019)

(a) *Definitions.* For the purposes of this clause, the following definitions apply:

(1) *"Earned Fee"* means the sum total of all incentive fees, award fees, fixed fees, and share of cost savings earned by the contractor during a performance evaluation period, as determined by the contracting officer or fee determining official (as appropriate). In the NNSA, the Fee Determining Official (FDO) is the Administrator, unless otherwise delegated. Where the contract provides for financial incentives that extend beyond a single performance evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent performance evaluation period. The allocable amount shall be the total amount of the Earned Fee divided by the number of evaluation periods over which it was earned.

(2) *"ES&H Terms"* means the performance requirements of this contract related to Environmental, Safety, and Health provisions, terms, and conditions, including the DOE-approved contractor Safety Management System (SMS) or similar document. These DEAR prescriptions include, but are not limited to: 970.0370-2 - Contract clause, 970.0470-1 – General, 970.0407-1-3 - Contract clause, 970.0470-2 - Contract clause, 970.1170-2 - Contract provision, 970.1707-4 - Contract clause, 970.2303-2-70 – General, 970.2303-3 - Contract clauses.

(3) "*Security Terms*" means the performance requirements of this contract related to the safeguarding of Restricted Data and other classified information as set forth in the Contract. These include: DEAR 952.204-2 SECURITY (AUG 2016), "SECURITY," (and any successor clause); DEAR 970.5204-2 (DEC 2000) (CLASS DEVIATION), "Laws, Regulations, and DOE Directives" (and any successor clause); and any other term or condition related to safeguarding information.

(b) *General.* (1) The payment of any Earned Fee under this contract is dependent upon—

(i) The Contractor's or Contractor employees' compliance with the ES&H Terms; and

(ii) The Contractor's or Contractor employees' compliance with Security Terms.

(2) If the contractor does not meet the performance requirements or conditions of the ES&H Terms or Security Terms during any performance evaluation period, the contracting officer may unilaterally reduce Earned Fee.

(c) *Reduction amount.*

(1) The amount of Earned Fee that may be unilaterally reduced is correlated to the severity of the performance failure.

(i) Level 1 performance failure: not less than 26% nor greater than 100%;

(ii) Level 2 performance failure: not less than 11% nor greater than 25%; and

(iii) Level 3 performance failure: not greater than 10%.

(d) *Mitigating Factors.* (1) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor's overall performance in meeting the ES&H Terms or Security Terms. Such consideration must include performance against any site-specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range.

(1) The mitigating factors include, but are not limited to, the following:

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: compliance with ES&H Terms and/or Security Terms (as appropriate) and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial environmental, safety, and health standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

(vi) Event caused by “Good Samaritan” act by the Contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain performance of ES&H Terms (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy;

environmental, safety, and health programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement of performance related to ES&H Terms by use of lessons-learned and best practices inter- and intra-DOE sites.

(e) *Effect of Reduction.* (1) The Government will effect Earned Fee reductions as soon as practical. If the effective date of the reduction falls after the completion of the fee determination for the evaluation period during which the performance failure occurred, the Government will effect the reduction during a subsequent evaluation period, by issuing a demand for payment or by reducing any Earned Fee, at the contracting officer's sole discretion. If the performance failure occurs during the last evaluation period before termination or completion of the contract, reduction will be effected as soon as practical during contract close-out.

(2) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of Earned Fee.

(f) *Failures Related to ES&H Terms.* Performance failures occur if the Contractor does not comply with the contract's ES&H terms. The levels of performance failure under which reductions of Earned Fee are:

(1) *Level 1:* Performance failures that are most adverse to environment, health and/or safety. Examples of Level 1 performance failures include, but are not limited to:

(i) Failure to develop and maintain required DOE/NNSA approval of an SMS;
(ii) Any action/event that is considered an "Accident" for which an Accident Investigation Board (AIB) is appointed pursuant to DOE Order 225.1B, Accident Investigations, or its successor. Accidents also include those investigated by Joint Accident Investigation Boards (JAIB), in which federal and M&O staff members team up to investigate the incident;

(iii) A combination of two, Level 2 performance failures that are significantly adverse to environment, health, or safety occurring during the same evaluation period; and

(iv) Contractor actions that result in a breakdown of the safeguards and SMS that resulted in severe harm to the environmental, safety, or health of any person.

(2) *Level 2:* Performance failures that are significantly adverse to environment, health and/or safety. Examples of Level 2 performance failures include, but are not limited to:

(i) Any action/event that nearly results in an "Accident" for which an AIB is appointed pursuant to DOE Order 225.1B, Accident Investigations, or its successor;

(ii) A failure to comply with an approved SMS that results in injury, exposure, or exceedance;

(iii) Failure to notify DOE/NNSA (e.g., NNSA Field Office Manager or other authorized

official) of an imminent danger situation after discovery, where such notification is a requirement of the contract;

(iv) Failure to mitigate a dangerous situation that could cause an Accident; and

(v) Contractor actions that result in a breakdown of the safeguards and/or SMS that resulted in major harm to the environmental, safety or health of any person.

