SOLICITATION, OFFER AND AWARD

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF PAGES
		1 | 162

2. CONTRACT NUMBER	3. SOLICITATION NUMBER	4. TYPE OF SOLICITATION	5. DATE ISSUED	6. REQUISITION/PURCHASE NUMBER
89233218CNA000001		☐ SEALED BID (IFB) ☒ NEGOTIATED (RFP)	10/25/2017	

7. ISSUED BY	CODE	8. ADDRESS OFFER TO (If other than Item 7)
NNSA M&O Contracting Branch NA-APM-131 Albuquerque Complex P.O. Box 5400 Albuquerque NM 87185-5400	05115	

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in _____ until _____ (Hour) local time _____ (Date)

CAUTION: LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE (NO COLLECT CALLS) AREA CODE	NUMBER	EXT.	C. E-MAIL ADDRESS
	Ariane S. Kaminsky	202	586-9713		ariane.kaminsky@nnsa.doe.gov

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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232.8)	10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
	NET 30			

14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
Triad National Security, LLC Attn: H. Rich Heitman 505 KING AVE COLUMBUS OH 43201	080961356		

15B. TELEPHONE NUMBER AREA CODE	NUMBER	EXT.	15C. CHECK IF REMITTANCE ADDRESS ☐ IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE

AWARD (To be completed by government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION
	$11,354,278,884.00	

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: ☐ 10 U.S.C. 2304 (c) ( ) ☐ 41 U.S.C. 253 (c) ( )	23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM

24. ADMINISTERED BY (If other than Item 7)	CODE	25. PAYMENT WILL BE MADE BY	CODE
See Schedule G	05003	See Schedule G	00503

26. NAME OF CONTRACTING OFFICER (Type or print)	27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	28. AWARD DATE
Christopher M. Duran		6/8/2018

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

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Previous edition is unusable

STANDARD FORM 33 (Rev. 9-97)
Prescribed by GSA - FAR (48 CFR) 53.214(c)

NAME OF OFFEROR OR CONTRACTOR
Triad National Security, LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	DUNS Number: 080961356 Contract Award No. 89233218CNA000001 to Triad National Security, LLC (Triad) for the Management and Operation of Department of Energy National Nuclear Security Administration's Los Alamos National Laboratory (LANL). Delivery Location Code: 05003 NNSA Los Alamos Field Office NA-LA Los Alamos Site Office 3747 West Jemez Road Los Alamos NM 87544 USA Payment: OR for NNSA U.S. Department of Energy Oak Ridge Financial Service Center P.O. Box 5807 Oak Ridge TN 37831 FOB: Destination				

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SECTION B: SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SERVICES BEING ACQUIRED [MODIFIED BY MODIFICATION NO. P00003]

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 the Los Alamos National Laboratory in Los Alamos County, New Mexico and at all satellite facilities as provided in the Statement of Work. The transition period is a four month period of performance with a firm-fixed-price of $12,400,000.

CLIN 0002 MANAGEMENT AND OPERATION OF THE LOS ALAMOS NATIONAL LABORATORY

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 the Los Alamos National Laboratory in Los Alamos County, New Mexico and at all satellite facilities as provided in the Statement of Work. This CLIN includes construction projects other than Capital Construction Projects as defined in this Contract.

CLIN 0002A BASE PERIOD

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 one year of performance on a cost-plus-fixed fee basis and an award fee basis.

CLIN 0002C OPTION PERIOD 2

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

CLIN 0002D OPTION PERIOD 3

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

CLIN 0002E OPTION PERIOD 4

Option Period 4 is one year of performance on a cost-plus-fixed fee basis and an award fee basis for Leadership Performance.

CLIN 0002F OPTION PERIOD 5

Option Period 5 is one year of performance on a cost-plus-fixed fee basis and an award fee basis for Leadership Performance.

CLIN 0003 STRATEGIC PARTNERSHIP PROJECTS

The Contractor shall, in accordance with Section J, Appendix A, Chapter II Work Scope Structure, paragraph 1.7 Strategic Partnership Projects (SPP), and all other the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to, the effective, efficient, and safe performance 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 one year of performance on a cost-plus-fixed-fee basis.

CLIN 0003C OPTION PERIOD 2

Option Period 2 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0003D OPTION PERIOD 3

Option Period 3 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0003E OPTION PERIOD 4

Option Period 4 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0003F OPTION PERIOD 5

Option Period 5 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0004 CAPITAL CONSTRUCTION PROJECTS

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/or performance of Capital Construction Projects under DOE O 413.3 (defined in Clause H-18 of this contract). Each Capital Construction Project shall be identified hereunder as a Sub-CLIN to CLIN 0004 via unilateral contract modification. Price and price structure (such as Firm Fixed Price, Cost-Plus-Incentive-Fee, or other price structures) and any applicable special terms and conditions shall be identified for each Capital Construction Project covered by CLIN 0004. Capital Construction projects not under DOE O 413.3 may be mutually agreed upon following this same CLIN and Price structure along with any applicable special terms and conditions.

B-2 CONTRACT TYPE AND VALUE [MODIFIED BY MODIFICATION P00006 & P000016]

(a) This is a performance-based, Management and Operating (M&O) Contract with firm fixed price, cost-plus-fixed-fee, and cost-plus-award fee provisions.

(b) Transition cost is firm fixed price for CLIN 0001. The firm fixed price for CLIN 0001 is $12,400,000.

(c) The estimated cost, fixed fee (FF), award fee (AF), and Total fee earned for CLIN 0002 (DOE/NNSA work) is set forth in Table 1 below:

Table 1 -- CLIN 0002 -- Management and Operation of LANL [P00016]

Contract Period	DOE/NNSA Estimated Cost	Fixed Fee (FF) Dollar Amount ($)	DOE/NNSA Award Fee (AF) Dollar Amount ($)	Total Available Fee (FF + AF)	Total Fee Earned (FF + AF)
Base Period (Year 1, 11-months)	$1,795,583,912	$17,955,839	$22,893,695	$40,849.534	TBD
Base Period (Year 2)	$2,001,912,827	$20,019,128	$25,524,389	$45,543,517	TBD
Base Period (Year 3)	$2,045,954,909	$20,459,549	$26,085,925	$46,545,474	TBD
Base Period (Year 4)	$2,090,965,917	$20,909,659	$26,659,815	$47,569,475	TBD
Base Period (Year 5)	$2,136,967,168	$21,369,672	$27,246,331	$48,616,003	TBD
Option Periods					
Option Period 1 (if exercised)	$2,183,980,446	$21,839,804	$27,845,751	$49,685,555	TBD
Option Period 2 (if exercised)	$2,232,028,015	$22,320,280	$28,458,357	$50,778,637	TBD
Option Period 3 (if exercised)	$2,281,132,632	$22,811,326	$29,084,441	$51,895,767	TBD
Option Period 4 (if exercised)	$2,331,317,550	$23,313,175	$29,724,299	$53,037,474	TBD
Option Period 5 (if exercised)	$2,382,606,536	$23,826,065	$30,378,233	$54,204,299	TBD

[Table 1 DOE/NNSA Estimated Cost to be completed by the Contracting Officer each fiscal year based on the enacted budget for the fiscal year. The Fee amounts to be completed by the Contracting Officer at the effective date of the Contract utilizing the fees determined at Contract award] Note: Total Fee Earned will be filled in by the issuance of a unilateral modification to the Contract.

(d) The estimated cost and fixed fee for CLIN 0003 (Strategic Partnership Projects -- Section J, Appendix A, Chapter II Work Scope Structure, paragraph 1.7) are set forth in Table 2 below. The estimated cost and the fixed fee for the Strategic Partnership Projects during the Base Period of the Contract and for each Option Period will be established by the DOE/NNSA prior to the commencement of the applicable fiscal year and will be incorporated into the Table below through a modification to this clause. The FF rate for SPP will not exceed 1.0% of the estimated cost of all projects anticipated for the applicable fiscal year.

Table 2 CLIN 0003 -- Strategic Partnership Projects [P00016]

Contract Period	Estimated Cost	Fixed Fee (FF)	Estimated Cost + Fixed Fee
Base Period (Year 1)	$266,383,653	$2,663,836	$269,047,489
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 (if exercised)	$TBD	$TBD	$ TBD
Option Period 2 (if exercised)	$TBD	$TBD	$ TBD
Option Period 3 (if exercised)	$TBD	$TBD	$ TBD
Option Period 4 (if exercised)	$TBD	$TBD	$ TBD
Option Period 5(if exercised)	$TBD	$TBD	$TBD

[Table 2 Estimated Cost to be completed by the Contracting Officer each fiscal year based on the estimated level of SPP projects for the year.]

