

PART I – THE SCHEDULE

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SECTION B: SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SERVICES BEING ACQUIRED

CONTRACT LINE ITEM NUMBER (CLIN) 0001 TRANSITION PERIOD

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 four-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)

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

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

The Base Period is five years of performance on a cost-plus-fixed-fee basis.

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.

- (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 using the formulas below. FF is FF for the period. The TAF is the product of the fee base multiplied by **TAF% Proposed[^]**. 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% Proposed[^]**)

TAF Amount = Fee Base * **TAF% Proposed[^]**

FF Amount = TAF Amount * **FF Portion% Proposed^{^^}**

AF Amount = TAF Amount - FF Amount

[^]Proposed TAF% of successful Offeror will be inserted at Contract award.

^{^^}Proposed FF Portion% of Successful Offeror will be inserted at Contract award.

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 annual 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 PX Plant

Contract Period*	Initial Fee Base	Updated Fee Base	Fixed Fee	Available Award Fee	Total Available Fee	Earned Award Fee	Total Earned Fee
Base Period (Year 1)	\$TBD	\$TBD				\$TBD	\$TBD
Base Period (Year 2)	\$TBD	\$TBD				\$TBD	\$TBD
Base Period (Year 3)	\$TBD	\$TBD				\$TBD	\$TBD
Base Period (Year 4)	\$TBD	\$TBD				\$TBD	\$TBD
Base Period (Year 5)	\$TBD	\$TBD				\$TBD	\$TBD
Option Periods							
Option Period 1 (Year 1) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 1 (Year 2) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 1 (Year 3) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 1 (Year 4) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 1 (Year 5) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 2 (Year 1) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 2 (Year 2) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 2 (Year 3) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 2 (Year 4) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 2 (Year 5) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 3 (Year 1) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 3 (Year 2) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 3 (Year 3) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 3 (Year 4) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Option Period 3 (Year 5) (if exercised)	\$TBD	\$TBD				\$TBD	\$TBD
Total	\$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 the **FF% Proposed^**. The fee base shall be calculated using the following formula:

$$((\text{CLIN 0003 Estimated Budget}) * (1 - 0.15)) / (1 + \text{FF\% Proposed}^{\wedge})$$

^Proposed CLIN 0003 FF% of successful Offeror will be inserted at contract award.

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)	\$TBD	\$TBD	\$TBD

(if exercised)			
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) (if exercised)	\$TBD	\$TBD	\$TBD
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

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 four months. The period of performance of this Contract consists of:

- (1) Transition Period: A period of four months 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

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 120 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 90 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 90 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 120 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 120 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 **TBD**, 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: *[offeror fill-in]*
Position: *[offeror fill-in]*
Company: *[offeror fill-in]*
Address: *[offeror fill-in]*
Phone: *[offeror fill-in]*
E-mail: *[offeror fill-in]*

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 **TBD**. This entity is comprised of: **TBD**.

- (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.

TBD [Team Members are parties comprising the performing entity and major subcontractors identified in the Contractor's proposal]

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: *[offeror fill-in]*
Position: *[offeror fill-in]*
Company: *[offeror fill-in]*
Address: *[offeror fill-in]*
Phone: *[offeror fill-in]*
E-mail: *[offeror fill-in]*

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

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 Engineers (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 Contracting 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.