(3) *Level 3:* Performance failures that reflect a lack of focus on maintaining or improving environment, health and/or safety. Examples of Level 3 performance failures include, but are not limited to:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external or internal oversight (e.g., reported per DOE Order 231.1B, Environment, Safety and Health Reporting, or its successor, requirements; DOE Order 232.2A, Occurrence Reporting and Processing of Operations Information, or its successor; of DOE Order 440.1B, Worker Protection Program for DOE/NNSA (including the National Nuclear Security Administration) Federal Employees, or its successor, requirements;

(ii) Multiple similar non-compliances related to ES&H Terms by external oversight organizations that, in aggregate, indicate a significant programmatic breakdown;

(iii) Non-compliance with ES&H Terms that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown;

(iv) Failure to notify DOE/NNSA, as appropriate, upon discovery of events or conditions where notification is required by the terms and conditions of the contract; and

(v) Contractor actions that result in a breakdown of the SMS that resulted in harm to the environmental, safety, or health of any person.

(g) *Safeguarding Restricted Data and/or Other Classified Information.* Performance failures occur if the Contractor does not comply with Security Terms. The levels of performance failure under which reductions of Earned Fee will be determined as follows:

(1) *Level 1:* Performance failure to comply with applicable law, DOE regulation, or directive, that has resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. Examples of Level 1 performance failures include, but are not limited to:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of: Top Secret Restricted Data or other information classified as Top Secret, any information in a Special Access Program (SAP) (regardless of classification level), information identified as sensitive compartmented information (SCI), or high-risk nuclear weapons-related data;

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of: Top Secret Restricted Data, or other information classified as Top Secret, any information in a SAP (regardless of classification level), information identified as SCI, or high-risk nuclear weapons-related data;

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of: Top Secret Restricted Data, or other information classified as Top Secret, any information in a SAP (regardless of classification level), information identified as SCI, or high-risk nuclear weapons-related data; and

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of: Top Secret Restricted Data or other information classified as Top Secret, any information in a SAP (regardless of classification level), information identified as SCI, or high-risk nuclear weapons-related data.

(2) *Level 2:* Performance failure to comply with applicable law, DOE regulation, or directive, that has resulted in, or that can reasonably be expected to result in, serious damage to the national security. Examples of Level 2 performance failures include, but are not limited to:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret;

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret;

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (g)(1)(iii) of this clause); and

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) *Level 3:* Performance failure that has been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. Examples of Level 3 performance failures include, but are not limited to:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential;

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information;

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable;

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information; and

(v) Contractor actions that result in a breakdown of the safeguards and security management system that risk the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Confidential.

(End of Clause)

I-25 DEAR 970.5215-4 COST REDUCTION (AUG 2009)

(a) *General.* It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the Contracting Officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.

(b) *Definitions. Administrative cost* is the Contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the Contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from -

(1) A specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort; or

(2) A design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the Contracting Officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

(c) *Procedure for submission of CRPs.*

(1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:

(i) Current Method (Baseline) - A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative, and supporting documentation.

(ii) New Method (New Proposed Baseline) - A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.

(iii) Feasibility Assessment - A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.

(2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following -

(i) The proposed contractual arrangement and the justification for its use; and

(ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.

(d) *Evaluation and decision.* All CRPs must be submitted to and approved by the Contracting Officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may -

(1) Pose a risk to the health and safety of workers, the community, or to the environment;

(2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;

(3) Require a change in other contractual agreements;

(4) Result in significant organizational and personnel impacts;

(5) Create a negative impact on the cost, schedule, or scope of work in another area;

(6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and

(7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.

(e) *Acceptance or rejection of CRPs.* Acceptance or rejection of a CRP is a unilateral determination made by the Contracting Officer. The Contracting Officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (*Insert Number*) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will -

(1) Result in net savings (in the sharing period if a design, process, or method change);

(2) Not reappear as costs in subsequent periods; and

(3) Not result in any impairment of essential functions.

(f) The failure of the Contracting Officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.

(g) *Adjustment to original estimated cost and fee.* If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.

(h) *Sharing arrangement.* If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

(i) *Validation of Shared Net Savings.* The Contracting Officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the Contractor will not be entitled to a share of the net shared savings.

(j) *Relationship to other incentives.* Only those benefits of an accepted CRP not awardable under other clauses of this contract shall be considered under this clause.

(k) *Subcontracts.* The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

(End of clause)

I-26 DEAR 970.5216-7 ALLOWABLE COST AND PAYMENT (OCT 2021) (NNSA CLASS DEVIATION FEB 2022)

(a) Payment.