(e) The total firm fixed price for the Transition Period (CLIN 0001), the estimated cost and fee for Base Period (CLINs 0002A and 0003A), including DOE/NNSA and Strategic Partnership Projects is identified in the latest executed funding modification.

(f) The FF and AF for CLIN 0002, and the FF rate for CLIN 0003 will not be negotiated on an annual basis and are established at Contract award.

B-3 CONTRACT FEE STRUCTURES [MODIFIED BY MODIFICATION P00003]

(a) CLIN 0001: Transition is firm fixed price and there is no fee structure.

(b) CLIN 0002: Management and Operation of LANL

(1) Fixed Fee (FF)

The estimated cost and FF for the Base Period of the Contract and for each Option Period, if exercised by DOE/NNSA are shown in paragraph B-2 (c) *Contract Type and Value,* Table 1.

All team members must share in the fee pool, whether they are subcontractors or members of a joint-venture, and no separate fee or profit will be paid on subcontracts with team members. The fee restriction above does not apply to members of the Contractor's team that are:

(i) small business(es);
(ii) Protégé firms as part of an approved Mentor-Protégé relationship under the Clause entitled, Mentor-Protégé Program;
(iii) a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or
(iv) competitively awarded subcontracts for commercial items as defined in FAR Subpart 2.1.

(2) Award Fee (AF)

The available AF for each performance period of the Base Period and each Option Period, if exercised by DOE/NNSA, are shown in the tables in paragraph B-2 (c), Contract Type and Value. The Contractor shall be eligible to earn AF of up to the amount specified for each performance period of the Base Period (CLIN 0002A), in accordance with (e)(2) of this clause.

(c) CLIN 0003: Strategic Partnership Projects (SPP) – Fixed Fee (FF)

The FF for SPP for the Base Period and each Option Period, if exercised by DOE/NNSA, are shown in paragraph B-2 (d), *Contract Type and Value*, Table 2.

(d) CLIN 0004: Capital Construction Projects

Price and 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 CLIN 0004.

(e) Payment of Fee

(1) Fixed Fee

The FF for the Base Period of the Contract (and option periods to the extent exercised) shall be paid monthly at the rate of one-twelfth (1/12) of the annual FF per month. Such payment amounts are to be drawn down by the Contractor from the Contract's special financial institution account in monthly installments on the last day of each month.

(2) Award Fee

(i) AF Determination. The amount of AF earned will be based on the Contractor's performance as evaluated against the criteria established in B.7, PERFORMANCE EVALUATION. The amount of AF earned by the Contractor will be unilaterally determined by NNSA's Fee Determining Official (FDO), who will document his or her AF determination in a Fee Determination Letter.

(ii) 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.

(iii) AF Delay. If the Contracting Officer does not notify the Contractor of the amount of AF earned by the date specified in (ii), 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 (ii).

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

(v) No Draw Down. The Contractor is not authorized to draw down the AF prior to receipt of the FDO's determination letter and authorization from the Contracting Officer via a contract modification.

(f) The Parties agree that a change made pursuant to the Changes clause of this Contract, DEAR 970.5243-1, or pursuant to any other clause of this Contract granting the Government the right to make unilateral changes to the Contract, shall not be considered a material change, and shall not warrant an equitable adjustment to fee (either FF, AF, or any fee established under any CLIN, including CLIN 0004).

B-4 KEY PERSONNEL REPLACEMENT

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 for a replacement Key Person within three years of being placed in the position, the Contractor shall forfeit three years of the DOE/NNSA reimbursable annual salary, bonuses and relocation costs (salary, bonuses, relocation costs as well as associated burdens incurred during transition is not reimbursable) as well as associated burdens, for that position for each occurrence.

B-5 OBLIGATION OF FUNDS [MODIFIED BY MODIFICATIONS P00001, P00002, P00004, P00007, P00009 THRU P00015 & P00016, P00017, P00019 THRU P00023, P00025 THRU P00029]

Pursuant to this Section I clause entitled "DEAR 970.5232-4, *Obligation of Funds*, (DEC 2000)" the total amount obligated by the Government with respect to this Contract is identified in the latest executed funding modification.

B-6 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary to Section I clause 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 utilize for such purposes.

B-7 PERFORMANCE EVALUATION [MODIFIED BY MODIFICATION P00003 & P00016]

Performance Evaluation and Measurement Plan (PEMP). A PEMP will be developed by NNSA for this Contract which will document strategic performance expectations 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. The PEMP once finalized, whether bilaterally or unilaterally, will be incorporated into the Contract at Section J, Appendix O, by contract modification. The Contracting Officer may revise the PEMP 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.

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 Representative (COR).

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 reperformance, 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 FAR 52.246-9 INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. 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.

E-3 INSPECTION AND ACCEPTANCE

Inspection of all activities and acceptance for all work and effort under this Contract shall be accomplished by the Contracting Officer or any 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 Section I clause FAR 52.242-15, *Stop-Work Order, Alternate I*. 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.

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 five years of performance. The Contract's maximum period of performance, including the Transition period and Option Period(s), if exercised, shall not exceed 10 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.

(2) Base Period: A period of five years beginning after completion of the Transition Period.

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

Option Period 1: If exercised, one year from the end of the Base Period.

Option Period 2: If exercised, one year from the end of Option Period 1.

Option Period 3: If exercised, one year from the end of Option Period 2.

Option Period 4: If exercised, one year from the end of Option Period 3.

Option Period 5: If exercised, one year from the end of Option Period 4.

F-4 PRINCIPAL PLACES OF PERFORMANCE

The work under this contract is to be carried out at a variety of locations within and outside the United States, but the principal place of performance will be at the Los Alamos National Laboratory in Los Alamos County, New Mexico.

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 that need to be considered are the requirements described FAR Part 17.207 Exercise of Options must be met before any option can be exercised. In addition, all M&O extended terms beyond 5 years of performance are subject to FAR Part 17.605 entitled, "Award, Renewal, and Extension". Authority to extend an M&O contract beyond 5 years falls under the authority of the Heads of Agency as described in FAR Part 17.602 (a). 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);

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

F-6 DELIVERABLES DURING TRANSITION

In addition to the transition deliverables identified elsewhere in this Contract, the following deliverables shall be submitted during the Transition Term:

(a) Transition Plan

The Contractor shall provide, for approval by the Contracting Officer, a Transition Plan, 10 calendar days after start of the Transition Period. The Transition Period is specified in paragraph 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 Costs

(1) The Contractor shall propose initial total Key Personnel compensation costs for each of its Key Personnel for the first year of the Base Period for CLIN 0002 within 10 calendar days after start of the Transition Period. The Contracting Officer will approve key personnel compensation costs for the first year of the Base Period. The Contractor shall provide supporting justification related to internal and external equity for each compensation request. The top contractor official's reimbursed base salary will serve as the maximum allowable salary

reimbursement level. No reimbursement above the limits specified will be allowed under the Contract for the first year of the Base Period.

(2) The Contractor shall separately identify and provide a total summary of the annual compensation costs of the Contractor's proposed Key Personnel for the first year of the Base Period. Costs shall include annual base salaries, and applicable bonuses, incentive pay, fringe benefits, and other key personnel compensation. For each of the Key Personnel proposed, identify the individual's position, name, current annual salary, and basis for determining the proposed annual salary. Separately identify and describe the basis of estimate for applicable fringe benefits, incentive pay, bonuses, and any other forms of Key Personnel compensation. Provide narrative support sufficient to explain the development and reasonableness of the proposed compensation costs.

(3) 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 $487,000 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(16).

(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 of this Contract. 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 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.

(d) Community Commitment Plan

The Community Commitment Plan shall be consistent with the intent of DEAR 970.5226-3, "*Community Commitment*". Clause H-23 entitled, "*Contractor Community Commitments*" contains additional details of the plans.

SECTION G: CONTRACT ADMINISTRATION DATA

G-1 GOVERNMENT CONTACTS

(a) The NNSA Manager, Los Alamos Field Office (LAFO) is the Contractor's primary point of contact for all operational and policy matters, except as identified in paragraphs (b, c, d, etc.) below, regarding performance of this contact. The LAFO Administrative Contracting Officer is the Contractor's primary point of contact for all contractual matters. The LAFO Manager and Administrative Contracting Officer can be reached at:

U.S. Department of Energy
National Nuclear Security Administration
Contracting Officer, Los Alamos Field Office
3747 West Jemez Road
Building 1410 TA 43
Los Alamos, NM 87544

(b) 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 NNSA Patent Counsel should be addressed to:

U.S. Department of Energy, National Nuclear Security Administration
NNSA Patent Counsel
Office of the General Counsel (NA-GC)
P.O. Box 5400
Albuquerque, NM, 87185-5400

(c) 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
P.O. Box 5400
Albuquerque, NM, 87185-5400

(d) Technical and Administrative Correspondence:

Technical and administrative correspondence concerning performance of this Contract shall be addressed to the responsible NNSA LAFO Contracting Officer Representative (COR), with an information copy to the Contracting Officer.