(1) The Government will make payments to the Contractor per DEAR 970.5232-2, “Payments and advances.” The payments will only be for amounts determined to be allowable by the Contracting Officer in accordance with the: Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract; the Department of Energy Acquisition Regulation subpart 970.31 in effect on the date of this contract; and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) Reimbursing costs.

(1) The Government will make payments to the Contractor per DEAR 970.5232-2, “Payments and advances.” The payments will only be for allowable costs. For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made–

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor’s payment request to the Government (the Government will make payments to the Contractor per DEAR 970.5232-2, “Payments and advances”);

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Indirect costs paid in accordance with the same provisions as required for direct costs as described within this section.

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until paid in accordance with DEAR 970.5232-2 Payments and advances (OCT 2021) Alternate II (OCT 2021) Alternate IV (DEC 2000) (NNSA CLASS DEVIATION FEB 2022) paragraph (b).

(3) Notwithstanding the audit and adjustment of invoices, payments, or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost- reimbursement under this clause.

(c) *Small business concerns*. The Government will make payments to the Contractor per DEAR970.5232-2, "Payments and advances."

(d) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)

(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) or to an authorized representative within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the contract auditor's results.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool amount, base amount, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(B-1) Laboratory/Plant Directed Research & Development (LDRD or PDRD) expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Intermediate indirect cost pool**s***. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) RESERVED.

(G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by contract, or by a lower level of detail (e.g. Budget & Reporting (B&R) code) if required by the contracting officer, and subcontract

and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed at the same level of detail as provided in Schedule H.

(J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor's name, address, and point of contact information). The schedule should contain a sufficient level of detail to enable a reconciliation of actual subcontract costs incurred from Schedule J to those claimed on Schedule H (i.e. B&R level).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts and SPPs physically completed in this fiscal year (include contract and SPP number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel including Executive Compensation Form. See 31.205-6(p). Additional salary reference information is available at https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf and https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf.

(C) Identification of prime contracts under which the contractor performs as a

subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, *etc.*).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre- contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the cost incurred to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates. The Contracting Officer shall advise the contractor if additional adjustments or repayments are necessary.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the

agreed- upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)

(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may-

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Forward pricing rates*. Until final annual indirect cost rates are established for any period, the contractor shall use the forward pricing rates established by the Contracting Officer or by an authorized representative, subject to adjustment when the final rates are established. These forward pricing rates-

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures*. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit*. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices, payments, vouchers, or statements of cost audited. Any payment may be-

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

The Government will make final payment to the Contractor per DEAR 970.5232-2, "Payments and advances."

(End of clause)

I-27 DEAR 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER (DEC 2000) ALTERNATE I (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)

(a) Definitions.

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

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

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (*h*) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software

are as set forth in the Restricted Rights Notice of subparagraph (*i*) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

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

(8) Open Source Software, as used in this clause, means computer software that is distributed under a license in which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).

(9) Patent Counsel means the National Nuclear Security Administration (NNSA) Patent Counsel assisting the DOE/NNSA contracting activity.

(b) Allocation of Rights.

(1) Except as may otherwise expressly provided or directed in writing by the Patent Counsel the Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE/NNSA, appropriate instances of the DOE/NNSA Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow

DOE/NNSA personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software. the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause (*"Rights in Limited Rights Data"*) or paragraph (i) of this clause (*"Rights in Restricted Computer Software"*); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE/NNSA concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE/NNSA will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information

which it receives from, or is given access to by DOE, NNSA or a third party, including a DOE or NNSA contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE/NNSA, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles)

(1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by PanTeXas Deterrence, LLC under Contract No. 89233224CNA000004 with the U.S. Department of Energy/National Nuclear Security Administration. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE and NNSA to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

(i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes,

(B) The program under which it was funded,

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement,

(D) Whether the data is subject to export control,

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "*Technology Transfer Mission*," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's and NNSA's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE or NNSA funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE/NNSA will be expressly withheld. Such excepted categories include data whose release

(A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes,

(B) would not enhance the appropriate transfer or dissemination and commercialization of such data,

(C) would have a negative impact on U.S. industrial competitiveness,

(D) would prevent DOE or NNSA from meeting its obligations under treaties and international agreements, or

(E) would be detrimental to one or more of DOE's or NNSA's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property and/or the NNSA Patent Counsel. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors'

funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE or NNSA may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.

(2) DOE/NNSA Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE/NNSA's permission for the Contractor to assert copyright or advise the Contractor that DOE/NNSA needs additional time to respond, and the reasons therefor.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

(A) An abstract describing the software suitable for publication,

(B) the source code for each software program, and

(C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software.

The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE/NNSA designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert

copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, NNSA, its contractors and to the public identifying its availability from the copyright holder.

(iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE/NNSA approval. The DOE/NNSA approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by PanTeXas Deterrence, LLC under Contract No. 89233224CNA000004 with the Department of Energy/National Nuclear Security Administration. For (period approved by *NNSA* Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the

possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE/NNSA. Neither the United States nor the United States Department of Energy/National Nuclear Security Administration, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE/NNSA has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e)(3)(iii) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE/NNSA determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE/NNSA shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE/NNSA to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 --"*Appeals*."

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE or NNSA Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government

can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the DOE/NNSA to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by PanTeXas Deterrence, LLC and [*insert the individual author*], hereinafter the Contractor, under Contract 89233224CNA000004 with the Department of Energy/National Nuclear Security Administration (DOE/NNSA). All rights in the computer software are reserved by DOE/NNSA on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public.

NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of Notice)

(5) A similar notice can be used for data, other than computer software, upon approval of Patent Counsel.

(f) Open Source Software. The Contractor may release computer software first produced by the Contractor in the performance of this Contract under an open source software license. Such software shall hereinafter be referred to as Open Source Software or OSS, subject to the following:

(1) Obtain Program Approval.

(i) The Contractor shall ensure that the DOE or NNSA Program or Programs that have provided funding (*Funding Source)* to develop the software have approved the distribution of the software as OSS. The funding Program(s) may provide blanket approval for all software developed with funding from that Program. However, OSS release for any one such software shall be subject to approval by all other funding

Programs which provide a substantial portion of the funds for the software, if any. If approval from the funding Program(s) is not practicable, Patent Counsel may provide approval instead. For software jointly developed under a CRADA or User Facility, or WFO, authorization from the CRADA Participant(s) or User Facility User(s), or WFO, as applicable, shall be additionally obtained for OSS release.

(ii) If the software is developed with funding from a federal government agency or agencies other than DOE or NNSA, then authorization from all the funding source(s) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency. However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If majority approval from such federal government agency(s) is not practicable, Patent Counsel may provide approval instead.

(2) Assert Copyright in the OSS. Once the Contractor has obtained Funding Source approval in accordance with subparagraph (1) of this section, copyright in the software to be distributed as OSS, may be asserted by the Contractor, or, for OSS developed under a CRADA or User Facility, or WFO, either by the Contractor, CRADA Participant, or User FacilityUser, or WFO, as applicable, which precludes marking such OSS as Protected Information.

(3) Form DOE F 241.4 for OSS to ESTSC. The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE or NNSA) to DOE's Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.

(4) OSS Record. The Contractor must maintain a record, available for inspection by DOE or NNSA, of software distributed as OSS. The record shall contain the following information: (i) name of the computer software (or other identifier), (ii) an abstract with description or purpose of the software, (iii) evidence of the funding Program's or source's approval, (iv) the planned or actual OSS location on the Contractor's webpage or other publicly available location (see subparagraph (5) below); (v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered;
(vi) the type of OSS license used; and (vii) release version of the software for OSS containing derivative works. Upon request of Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the record.

(5) Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible as an open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, NNSA, or other industry standard means.

(6) Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property and/or NNSA Patent Counsel may periodically issue guidance on OSS licenses.

Each Contractor created OSS license, must contain, at a minimum, the following provisions:

(i) A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and

(ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (10) below). This provision might allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.

(7) Collection of administrative costs is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.

(8) Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled Technology Transfer Mission (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties as set forth elsewhere in this clause is not modified by this section.

(9) Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews of the derivative versions.

(10) Determine if Trademark Protection for the OSS is Appropriate. DOE and NNSA Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the Program or the Contractor may want to seek trademark protection. If the OSS is protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.

(11) Government License. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to

reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(12) Availability of Original OSS. The object code and source code of the original OSS developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is publicly available. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.

(g) Subcontracting.

(1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "*Rights in Data-General*" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE/NNSA.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(h) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "*Limited Rights Notice*" set forth below. All such limited rights data shall be marked with the following "*Limited Rights Notice*:"

Limited Rights Notice

These data contain "*limited rights data*," furnished under Contract No. 89233224CNA000004 with the United States Department of Energy/National Nuclear Security Administration which may be duplicated and used by the Government with the express limitations that the "*limited rights data*" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "*limited rights data*" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "*limited rights data*" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "*limited rights data*" be retained in confidence and not be further disclosed;

(d) This "*limited rights data*" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "*limited rights data*" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the

United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(i) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "*Restricted Rights Notice*:"

Restricted Rights Notice --Long Form

(a) This computer software is submitted with restricted rights under Department of Energy/National Nuclear Security Administration Contract No. 89233224CNA000004. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice --Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE/NNSA Contract No. 89233224CNA000004 with PanTeXas Deterrence, LLC.

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R- mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished- rights reserved under the Copyright Laws of the United States."

(j) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as

affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

I-28 DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2019) ALTERNATE II (DEC 2000) (NNSA CLASS DEVIATION JAN 2021) (DOE CLASS DEVIATION JAN 2022)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority.

(1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Facility, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Facility consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 *et seq.*); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); Section 102 of the Laboratory Modernization and Technology Transfer Act (Public Law 115-246) and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Facility; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Facility that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Strategic Partnership Projects (SPP); providing information exchanges; and making available laboratory or weapon production user facility. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, SPP, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

(3) Nothing in this, or any other section of this contract provides the Contractor with any property right, including the right to license, in data first produced in the performance of this contract, except as expressly provided in the contract or approved in writing by the Contracting Officer.

(b) Definitions.

(1) Contractor's Facility Director means the individual who has supervision over all or substantially all of the Contractor's operations at the Facility.

(2) Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Facility, and one or more parties including at least one non-Federal party under which the Government, through its Facility, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Facility; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Facility Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) Assignment means any agreement by which the Contractor transfers ownership

of Facility's Intellectual Property, subject to the Government's retained rights.

(6) Facility's Biological Materials means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Facility's employees or through the use of Facility's research resources.

(7) Facility's Tangible Research Product means tangible material results of research which

(i) Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(ii) Are not materials generally commercially available; and

(iii) Were made under this contract by Facility's employees or through the use of Facility's research resources.

(8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Facility's Biological Materials or Facility's Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(9) Privately funded technology transfer means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(c) Allowable Costs.

(1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated

funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Strategic Partnership Projects) of the Facility for that fiscal year without written approval of the contracting officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance -- Litigation and Claims" of this contract.

(d) Conflicts of Interest -- Technology Transfer. The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to all persons participating in the Facility research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with research involving nonfederal sponsors and for CRADA activity in accordance with the provisions of paragraph (n) (5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE and NNSA projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or SPP activities of the Contractor;

(5) Conduct DOE- and NNSA-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE, NNSA or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the contracting

officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a Facilit*y* employee within the previous two years or to the company in which the individual is a principal;

(9) Notify non-Federal sponsors of SPP activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of SPPs or user agreements; and

(10) Notify NNSA prior to the Contractor's acting in an advisory role for evaluation of a technical proposal for funding by a third party or a DOE or NNSA Program, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

(e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Facility and by entities other than the Contractor.

(f) U.S. Industrial Competitiveness.

(1) In the interest of enhancing U.S. Industrial Competitiveness in its licensing and assignments of Intellectual Property, the Contractor shall give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its decisions involving licensing or assignment of Facility's intellectual property where the Contractor obtains rights during the course of the Contractor's operation of the Facility's under this contract:

(i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States;

(ii) whether a proposed licensee or an assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(iii) in licensing or assigning any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights. The Contractor, with the assistance of the Contracting Officer, may rely upon the following information; (A) U.S. Trade Representative Inventory of Foreign Trade Barriers, (B) U.S. Trade Representative Special 301 Report, and, (C) such other relevant information available to the contracting officer. The Contractor should review the US. Trade Representative web site at: <http://www.ustr.gov> for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a complete and informed decision.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1) of this clause is likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(4) The Contractor agrees to be bound by paragraph (t) U.S. Competitiveness in its Patent Rights provision (e.g. 48 CFR 970.5227-10 or 48 CFR 970.5227-12 as may be modified) as applicable.

(g) Indemnity--Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) Disposition of Income.

(1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Facility, consistent with the research and development mission and objectives of the Facility and subject to Section 12(b)(5) of the

Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws(35 U.S.C. 200 *et seq.*) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Facility's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Facility Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Facility, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall notify the Contracting Officer of any changes to its policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer. Such changes shall be subject to the approval of the Contracting Officer.

(i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Facility shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Facility, to the successor contractor or to the Government as directed by the contracting officer.

(j) Technology Transfer Affecting the National Security.

(1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE/NNSA to determine the extent that commercialization of such technology would enhance or diminish

security interests of the United States, or diminish communications within DOE/NNSA's nuclear weapon production complex. DOE/NNSA shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE/NNSA shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) Records. The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE/NNSA and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer to enable DOE/NNSA to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE/NNSA and in such a format which will serve to adequately inform DOE/NNSA of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) Reports to Congress. To facilitate DOE/NNSA's reporting to Congress, the Contractor is required to submit annually to DOE/NNSA a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Facility innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.

(m) Oversight and Appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Facility Contractor

performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) Technology Transfer through Cooperative Research and Development Agreements. Upon approval of the contracting officer and as provided in a DOE/NNSA-approved Joint Work Statement (JWS), the Facility Director, or designee, may enter into CRADAs on behalf of the DOE/NNSA subject to the requirements set forth in this paragraph. Also, under such circumstances as DOE or NNSA considers appropriate, the DOE or NNSA may waive the following requirements associated with the submission and approval of JWS and CRADA agreements, as legislated by the 2001 National Defense Authorization Act.