(e) Designation of Contracting Officer Representative(s)

The COR's official delegation of authority will be provided by the Contracting Officer to the Contractor. 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 this 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 this 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 has issued a formal contractual change.

If an effort under this Contract requires that an Alternate COR 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.

(f) Contractual Correspondence/Matters

Correspondence involving contractual matters shall be addressed to the Administrative Contracting Officer (ACO), who is also primarily responsible for all contractual actions required to be taken by the Government under the terms of this Contract. The ACO may be contacted at

Contracting Officer
U.S. Department of Energy/NNSA
Los Alamos Field Office
3747 West Jemez Road
Building 1410 TA 43
Los Alamos, NM 87544

(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 89233218CNA000001, (insert topic of correspondence after Contract Number)

G-2 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this Contract, a Contracting Officer is the only individual authorized, on behalf of the Government, to:

(a) Accept nonconforming work;

(b) Waive any requirement of this Contract; or

(c) Modify any term or condition of this Contract.

G-3 CONTRACTOR CONTACT

The Contractor shall identify to the Contracting Officer the point of contact who has signature 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:	Dr. Thomas Mason
Position:	President and Laboratory Director of Triad
Company:	Triad National Security, LLC
Address:	505 King Ave., Columbus, OH 43201
Phone:	(614) 424-7155
E-mail:	masont@battelle.org

G-4 PERFORMANCE GUARANTEE(S)

If the Contractor has organized a separate legal entity to perform the work under this Contract, 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 this contract, shall guarantee performance as evidenced by the Performance Guarantee Agreement(s) incorporated in Section J, Appendix I, Performance Guarantee Agreement(s)(subcontractors are not be required to provide a performance guarantee). If the Contractor is a joint venture, limited liability company, or other similar entity, where more than one company is involved, the parent or all member organizations shall assume joint and severable liability for the performance of the Contract. 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-5 RECOGNITION OF PERFORMING ENTITY

(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 Triad National Security, LLC. This entity is comprised of: Battelle Memorial Institute, The Regents of University of California, The Texas A&M University System.

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

G-6 RESPONSIBLE CORPORATE OFFICIAL [MODIFIED BY MODIFICATION P00022]

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 senior Contractor official on-site 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:	Dr. M. Katherine Banks
Position:	Vice Chancellor of Engineering and National Laboratories
Company:	Texas A&M University
Address:	Texas A&M University, 3127 TAMU, College Station, TX, 77843-3127
Phone:	(979) 845-1321
E-mail:	k-banks@tamu.edu

G-7 INVOICING FOR TRANSITION PRICE

(a) The Contractor shall submit vouchers electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS) for payment for work performed under CLIN 0001A, 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) The Contractor shall bill 1/4 of the firm fixed price for the transition period monthly. The Contractor shall invoice for work performed in accordance with Section I clause FAR 52.216-7 and as directed by the Contracting Officer following the procedures at paragraph (a) of this clause. The final invoice shall be submitted within 60 days after the end of transition period.

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 DE-AC52-06NA25396 will continue during performance of this contract. 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; and,
(9) 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. If, at the completion or termination of this Contract, the Contracting Officer does not direct the Contractor to transfer or assign such obligations 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 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 PARTICIPATION

The Small Business Subcontracting Plan is incorporated in Section J, Appendix E. 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 and dated December 11, 2017 and May 31, 2018, are hereby incorporated in 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 and 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 Organizational Conflict of Interest (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 of 48 CFR 52.227-23 “Rights of Proposal Data (Technical)” in any subcontract awarded based on consideration of a technical proposal.

H-7 PRIVACY 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-31	Firearms Qualification Records
DOE-45	Weapon Data Access Control System
DOE-48	Security Education and/or Infraction Reports
DOE-52	Alien Visits and Participation

H-8 TRANSITION

The Laboratories' 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 Clause F-6 entitled *"Deliverables During Transition"* and Section J, Appendix J – Transition Plan. The Contractor's responsibility for management and operation of the Los Alamos National Laboratory shall commence with the Base Period.

H-9 CONFERENCE MANAGEMENT (SEP 2015)

The Contractor agrees that:

a) The contractor shall ensure that contractor-sponsored conferences 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 will ensure 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 defined in Attachment 2 to the Deputy Secretary's memorandum of August 17, 2015 entitled *"Updated Guidance on Conference-Related Activities and Spending."* A copy of the memorandum may be found at http://energy.gov/management/downloads/policy-flash-2015-36-al-2015-09.

c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:

   1) The contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:

      i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference) or

      ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).

   2) The contractor authorizes use of its official seal, or other seals/logos/ trademarks to promote a conference. Exceptions include non-M&O contractors who use their

seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).

d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.

e) The contactor will provide information on conferences they plan to sponsor with expected costs exceeding $100,000 in the Department's Conference Management Tool, 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, registration costs, recovered costs (e.g., through exhibit fees)

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.

g) For DOE-sponsored conferences, the contractor will not expend funds on the proposed conference until notified by the contracting officer.

1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/ trademarks to promote a conference. Exceptions include instances where DOE:

i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference) or

ii) purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.

2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.

3) The contractor will provide cost and attendance information on their participation in all DOE-sponsored conference in the DOE Conference Management Tool.

h) For *non-contractor sponsored conferences*, the contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:

1) Track all conference expenses.

2) Require the Laboratory Director (or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of $100,000 or greater.

i) Contractors are not required to enter information on non-sponsored conferences in DOE'S Conference Management Tool.

j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than $10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If a contractor does so, its expenditures for the conference may be deemed unallowable.

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 (http://www.gsa.gov/portal/category/100759). 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 corporate parent (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 Contract Clause entitled *"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 purposed Implementation of paragraph (b) (1) of the Contract Clause entitled *"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) 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) 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, or any other work, to be performed either by another contractor directly contracted by the 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, another contractor, or other parties. 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 Contactor 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 Representative (COR), any performance of a designated Contract that may not be in compliance with its terms and conditions but 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 Los Alamos National Laboratory*," substantially as written here, in all such contracts as follows:

OTHER GOVERNMENT CONTRACTORS PERFORMING WORK AT LANL

In addition to this Contract, 89233218CNA000001, the Government may undertake or award other contracts for additional work or services at any LANL site. 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 necessary and/or as may be directed by the Contracting Officer. The contractor shall not commit or permit any act or omission 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) 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

(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 - Acquisition and Project Management (NA-APM)" 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 mailto: fociserver@anl.gov.

(End of clause)

H-17 CONTRACTOR EMPLOYEES

In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the NNSA or the Government; however, nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

H-18 CONSTRUCTION PROJECTS

For Capital Construction Projects, the Contractor agrees that the NNSA will incorporate, as appropriate, construction terms and conditions into the M&O Contract or work authorization for the completion of that project that are not otherwise contained in the M&O Contract. 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*."

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/or performance of Capital Projects as the Parties may agree.

(a) Capital Construction Projects are defined for the purposes of this Contract as construction projects which are anticipated to exceed a total of $50M for all design and construction costs.

(b) The Contracting Officer may, in its sole discretion, direct the Contractor to manage and/or perform Capital Construction Projects, or any portion thereof, as they arise. The Parties shall establish by mutual agreement the price and applicable price structure (such as Firm Fixed Price, Cost-Plus Incentive-Fee, or other price structures as agreed) and any special terms and conditions which shall apply to each Capital Construction Project. The Contractor agrees to enter into good-faith negotiations with the Government to establish the price, price structure, and special terms and conditions which may apply to each Capital Construction Project. However, if the Parties cannot reach mutual agreement, the Contracting Officer may, within its sole discretion, (1) withdraw the direction to perform and/or manage a particular Capital Construction Project or (2) direct the Contractor to proceed with the performance and/or management of the Capital Construction Project in accordance with specified terms and conditions via a unilateral contract modification, in which case the Contractor shall be entitled to an equitable adjustment. 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) Each Capital Construction Project which is authorized under this contract shall be identified via bilateral contract modification, to include SUB-CLINs, project title, contract type (such as Performance Based Incentive Fee or Firm-Fixed-Price), description of work, delivery schedule (to include major milestones and/or completion date), and associated terms and conditions necessary for the completion of a project and not otherwise contained in the Contract. Sub-CLINs will only be considered when they have reached the Critical Decision-2/3 as described within DOE Order 413.3B, *"PROGRAM AND PROJECT MANAGEMENT FOR THEACQUISITION OF CAPITAL ASSETS."*

(d) Construction projects which are not Capital Projects, as defined herein, are within the scope of CLIN 0002 and shall be performed or managed by the Contractor as directed by the Government. Such construction projects may be assigned by Work Authorizations or a sub-CLIN under CLIN 0004 which may include construction-related clauses prescribed in the Federal Acquisition Regulation and/or the Department of Energy Acquisition Regulation 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.