(1) Review and Approval of CRADAs.

(i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's Facility Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's Facility Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

(iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter.

(2) Selection of Participants. The Contractor's Facility Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia

involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) Withholding of Data.

(i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE/NNSA shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE or NNSA facilities for use by DOE/NNSA or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing

of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) Strategic Partnership Projects and User Facility Programs.

(i) Strategic Partnership Projects (SPP) and User Facility Agreements (UFAs) are available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, who are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., SPP and UFA, and of the Class Patent Waiver provisions associated therewith, when conditions associated with the activity under the agreement can appropriately be performed under such alternative agreement(s).

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in SPP and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE/NNSA approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE/NNSA class waiver (including Strategic Partnership Projects and User Class Waivers) or individually negotiated waiver that applies to the agreement.

(5) Conflicts of Interest.

(i) Except as provided in paragraph (n) (5) (iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or

partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee –

(1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(p) Technology Partnership Ombudsman.

(3) The Contractor agrees to establish a position to be known as *"Technology*

Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the Facility, and technology licensing.

(4) The Ombudsman shall be a senior official of the Contractor's Facilit*y* staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the Facility, shall function as such senior official.

(5) The duties of the Technology Partnership Ombudsman shall include:

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the Facility regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE and NNSA, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.

(q) Inapplicability of Provisions to Privately Funded Technology Transfer Activities. Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity -- Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

(End of Clause)

I-29 DEAR 970.5227-12 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (AUG 2002) ALTERNATE I (DOE CLASS DEVIATION JAN 2022)

(a) Definitions.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), and unless otherwise identified or indicated, includes

the coordinated efforts of the DOE and NNSA.

DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.

DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.*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).

Initial Patent Application means, as to a given Subject Invention, the first provisional or non-provisional U.S. national application for patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, the first international application filed under the Patent Cooperation Treaty as defined in 37 CFR 1.9(b) which designates the United States, or the first application for a Plant Variety Protection certificate, as applicable.
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.*).

Made when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

Patent Counsel means the National Nuclear Security Administration (NNSA) Patent Counsel assisting the contracting activity.

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.

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.

Statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

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. *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, (t) U.S. Competitiveness 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) As determined by DOE, 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) Any funding agreement related to Energy Efficiency, Storage, Integration and Related Technologies, Renewable Energy, and Advanced Energy Technologies which is funded by the Office of Energy Efficiency and Renewable Energy (EERE) or the Advanced Research Projects Agency – Energy (ARPA-E);

(E) Solid State Energy Conversion Alliance (SECA) if the Contractor is a participant in the “Core Technology Program”;

(F) Solid State Lighting Program (SSLP) if the Contractor is a participant in the “Core Technology Program”;

(G) Cybersecurity, Energy Security, and Emergency Response;

(H) Quantum Information Science Technologies; and

(I) Domestic Manufacture of DOE Science and Energy technologies (S&E DEC)

(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 (t) U.S. Competitiveness requirements to the maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel in writing.

(iv) Exceptional circumstances subject inventions are as set forth in the applicable patent waiver. In addition, DOE 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 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 no less than 60 days before any on sale, public use, or publication of the subject invention. The disclosure to DOE 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 Strategic Partnership Projects agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE 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, 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 within two (2) years of the date of the disclosure of the subject invention to DOE, 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 Statutory Period under 35 U.S.C. 102(b), the period for election may be shortened by DOEA to a date that is no more than sixty (60) days prior to the end of the 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 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.

(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 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 may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(2) *Failure to disclose or elect to retain title.* Title vests in DOE and DOE 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 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'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 file a non-provisional application, or 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 may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.

(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 (v) of this clause.

(6) Upon a breach of paragraph (t) U.S. Competitiveness 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 may grant or refuse to grant such a request by the Contractor. If DOE 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 shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non- transferrable, on a case-by-case basis.

(3) *Revocation or modification of a Contractor license*. DOE 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 licensing regulations. DOE 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 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 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 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 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 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.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. 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 60 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. 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 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.

(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. If the S&E DEC is applicable (see subparagraph (b)(3)(iii) of this clause), paragraph (t) U.S. Competitiveness must be included in the subcontractor's patent clause as paragraph (m) U.S. Competitiveness. Additionally, the following item (4) must be added to paragraph (d) of the subcontractor's patent clause "(4) Upon a breach of paragraph (m) U.S. Competitiveness 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. If the S&E DEC is applicable (see subparagraph (b)(3)(iii) of this clause), paragraph (t) U.S. Competitiveness must be included in the subcontractor's patent clause as paragraph (n) U.S. Competitiveness. Additionally, the following must be appended to the first sentence paragraph of (d)(1) " or upon a breach of paragraph (n) U.S. Competitiveness of this clause."

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE 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, 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. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, 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 agrees 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 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) *March-In Rights.* With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE 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 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.

(k) *Communications.* The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

(l) *Reports.*

(1) *Interim reports.* Upon DOE's o request, the Contractor shall submit to DOE o, no more frequently than annually, a list of subject inventions disclosed to DOE 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 in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, 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.

(m) *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.

(n) 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.

(o) 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.

(p) 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, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE 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, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) *Patent Functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE 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.

(r) *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.

(s) *Annual Appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) U. S. Competitiveness. Notwithstanding 48 CFR 970.5227-3(f) U.S. Industrial Competitiveness, for all work subject to the S&E DEC, 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.

(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 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 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 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.

(w) Unauthorized Access. The contractor will protect all invention reports, unpublished

patent applications and other invention related information from unauthorized access and disclosure using at least commonly available techniques and practices. In the event that the Contractor becomes aware of unauthorized access to invention reports, unpublished patent applications and other invention related information, the Contractor shall notify Patent Counsel within 7 days.

(End of Clause)

I-30 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000) (NNSA CLASS DEVIATION FEB 2022)

(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 payment may be withdrawn against the payments cleared financing arrangement without the 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 __0__ 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. 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 that 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 therefore.

(l) *Determining allowable costs.* Regardless of contractor 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)

I-31 DEAR 970.5232-3 ACCOUNTS, RECORDS AND INSPECTION (DEC 2010) (NNSA CLASS DEVIATION FEB 2022)

(a) *Accounts.* The Contractor shall maintain a single financial management system with separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred or anticipated to be incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.

(c) *Audit of subcontractors' records.* If the subcontractor's incurred costs are a factor in determining the amount the Contractor pays the subcontractor and submits to the

Government for reimbursement, the Contractor shall: perform a sufficient amount of audit work (that the Contracting Officer agrees is sufficient) of its subcontractor's incurred costs to provide reasonable assurance the costs are allowable; or arrange for an audit by the cognizant government audit agency through the Contracting Officer of its subcontractor's incurred costs.

(d) *Disposition of records.* Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) *Reports.* The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) *Inspections.* The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) *Subcontracts.* The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor. The Contractor further agrees to include an "Audit" clause, the substance of which is the "Audit" clause set forth at 48 CFR 52.215-2, in each subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (h) of this clause, but which contains a "defective cost or pricing data" clause.

(h) Comptroller General.

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this

contract or a subcontract hereunder and to interview any employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

(i) *Internal audit.* The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—

(i) The internal audit organization's placement within the contractor's organization and its reporting requirements;

(ii) The audit organization's size and the experience and educational standards of its staff;

(iii) The audit organization's relationship to the corporate entities of the Contractor;

(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;

(vi) The intended use of external audit resources;

(vii) The plan for audit of subcontracts, both pre-award and post-award; and

(viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.

(2) By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business,

financial, or management controls.

(3) By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.

(4) The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) *Remedies.* If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, *Penalties for Unallowable Costs*; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

(End of Clause)

I-32 DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DOE CLASS DEVIATION OCT 2021)

(a) The Contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements. In addition, the Contractor shall maintain and administer a financial management system that is in accordance with Generally Accepted Accounting Principles (GAAP) for Federal entities, as defined by the Federal Accounting Standards Advisory Board and implemented by the DOE Financial Management Handbook and other implementing policies. The financial system will also permit the proper allocation of costs to separately funded activities consistent with Cost Accounting Standards (CAS), as defined by 48 CFR 9900 and any implementing DOE policies, and ensures that accountability for the assets can be maintained.

(b) The Contractor shall submit to the Contracting Officer for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The Contractor shall notify DOE 30 days in advance of any planned implementation of any substantial changes to the plan and, as requested by the Contracting Officer, shall submit any such changes to the Contracting Officer for written approval before implementation.

(End of clause)

I-33 DEAR 970.5232-8 INTEGRATED ACCOUNTING (DOE CLASS DEVIATION OCT 2021)

Integrated accounting procedures are required for use under this contract. The Contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of corresponding accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's primary accounting system for reporting financial activity under this contract in accordance with requirements imposed by the Contracting Officer pursuant to the Laws, Regulations, and DOE Directives clause of this contract.

(End of clause)

I-34 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (AUG 2016) (NNSA CLASS DEVIATION FEB 2022)

(a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's obligations include, among other things, retaining documentation to justify the cost on any flexibly priced subcontract or any subcontract with a flexibly priced element. The Contractor shall not purchase any item or service, expressly prohibited by the written direction of DOE, and shall use any special and directed sources expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the Contractor's purchasing function, including the Contractor's compliance with its approved system and methods and the Contractor's management of the function. Such appraisals shall be performed against the criteria set forth in with 48 CFR subpart 44.3. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 48 CFR subpart 970.41.

(c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.