(e) The Government reserves the right to have other contractors perform or manage any or all construction projects, including Capital Construction Projects, or any portion thereof at Los Alamos National Laboratory sites. 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 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 related costs are within the scope of CLIN 0002.

H-19 STRATEGIC PLANNING

A key element to sound laboratory stewardship and governance is a shared strategic level vision for the future of the laboratory and the strategic investments necessary across mission support areas to assure the laboratory's continued future vitality and capability to perform its missions. To aid in strengthening this alignment, the M&O partner leadership from each NNSA Laboratory shall work in coordination with NNSA field office and HQ functional and program leadership in developing and presenting annual laboratory strategic plans. To enable a uniform and consistent reporting approach and to allow for the process to evolve and change as necessary, NNSA will provide annual report and presentation guidance. The information from these activities provides the starting point for periodic and continuous discussions between the DOE/NNSA and management and operating partners' leadership about the site's future directions, immediate and long range challenges, and resource needs. The results of these activities are intended to ensure alignment with agency goals, priorities, and budgets.

H-20 ORGANIZATIONAL CULTURE CHANGE [MODIFIED BY MODIFICATION P00008, P00018]

The contractor shall improve the organizational culture by proactively balancing the conduct of operations in every aspect of executing the statement of work (e.g. integrating a research environment with a production environment 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. In addition, the focus areas and attributes described in Department of Energy Guide 450.4-1C, Attachment 10.

The Contractor shall include organizational culture improvement as part of its strategic planning activities. Other organizational culture improvement activities will include but not limited to the following:

(a) Within 6 months of the start of the base period, partner with NNSA to develop an Integrated schedule for TA-55 to encompass pit manufacturing, surveillance, infrastructure and equipment installation to achieve 30 pits/year by 2026, and provide a list of opportunities to accelerate the schedule.

(b) Implement Laboratory Operations Supervisor Academy (LOSA) to train all supervisory staff in hazardous operations areas within 12 months of the start of the base period and all remaining supervisory staff within 24 months of the start of the base period.

(c) Use corporate reach back to Fluor to ensure continuity and revalidate capital projects at risk within 6 months of the start of the base period.

(d) Assess all outstanding criticality safety evaluations (CSEs) for LANL PF-4 operations within 6 months of the start of the base period; then use corporate reach back to bring resources to accelerate high priority evaluations.

H-21 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (SEP 2015)

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

"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.

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

"Transaction" means any awarded contract, agreement, order, or modification, etc. (other than one involving an employer-employee relationship) entered into by a DOE M&O prime contractor calling for supplies and services (including construction) required solely for performance of the prime contract.

(b) Limited Interim Reporting.

The Contractor shall report no less than the twenty highest dollar value first-tier small business subcontract transactions under the contract by December 1 for the previous fiscal year until the Contractor business systems can report the required data as set forth in paragraph (c) below. Classified subcontracts shall be excluded from the reporting requirement and shall not be counted towards the total number of transactions of the reporting requirement.

(1) Transactions with a corporation, company, or subdivision that is an affiliate of the Contractor are not included in these reports.

(2) The Contractor shall provide the data on first-tier small business subcontract transactions under the contracts, as described in the MOSRC Guide via the Microsoft Excel spreadsheet co-located at https://max.gov in the MOSRC Collaboration Center. The spreadsheet will be submitted to HQProcurementSystems@hq.doe.gov.

(3) Full Reporting. The Contractor shall update their business systems and processes to collect and report data to MOSRC in compliance with the MOSRC Guide. The Contractor shall report data in MOSRC for FY18 (and each year thereafter) first-tier small business subcontracting transactions under the contract. Classified subcontracts shall be excluded from the reporting requirements. All Contractor systems shall be updated in order to provide the first FY18 report in November 2017 for October 2017 transactions.

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 CONTRACTOR COMMUNITY COMMITMENTS

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. The plan shall be consistent with the intent of DEAR 970.5226-3, "*Community Commitment*". The plan shall describe the Contractor's planned activities as to how it will be a constructive partner to the communities in the State of New Mexico. The Contractor is encouraged to consider specific performance goals around maximizing subcontracting to businesses within New Mexico, small businesses in Northern New Mexico, and Strategic Partnerships with New Mexico's system of higher education. The plan, shall be incorporated into Section J, Appendix L – Contractor Community Commitment Plan. Reasonable costs associated with the development of the plan will be considered allowable, while costs associated with implementing the plan are unallowable.

H-24 REGIONAL EDUCATIONAL OUTREACH PROGRAM

Pursuant to the provisions of the National Defense Authorization Act for FY 2005, Public Law No: 108-375, Section 3144, the Contractor shall provide support to the Los Alamos Public School District, New Mexico, for the elementary and secondary education of students in the school district in the amount of $8,000,000 in each fiscal year as an allowable costs under this Contract.

H-25 COMMUNITY TECHNICAL ASSISTANCE

The Contractor is authorized to conduct a Community Technical Assistance program to provide access by regional businesses, regional municipalities, institutions, and communities to Laboratory resources provided that such assistance (1) does not duplicate services provided by other entities, or (2) compete with the private sector. The costs of such program is allowable.

H-26 ASSET MANAGEMENT REQUIREMENTS

(a) Facilities Management Performance

(1) General

The minimum industry codes and standards for design and construction activities shall be as designated in applicable regulatory requirements (such as 10 CFR 851), and the applicable Directives in Contract Section J, Appendix B, List of Applicable Directives (such as DOE Order 420.1C). In addition to required codes and standards, NNSA Policy Letters shall also be used for the design and construction of nuclear facilities and accelerators.

(2) Site Facility Plan

The Contractor shall establish and maintain a Site Facility Plan that addresses the current condition of the Laboratory and future needs based on the strategic plan for the Laboratory. The Site Facility Plan shall be updated annually. The NNSA shall provide to the Contractor guidance for the preparation of the Site Facility Plan for which the Contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the Contractor shall prepare, and maintain through annual updates, the Site Facility Plan to reflect those actions necessary to keep the development of facilities current with the needs of the Government and allow the Contractor to successfully accomplish its mission in support of National Security. In developing this Site Facility Plan, the Contract shall follow the procedure guidance set forth in the applicable Directive in Contract Section J, Appendix B, List of Applicable Directives and NNSA Policy Letters. The Contractor shall use the Site Facility Plan to manage and control the development of facilities and lands. The Site Facility Plan and any NNSA directed revisions to the Site Facility Plan shall be submitted to the Contracting Officer for review and approval by NNSA. The Contractor may periodically during the year update and revise the Site Facility Plan to reflect changing mission needs. Changes to planned projects between official updates of the Site Facility Plan and the related NNSA approvals shall be approved through the NNSA project authorization process.

(3) Project Management

All capital investments shall be managed and controlled by the Contractor in Accordance with the Project Execution Plan for each project.

(4) Real Property

Real property at the sites shall be acquired, operated, and disposed of in a manner to support the policies and standards established by DOE/NNSA. Each acquisition of real property, whether by lease or purchase or by any other means, requires the express written authorization of the Contracting Officer and a cognizant Certified Realty Specialist, and may require additional DOE/NNSA and/or Government approvals (e.g. OMB) as directed by the Contracting Officer.

The Contractor shall provide an *"Annual Real Property Acquisition Plan"* within the first quarter of each fiscal year. The Contractor's processes for acquisition and disposal of Real Property must incorporate the NNSA supplemental guidance on real property acquisition and disposal, the U.S. Department of Energy Real Estate Desk Guide (Rev 2013)(or its successor), and all other applicable directives and policies as indicated in Contract Section J, Appendix B, List of Applicable Directives and NNSA Policy Letters.

(5) Operations and Maintenance

Facilities shall be operated and maintained in such a manner that they are fit for the intended use; promote operational safety; protect the environment, the workers, and the public; enhance the Laboratory's mission; minimize the use of energy resources; and protect the Government's capital investment.