(d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) *Audit of Subcontractors.*

(1) The Contractor shall provide for -

(i) Periodic post-award audit--or a sufficient amount of audit work (the Contracting Officer agrees is sufficient)--to provide reasonable assurance that all claimed subcontract costs are allowable for: flexibly priced subcontracts at all tiers; and the flexibly priced elements in any subcontracts at all tiers ("flexibly priced" subcontracts and elements include Cost-Reimbursement subcontracts, Time-and-Materials subcontracts, cost-reimbursement elements in Fixed-Priced contracts, etc.); and

(ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely joint involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability. In no case, however, shall the Contractor's subcontract audit arrangements preclude the Contracting Officer's determination of the allowability or unallowability of the subcontract costs the Contractor claims for reimbursement.

(3) Where audits of subcontractors at any tier are required, the Contractor shall consult with the Cognizant Contract Auditor to determine if the auditor is already planning to audit the subcontract. If not already planned, the Contractor shall consult with the DOE Contracting Officer on the best approach for obtaining an audit; this may involve employing external auditors. The Contractor shall interact with the cognizant Federal agency in a manner appropriate to the magnitude and nature of the subcontracted work. In no case, however, shall subcontractor auditing arrangements preclude determination by the Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursement subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).

(f) *Bonds and Insurance.*

(1) The Contractor shall require performance bonds in amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of $150,000. The Contractor shall consider the use of performance bonds in fixed-price non- construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $150,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than $35,000, but not greater than $150,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) *Buy American.* The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of $500,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at $500,000 or less.

(h) *Construction and Architect-Engineer Subcontracts*.

(1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Prevention of Conflict of Interest.

(i) The Contractor shall not award a subcontract for construction to the architect- engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and

construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed- price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) *Contractor-Subcontractor Relationship.* The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.

(l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of Head of Contracting Activity, in consultation with the local legal counsel.

(m) *Leasing of Motor Vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.

(n) Management, Acquisition and Use of Information Resources. Requirements for information technology and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders, statutes, and regulations.

(o) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(p) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR Subpart 908.71, Federal Management Regulation 41 CFR Part 102, and the Federal Property Management Regulation 41 CFR Chapter 101:

(1) Motor vehicles - 48 CFR 908.7101
(2) Aircraft - 48 CFR 908.7102
(3) Security Cabinets - 48 CFR 908.7106
(4) Alcohol - 48 CFR 908.7107
(5) Helium - 48 CFR subpart 8.5
(6) Fuels and packaged petroleum products - 48 CFR 908.7109
(7) Coal - 48 CFR 908.7110
(8) Arms and Ammunition - 48 CFR 908.7111
(9) Heavy Water - 48 CFR 908.7121(a)
(10) Precious Metals - 48 CFR 908.7121(b)
(11) Lithium - 48 CFR 908.7121(c)
(12) Products and services of the blind and severely handicapped - 41 CFR 101-26.701
(13) Products made in Federal penal and correctional institutions - 41 CFR 101-26.702

(q) *Purchase versus Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made -

(1) At time of original acquisition;
(2) When lease renewals are being considered; and
(3) At other times as circumstances warrant.

(r) *Quality Assurance.* Contractors shall include appropriate clauses in subcontracts related to quality assurance requirements that provide no less protection for the Government , as that required of the contractor in the prime contract.

(s) *Setoff of Assigned Subcontractor Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(t) *Strategic and Critical Materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.

(u) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such

subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(v) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(w) *Subcontract Flowdown Requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

(1) *Wage rate requirements (construction),* formerly known as the Davis-Bacon Act, clauses prescribed in 48 CFR 22.407.

(2) Foreign Travel clause prescribed in 48 CFR 952.247-70.

(3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).

(4) Service Contract Labor Standards, formerly known as Service Contract Act clauses prescribed in 48 CFR 22.1006.

(5) State and local taxes clause prescribed in 48 CFR 970.2904-1.

(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1.

(7) Displaced Employee Hiring Preference clause prescribed in 48 CFR 926.7104.

(8) Service Contract Reporting clause prescribed in 48 CFR 4.1705.

(9) . Contract Work Hours and Safety Standards – Overtime Compensation as prescribed in 48 CFR 22.305.

(10) Paid Sick leave under Executive Order 13706 as prescribed in 48 CFR 22.2110.

(11) Collective Bargaining Agreements Management and Operating Contracts as prescribed in 48 CFR 970.2201-1-3.

Workplace Substance Abuse Programs at DOE Sites as prescribed in 48 CFR 970.2305-4.

(x) *Legal Services.* Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719.

(End of Clause)

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J: LIST OF APPENDICES (MOD P00004, P00010)

Appendix A	Statement of Work (SOW)
Appendix B	List of Applicable Directives (Revised P00004)
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Appendix D	Personnel Appendix
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Appendix J	Transition Plan
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