(6) Utilities Acquisition and Management

Utility systems including without limitation electrical, water, natural gas, sewage, telecommunications, internet, and steam, unless furnished by the government, shall be acquired, operated, and maintained by the contractor to provide highly reliable and efficient systems.

(7) Resources Management

The Contractor shall manage the use of energy and water resources in a manner that minimizes consumption.

(b) Subcontract Requirements. To the extent the Contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

H-27 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-28 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 those awarded by the Integrated Contractor Purchasing Team (ICPT) 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-29 UTILIZATION OF PARENT CORPORATE SYSTEMS

If the Contractor, in the interest of efficiency and effectiveness of business operations, decides to adopt or adapt its parent corporate systems or services, it will ensure that the Government and Contractor's data in such systems is readily transferable to a successor contractor.

H-30 PERFORMANCE BASED MANAGEMENT SYSTEM [MODIFIED BY MODIFICATION NO. P00003]

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 entitled *"Performance Evaluation."*

H-31 BUSINESS ENTITY – FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER (FFRDC)

The Contractor shall operate and manage Los Alamos National Laboratory consistent with Federal Acquisition Regulation (FAR) Subpart 35.017, and have as its sole purpose the management and operation of Los Alamos National Laboratory. Accordingly, the Contractor will establish and maintain its own system of policies and procedures related to the management and operation of the Laboratory, which is consistent with the terms of this Contract, DOE Directives, regulations and practices.

H-32 IMPLEMENTATION OF ITER AGREEMENT ANNEX ON INFORMATION AND INTELLECTUAL PROPERTY

(a) Contractor agrees to be subject to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the ITER Agreement) as it applies to intellectual property, as follows: specifically, and without limitation, subject inventions and data produced in the performance of this contract and subcontracts related to the ITER project are subject to the license rights and other obligations provided for in the ITER Agreement's Annex on Information and Intellectual Property.

(b) Background intellectual property of the Contractor, as defined in the Annex, is also subject to the provisions of the ITER Agreement. In particular and under certain circumstances, Contractor shall use it best efforts to identify Background Intellectual property (including patents and data) and grant a nonexclusive license in certain Background Intellectual Property to the parties to the ITER Agreement (Members) for commercial fusion use. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE.

(c) Further, intellectual property generated by Contractor employees who are designated as seconded staff to the ITER organization shall be owned by the ITER Organization

and the Contractor gets no rights to such intellectual property except those rights provided the Contractor by the Government as a result of the Government being a member of the ITER Organization. Contractor agrees that Contractor employee agreements will be suitably modified as necessary to effectuate this provision and that employees will be required to execute a separate secondary agreement with the ITER Organization.

(d) The Government may provide to each ITER Member, as defined in the ITER Agreement, the right, for non-commercial uses, to translate, reproduce, and publicly distribute data produced in the performance of this contract. Contractor will deliver, at a minimum, to DOE, copies of all ITER-related peer-reviewed manuscripts provided to scientific and technical journal publishers which may then be distributed to Members in accordance with the ITER Agreement. Contractor agrees that the ITER Organization may impose a different delivery requirement in order to be in compliant with this paragraph and that, if so, Contractor agrees that this paragraph may be suitably modified to be in accordance with the ITER Agreement.

(e) Contractor shall include the ITER patent and data rights clauses transmitted to the Contractor from the U.S. ITER Project Office, suitably modified to identify the parties, in all subcontracts related to ITER, at any tier, for experimental, developmental, demonstration or research work and in subcontracts in which technical data or computer software is expected to be produced or in subcontracts that contain a requirement for production or delivery of data.

H-33 PERFORMANCE OF WORK AT FACILITIES AND SITES OTHER THAN LOS ALAMOS NATIONAL LABORATORY

In performance of the Contract's work at facilities and sites other than LANL, the Contractor shall comply with applicable requirements set forth in this Contract's Appendix B entitled *"List of Applicable Directives,"* and any additional directives which have been established for the NNSA Prime Contractor at that facility/site that are applicable to the Contractor's work being performed and that are applicable to the associated hazards at the particular facility or site.

H-34 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 A, Statement of Work, Chapter III, Human Resources, and Appendix C, Personnel Appendix attached to this Contract.

(b) ITEMS OF UNALLOWABLE COSTS:

(1) Premium Pay for wearing radiation-measuring devices for Laboratory 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 "teaming arrangement" as defined in FAR 9.601.

(4) Meals, snacks, refreshment and catering services, except 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) Costs that are unallowable under other contract terms shall not be allowable as compensation for personnel services.

H-35 INTELLECTUAL AND SCIENTIFIC FREEDOM

(a) The Parties recognize the importance of fostering an atmosphere at the Laboratory conducive to scientific inquiry and the development of new knowledge and creative and innovate ideas related to important national interests.

(b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratory and colleagues at universities, colleges and other laboratories or scientific facilities is vital to the success of the scientific, engineering, and technical work performed by Laboratory personnel.

(c) In order to further the goals of the Laboratory and the national interest, it is agreed by the Parties that the scientific and engineering personnel at the Laboratory shall be accorded the rights of publication or other dissemination of research, and participation in open debate and in scientific, educational, or professional meetings or conferences, subject to the limitations included in technology transfer agreements and such other limitations to related to the obligations of the Parties to protect classified and unclassified controlled nuclear information or other sensitive or confidential information, as provided by law, regulations, DOE/NNSA directives or policies, this contract, or other applicable requirements or agreements**.**

H-36 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-37 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014)

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-38 MANHATTAN PROJECT NATIONAL HISTORICAL PARK [MODIFIED IN MODIFICATION P00006]

Pursuant to the provisions of Public Law 113-291, Section 3039 established the requirement to preserve and protect certain Manhattan Project Sites (16 U.S.C. 410uuu). On November 10, 2015, the United States Department of the Interior (DOI), through the National Park Service (NPS) and the United States Department of Energy (DOE) executed a Memorandum of Agreement (MOA) to govern their respective roles—through a Joint Operating Agreement (JOP)--in administering the facilities and areas under the DOE's administrative jurisdiction that are included in the Manhattan Project National Historical Park. The Contractor shall comply with Public Law 113-291, Section 3039; DOE and DOI's MOA; and the technical direction provided by JOP and Los Alamos National Laboratory designated Contracting Officer Representatives.

H-39 DEFINITION OF UNUSUALLY HAZARDOUS OR NUCLEAR RISK AND OTHER TERMS FOR PURPOSES OF FAR CLAUSE 52.250-1, INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984) ALT I (APR 1984) [MODIFIED IN MODIFICATION P00008]

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

1. Participation in activities in support of a nonproliferation effort on behalf of the United States, outside the United States, as described in (i) through (iv):

   i. DOE's Nuclear Emergency Search Team (NEST),

   ii. DOE's Nuclear/Radiological Advisory Team (N/RAT)

   iii. DOE's Accident Response Group (ARG)/DOE's Joint Technical Operations Team (JTOT);

   iv. Crisis response teams;

   to the extent participation in activities described in subparagraph i., ii.,iii. or iv.

above involves nuclear emergency response activities involving real or suspected nuclear weapons, nuclear weapons components, or nuclear materials which can be readily utilized either (1) for the production or the fabrication of nuclear weapons without substantial further effort, or (2) for intentional widespread contamination or dispersal of harmful nuclear materials, whether or not such real or suspected weapons, components, or harmful nuclear materials are owned by the United States.

2. Repairs and maintenance of United States-owned nuclear weapons, requested by the Department of Defense under DOE's Stewardship role for the United States nuclear weapons stockpile.

3. Repairs and maintenance of United Kingdom-owned nuclear weapons requested by the Ministry of Defense of the United Kingdom, as directed or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary of Energy.

4. Participation in DOE's Materials Protection Control and Accountability (MPC&A) program including cooperative work outside the United States on the design and implementation of MPC&A systems for facilities processing, handling, and storing nuclear materials, and the transportation of nuclear materials; provision of U.S.-manufactured equipment, and procurement of equipment for installation in facilities in order to implement the above systems; and training in the design, use and assessment of MPC&A systems.

5. Participation in the U.S.-Russian Plutonium Disposition Program including cooperative work outside the United States on the demonstrations of alternative technologies for converting weapons-origin plutonium into forms unsuitable for direct weapons applications and subsequently into forms suitable for ultimate disposition; technical support for the construction and demonstration of a pilot line for Russian plutonium conversion/disposition of weapons-origin plutonium; and technical support for the construction of a Russian production line for conversion and/or disposition of Russian weapons-origin plutonium.

6. Other activities relating to nonproliferation, emergency response, anti-terrorism activities, or critical national security activities that involve the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radioactive, chemical, biological, or explosive material, facilities or devices, and nuclear weapons research, design, development, production, testing and maintenance, and development of technology as part of Government programs for nuclear weapons deployment, storage and stockpile stewardship, transportation, demilitarization, dismantlement or disposition, provided such activities are specifically requested or approved, in writing, by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary for Nuclear Security, and further provided that the request or approval specifically identifies a particular project involving one of those activities and makes the indemnity provided by this clause applicable to that particular project under the contract.

(b) The unusually hazardous or nuclear risks described above are indemnified only to the extent that they are not covered by the Price-Anderson Act, Section 170d of the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2210(d)) or where the indemnification provided by the Price-Anderson Act is limited by the restriction on Public Liability imposed by Section 170e. of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 221 0(e)) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the contractor is exposed.

(c) Additional Definitions of Terms

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

2. As used in FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984) (ALTERNATE I) (APR 1984),

   i. the term "Contractor" except as used in paragraphs (a) and (e) ofl-2 9, FAR 52.250-1 means

      (A) Triad National Security, LLC (Triad),

      (B) Triad parent organizations including: Battelle Memorial Institute, The Texas A&M University System, and The Regents of the University of California; integrated large business subcontractors, Fluor Federal Services, Inc. and Huntington Ingalls Industries/Stoller Newport News Nuclear, Inc.; and integrated small business subcontractors Longenecker & Associates, Inc., TechSource, Inc. and Merrick-SMSI Joint Venture, LLP and each parent organization's corporate successors and corporate affiliates, and

      (C) Employees, officers and directors of (A) and/or (B) above named or threatened to be named as defendants in lawsuits or litigation threatened or initiated by third parties which seek to impose or establish, or which could result in, a risk which is defined in this contract as unusually hazardous or nuclear, on account of actions or inactions of Triad National Security, LLC, or on account of actions or inactions undertaken by the corporations or individuals identified in subparagraph (A) and/or (B) above for, on behalf of, or with respect to, Triad National Security, LLC under this contract.

   ii. the term "Contractor" as used in paragraphs (a) and (e) ofl-29, FAR 52.250-1 means Triad National Security, LLC;

   iii. the term "Contractor's business" means the management and operation of the Los Alamos National Laboratory (LANL) and satellite facilities of DOE/NNSA under

this contract;

iv. the terms "Contractor's operations at any one plant or separate location in which this contract is being performed" and "a separate and complete major industrial operation in connection with the performance of this contract" mean the Los Alamos National Laboratory located in Los Alamos County, New Mexico;

v. the term "agency head" means the Secretary of Energy; and

vi. the term "affiliate" as used in this clause means the member companies of Triad National Security, LLC (Battelle Memorial Institute, The Regents of the University of California, and The Texas A&M University System, and, if applicable, the parent companies of each including the ultimate parent company of each) as well as companies, other than Triad National Security, LLC, that directly or indirectly, are owned or otherwise controlled by the member companies of Triad National Security, LLC.

H-40 INVITED CONTRACTOR OR TECHNICAL REPRESENTATIVE STATUS UNDER U.S. - REPUBLIC OF KOREA (ROK) (OCT 2018) [MODIFIED IN MODIFICATION P00005]

Invited Contractor (IC) and Technical Representative (TR) status shall be governed by the U.S.-ROK Status of Forces Agreement (SOFA) as implemented by United States Forces Korea (USFK) Reg 700-19, which can be found under the "publications" tab on the US Forces Korea homepage http://www.usfk.mil

(a) Definitions. As used in this clause—

"U.S. – ROK Status of Forces Agreement" (SOFA) means the Mutual Defense Treaty between the Republic of Korea and the U.S. of America, Regarding Facilities and Areas and the Status of U.S. Armed Forces in the Republic of Korea, as amended

"Combatant Commander" means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161. In Korea, the Combatant Commander is the Commander, United States Pacific Command.

"United States Forces Korea" (USFK) means the subordinate unified command through which US forces would be sent to the Combined Forces Command fighting components.

"Commander, United States Forces Korea" (COMUSK) means the commander of all U.S. forces present in Korea. In the Republic of Korea, COMUSK also serves as Commander, Combined Forces Command (CDR CFC) and Commander, United Nations Command (CDR UNC).

"USFK, Assistant Chief of Staff, Acquisition Management" (USFK/FKAQ) means the principal staff office to USFK for all acquisition matters and administrator of the

U.S.-ROK SOFA as applied to US and Third Country contractors under the Invited Contractor (IC) and Technical Representative (TR) Program (USFK Reg 700-19).

"Responsible Officer (RO)" means a senior DOD employee (such as a military E5 and above or civilian GS-7 and above), appointed by the USFK Sponsoring Agency (SA), who is directly responsible for determining and administering appropriate logistics support for IC/TRs during contract performance in the ROK.

(b) IC or TR status under the SOFA is subject to the written approval of USFK, Assistant Chief of Staff, Acquisition Management (FKAQ), Unit #15289, APO AP 96205-5289.

(c) The contracting officer will coordinate with HQ USFK/FKAQ, IAW FAR 25.8, and USFK Reg 700-19. FKAQ will determine the appropriate contractor status under the SOFA and notify the contracting officer of that determination.

(d) Subject to the above determination, the contractor, including its employees and lawful dependents, may be accorded such privileges and exemptions under conditions and limitations as specified in the SOFA and USFK Reg 700-19. These privileges and exemptions may be furnished during the performance period of the contract, subject to their availability and continued SOFA status. Logistics support privileges are provided on an as-available basis to properly authorized individuals. Some logistics support may be issued as Government Furnished Property or transferred on a reimbursable basis.

(e) The contractor warrants and shall ensure that collectively, and individually, its officials and employees performing under this contract will not perform any contract, service, or other business activity in the ROK, except under U.S. Government contracts and that performance is IAW the SOFA.

(f) The contractor's direct employment of any Korean-National labor for performance of this contract shall be governed by ROK labor law and USFK regulation(s) pertaining to the direct employment and personnel administration of Korean National personnel.

(g) The authorities of the ROK have the right to exercise jurisdiction over invited contractors and technical representatives, including contractor officials, employees and their dependents, for offenses committed in the ROK and punishable by the laws of the ROK. In recognition of the role of such persons in the defense of the ROK, they will be subject to the provisions of Article XXII, SOFA, related Agreed Minutes and Understandings. In those cases in which the authorities of the ROK decide not to exercise jurisdiction, they shall notify the U.S. military authorities as soon as possible. Upon such notification, the military authorities will have the right to exercise jurisdiction as is conferred by the laws of the U.S.

(h) Invited contractors and technical representatives agree to cooperate fully with the USFK Sponsoring Agency (SA) and Responsible Officer (RO) on all matters pertaining to logistics support and theater training requirements. Contractors will provide the assigned SA prompt and accurate reports of changes in employee status as required by USFK Reg 700-19.

(i) Theater Specific Training. Training Requirements for IC/TR personnel shall be conducted in accordance with USFK Reg 350-2 Theater Specific Required Training for all Arriving Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to USFK. IC/TR personnel shall comply with requirements of USFK Reg 350-2.

(j) Except for contractor air crews flying Air Mobility Command missions, all U.S. contractors performing work on USAF classified contracts will report to the nearest Security Forces Information Security Section for the geographical area where the contract is to be performed to receive information concerning local security requirements.

(k) Invited Contractor and Technical Representative status may be withdrawn by USFK/FKAQ upon:

(1) Completion or termination of the contract.

(2) Determination that the contractor or its employees are engaged in business activities in the ROK other than those pertaining to U.S. armed forces.

(3) Determination that the contractor or its employees are engaged in practices in contravention to Korean law or USFK regulations.

(l) It is agreed that the withdrawal of invited contractor or technical representative status, or the withdrawal of, or failure to provide any of the privileges associated therewith by the U.S. and USFK, shall not constitute grounds for excusable delay by the contractor in the performance of the contract and will not justify or excuse the contractor defaulting in the performance of this contract. Furthermore, it is agreed that withdrawal of SOFA status for reasons outlined in USFK Reg 700-19, Section II, paragraph 6 shall not serve as a basis for the contractor filing any claims against the U.S. or USFK. Under no circumstance shall the withdrawal of SOFA Status or privileges be considered or construed as a breach of contract by the U.S. Government.

(m) Support.

(1) Unless the terms and conditions of this contract place the responsibility with another party, the COMUSK will develop a security plan to provide protection, through military means, of Contractor personnel engaged in the theater of operations when sufficient or legitimate civilian authority does not exist.

(2)(i) All Contractor personnel engaged in the theater of operations are authorized resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical or emergency dental treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(3) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the theater of operations under this contract.

(n) Compliance with laws and regulations. The Contractor shall comply with, and shall ensure that its personnel supporting U.S Armed Forces in the Republic of Korea as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(1) United States, host country, and third country national laws;

(2) Treaties and international agreements;

(3) United States regulations, directives, instructions, policies, and procedures; and

(4) Orders, directives, and instructions issued by the COMUSK relating to force protection, security, health, safety, or relations and interaction with local nationals. Included in this list are force protection advisories, health advisories, area (i.e. "off-limits"), prostitution and human trafficking and curfew restrictions.

(o) Vehicle or equipment licenses. IAW USFK Regulation 190-1, Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the theater of operations. All contractor employees/dependents must have either a Korean driver's license or a valid international driver's license to legally drive on Korean roads.

(p) Evacuation.

(1) If the COMUSK orders a non-mandatory or mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national contractor personnel.

(2) Non-combatant Evacuation Operations (NEO).

(i) The contractor shall designate a representative to provide contractor personnel and dependents information to the servicing NEO warden as required by direction of the Responsible Officer.

(ii) If contract period of performance in the Republic of Korea is greater than six months, non emergency essential contractor personnel and all IC/TR dependents shall participate in at least one USFK sponsored NEO exercise per year.

(q) Next of kin notification and personnel recovery.

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is missing, captured, or abducted.

(2) In the case of missing, captured, or abducted contractor personnel, the Government will assist in personnel recovery actions in accordance with DOD Directive 2310.2, Personnel Recovery.

(3) IC/TR personnel shall accomplish Personnel Recovery/Survival, Evasion, Resistance and Escape (PR/SERE) training in accordance with USFK Reg 525-40, Personnel Recovery
Procedures and USFK Reg 350-2 Theater Specific Required Training for all Arriving Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to USFK.

(r) Mortuary affairs. Mortuary affairs for contractor personnel who die while providing support in the theater of operations to U.S. Armed Forces will be handled in accordance with DOD Directive 1300.22, Mortuary Affairs Policy and Army Regulation 638-2, Care and Disposition of Remains and Disposition of Personal Effects.

(s) USFK Responsible Officer (RO). The USFK appointed RO will ensure all IC/TR personnel complete all applicable training as outlined in this clause.

(End of Clause)

H-41 CONTINUANCE OF PERFORMANCE DURING ANY STATE OF EMERGENCY IN THE REPUBLIC OF KOREA (ROK) [MODIFIED IN MODIFICATION P00005]

Invited Contractor (IC) and Technical Representative (TR) status shall be governed by the U.S.-ROK Status of Forces Agreement (SOFA) as implemented by United States Forces Korea (USFK) Reg 700-19, which can be found under the "publications" tab on the US Forces Korea homepage http://www.usfk.mil

(a) Definitions. As used in this clause—

"U.S. – ROK Status of Forces Agreement" (SOFA) means the Mutual Defense Treaty between the Republic of Korea and the U.S. of America, Regarding Facilities and Areas and the Status of U.S. Armed Forces in the Republic of Korea, as amended

"Combatant Commander" means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161. In Korea, the Combatant Commander is the Commander, United States Pacific Command.

"United States Forces Korea" (USFK) means the subordinate unified command through which US forces would be sent to the Combined Forces Command fighting components.

COMUSK means the commander of all U.S. forces present in Korea. In the Republic of Korea, COMUSK also serves as Commander, Combined Forces Command (CDR CFC) and Commander, United Nations Command (CDR UNC).

"USFK, Assistant Chief of Staff, Acquisition Management" (USFK/FKAQ) means the principal staff office to USFK for all acquisition matters and administrator of the U.S.-ROK SOFA as applied to US and Third Country contractors under the Invited Contractor (IC) and Technical Representative (TR) Program (USFK Reg 700-19).

"Responsible Officer" (RO) means A senior DOD employee (such as a military E5 and above or civilian GS-7 and above), appointed by the USFK Sponsoring Agency (SA), who is directly responsible for determining and administering appropriate logistics support for IC/TRs during contract performance in the ROK.

"Theater of operations" means an area defined by the combatant commander for the conduct or support of specified operations.

"Uniform Code of Military Justice" means 10 U.S.C. Chapter 47

(b) General.

(1) This clause applies when contractor personnel deploy with or otherwise provide support in the theater of operations (specifically, the Korean Theater of Operations) to U.S. military forces deployed/located outside the United States in—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

(iii) Other military operations or exercises designated by the Combatant Commander.

(2) Contract performance in support of U.S. military forces may require work in dangerous or austere conditions. The Contractor accepts the risks associated with required contract performance in such operations. The contractor will require all its employees to acknowledge in writing that they understand the danger, stress, physical hardships and field living conditions that are possible if the employee deploys in support of military operations.

(3) Contractor personnel are not combatants and shall not undertake any role that would jeopardize their status. Contractor personnel shall not use force or otherwise directly participate in acts likely to cause actual harm to enemy armed forces.

(c) Support.

(1) Unless the terms and conditions of this contract place the responsibility with another party, the COMUSK will develop a security plan to provide protection, through military means, of Contractor personnel engaged in the theater of operations when sufficient or legitimate civilian authority does not exist.

(2)(i) All Contractor personnel engaged in the theater of operations are authorized resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(3) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the theater of operations under this contract.

(d) Compliance with laws and regulations. The Contractor shall comply with, and shall ensure that its personnel supporting U.S Armed Forces in the Republic of Korea as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(1) United States, host country, and third country national laws;

(i) The Military Extraterritorial Jurisdiction Act may apply to contractor personnel if contractor personnel commit crimes outside the United States.
(ii) Under the War Crimes Act, United States citizens (including contractor personnel) who commit war crimes may be subject to federal criminal jurisdiction.

(iii) When Congress formally declares war, contractor personnel authorized to accompany the force may be subject to the Uniform Code of Military Justice.

(2) Treaties and international agreements;

(3) United States regulations, directives, instructions, policies, and procedures; and

(4) Orders, directives, and instructions issued by the COMUSK relating to force protection, security, health, safety, or relations and interaction with local nationals. Included in this list are force protection advisories, health advisories, area (i.e. "off-limits"), prostitution and human trafficking and curfew restrictions.

(e) Pre-deployment/departure requirements. The Contractor shall ensure that the following requirements are met prior to deploying/locating personnel in support of U.S. military forces in the Republic of Korea. Specific requirements for each category may be specified in the statement of work or elsewhere in the contract.

(1) All required security and background checks are complete and acceptable.

(2) All contractor personnel meet the minimum medical screening requirements and have received all required immunizations as specified in the contract. In the Republic of Korea, all contractor employees subject to this clause shall comply with the same DoD immunization requirements applicable to Emergency Essential DoD civilians—INCLUDING ANTHRAX IMMUNIZATION. The Government will provide, at no cost to the Contractor, any Korean theater-specific immunizations and/or medications not available to the general public.

(3) Contractor personnel have all necessary passports, visas, and other documents required to enter and exit a theater of operations and have a Geneva Conventions identification card from the deployment center or CONUS personnel office—if, applicable.

(4) Country and theater clearance is obtained for contractor personnel. Clearance requirements are in DOD Directive 4500.54, Official Temporary Duty Abroad, DOD 4500.54-G, DOD Foreign Clearance Guide, and USFK Reg 1-40, United States Forces Korea Travel Clearance Guide. Contractor personnel are considered non-DOD personnel traveling under DOD sponsorship.

(f) Processing and departure points. Deployed contractor personnel shall—

(1) Under contingency conditions or under other conditions as specified by the Contracting Officer, process through the deployment center designated in the contract, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of contractor personnel and to ensure that all deployment requirements are met;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) If processing through a deployment center, process through a Joint Reception Center (JRC) upon arrival at the deployed location. The JRC will validate personnel

accountability, ensure that specific theater of operations entrance requirements are met, and brief contractor personnel on theater-specific policies and procedures.

(g) Personnel data list.

(1) The Contractor shall establish and maintain with the designated Government official a current list of all contractor personnel that deploy with or otherwise provide support in the theater of operations to U.S. military forces as specified in paragraph (b)(1) of this clause. The Synchronized Predeployment and Operational Tracker (SPOT) is the designated automated system to use for this effort. This accountability requirement is separate and distinct from the personnel accountability requirement listed in the U.S–ROK SOFA's Invited Contractor/Technical Representative Program (as promulgated in USFK Regulation 700-19).

(2) The Contractor shall ensure that all employees on the list have a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official.

(h) Contractor personnel.

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this clause. Contractors shall replace designated personnel within 72 hours, or at the Contracting Officer's direction. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall have a plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The Contractor shall keep this plan current and shall provide a copy to the Contracting Officer and USFK Sponsoring Agency (see USFK Reg 700-19) upon request. The plan shall—

(i) Identify all personnel who are subject to U.S. or Republic of Korea military mobilization;

(ii) Identify any exemptions thereto;

(iii) Detail how the position would be filled if the individual were mobilized; and

(iv) Identify all personnel who occupy a position that the Contracting Officer has designated as mission essential.

(i) Military clothing and protective equipment.

(1) Contractor personnel supporting a force deployed outside the United States as specified in paragraph (b)(1) of this clause are prohibited from wearing military clothing unless specifically authorized in writing by the COMUSK. If authorized to wear military clothing, contractor personnel must wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures and the Geneva Conventions.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective clothing.

(3) The deployment center, the Combatant Commander, or the Sponsoring Agency shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) Weapons.

(1) If the Contractor requests that its personnel performing in the theater of operations be authorized to carry weapons, the request shall be made through the Contracting Officer to the COMUSK. The COMUSK will determine whether to authorize in-theater contractor personnel to carry weapons and what weapons will be allowed.

(2) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the COMUSK regarding possession, use, safety, and accountability of weapons and ammunition.

(iv) The use of deadly force by persons subject to this clause shall be made only in self-defense, except:

(v) Persons subject to this clause who primarily provide private security are authorized to use deadly force only as defined in the terms and conditions of this contract in accordance with USFK regulations and policies (especially, USFK Regulation 190-50).

(vi) Liability for the use of any weapon by persons subject to this clause is solely the responsibility of the individual person and the contractor.

(3) Upon redeployment or revocation by the COMUSK of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) Evacuation.

(1) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(l) Theater Specific Training. Training Requirements for IC/TR personnel shall be conducted in accordance with USFK Reg 350-2 Theater Specific Required Training for all Arriving Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to USFK.

(m) USFK Responsible Officer (RO). The USFK appointed RO will ensure all IC/TR personnel complete all applicable training as outlined in this clause.

(n) Changes. In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(o) Subcontracts. The Contractor shall incorporate the substance of this clause, including this paragraph, in all subcontracts that require subcontractor personnel to be available to deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed/stationed outside the United States in—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or exercises designated by the Combatant Commander.

(p) The Contracting Officer will discern any additional GFE, GFP or logistical support necessary to facilitate the performance of the enhanced requirement or necessary for the protection of contractor personnel. These items will be furnished to the Contractor at the sole discretion of the Contracting Officer and may be provided only on a reimbursable basis.

(End of clause)

H-42 NNSA AND DOE/EM MANAGEMENT STEERING COMMITTEE (MSC) [MODIFIED IN MODIFICATION P00008]

(a) An MSC will be established under the DOE Environmental Management (EM) Los Alamos Legacy Cleanup Contract (LLCC) comprised of senior level advisors with DOE EM and the Contractor to assist in both the work of EM and NNSA and the NNSA/DOE EM Federal Prime Contractor. To ensure that problems and issues are fairly and efficiently resolved, the MSC will assist in early resolution of issues. Such resolution will not supersede the Contracting Officer's (CO) authority nor take precedence over any requirement in either this Contract or the DOE EM LLCC.

(b) The Contractor shall provide representatives to serve as members of the MSC and the associated organizations. The MSC includes members of EM-LA, NA-LA, the NNSA M&O Contractor, and the LLCC Federal Prime Contractor. The Contractor shall raise issues as applicable, as they are identified to the MSC. The MSC meets as needed, and the implementing organizations meet monthly, but expect that the frequency will decrease over time. The MSC does not diminish authority of the designated NNSA and EM CO responsibility for the contract(s). Therefore, before consulting with the MSC, parties must first address their concerns, issues, disagreements, and/or recommendations to the cognizant CO(s) for resolution. All contractual actions and technical direction under this Contract shall be provided by the designated CO and Contracting Officer Representative, respectively.

H-43 PERFORMANCE DIRECTION [MODIFIED IN MODIFICATION P00008]

(a) The Contractor is responsible for the management and operation of the site in accordance with the Terms and Conditions of the Contract, duly issued Work Authorizations (WAs), and written direction and guidance provided by the Contracting Officer and the Contracting Officer's Representative (COR). NNSA is responsible for establishing the work to be accomplished, the applicable requirements to be met, and overseeing the performance of work of the Contractor. The Contractor will use its expertise and ingenuity in Contract performance and in making choices among acceptable alternatives to most effectively, efficiently and safely accomplish the work called for by this Contract. If the Contractor fails to comply with NNSA requirements, NNSA may direct the Contractor in how to complete the work.

(b) Only the Contracting Officer may issue, modify, and priority rank WAs.

(c) (1) The Contracting Officer and the NNSA Administrator will appoint, in writing, specific NNSA employees as CORs with the authority to issue Performance Direction to the Contractor. CORs are authorized to act within the limits of their delegation letter. A copy of each letter will be provided to the Contractor. COR functions include technical monitoring, inspection, and other functions of a technical nature not involving a change in the scope, cost, or terms and conditions of the Contract. The COR is authorized to review and approve technical reports, drawings, specifications, and technical information delivered by the Contractor.

(2) The Contractor must comply with written Performance Directions that are signed by the COR and:

(i) Redirect the Contract effort, shift work emphasis within a work area or a WA, require pursuit of certain lines of inquiry, further define or otherwise serve to accomplish the Statement of Work (SOW), or

(ii) Provide information that assists in the interpretation of drawings, specifications, or technical portions of the work description.

(3) Performance Direction does not:

(i) authorize the Contractor to exceed the funds obligated on the Contract;

(ii) authorize any increased cost or delay in delivery in a WA;

(iii) entitle the Contractor to an increase in fee; or

(iv) change any of the terms or conditions of the Contract.

(d) The Contractor shall accept only Performance Direction that is provided in writing by a COR and that is within the SOW and a WA.

(e) (1) The Contractor shall promptly comply with each duly issued Performance Direction unless the Contractor reasonably believes that the Performance Direction violates this clause. If the Contractor believes the Performance Direction violates this clause, the Contractor shall suspend implementation of the Performance Direction and promptly notify the Contracting Officer of its reasons for believing that the Performance Direction violates this clause. Oral notification to the Contracting Officer shall be confirmed in writing within ten days of the oral notification.

(2) The Contracting Officer will determine if the Performance Direction is within the SOW and WA. This determination will be issued in writing and the Contractor shall promptly comply with the Contracting Officer's direction. If it is not within the SOW or WA, the Contracting Officer may issue a change order pursuant to the Contract's Section I Clause entitled "Changes."

(f) The Parties agree to maintain full and open communication at all times, and on all issues affecting Contract performance, during the term of this Contract.

PART II – CONTRACT CLAUSES
SECTION I - CONTRACT CLAUSES

A. FAR CLAUSES INCORPORATED BY REFERENCE [MODIFIED BY MODIFICATION P00006]

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

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.203-3	Gratuities	Apr 1984
52.203-5	Covenant Against Contingent Fees	May 2014
52.203-6	Restrictions on Subcontractor Sales to the Government	Sep 2006
52.203-7	Anti-Kickback Procedures	May 2014
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	May 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	May 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	Oct 2010
52.203-13	Contractor Code of Business Ethics and Conduct	Oct 2015
52.203-14	Display of Hotline Poster(s) *(b)(3) Required poster is: 'DOE Hotline Poster* http://energy.gov/ig/downloads/office-inspector-general-hotline-poster'	Oct 2015
52.203-16	Preventing Personal Conflicts of Interest	Dec 2011
52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights	Apr 2014
52.203-18	Prohibition on Contracting With Entities That Require Certain Confidentiality Arrangements or Statements Representation	Jan 2017
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreement Statements	Jan 2017
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	May 2011
52.204-7	System for Award Management	Oct 2016
52.204-9	Personal Identity Verification of Contractor Personnel	Jan 2011

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	Oct 2016
52.204-12	Unique Entity Identifier Maintenance	Oct 2016
52.204-13	System for Award Management Maintenance	Oct 2016
52.204-14	Service Contract Reporting Requirements	Oct 2016
52.204-18	Commercial and Government Entity Code Maintenance	Jul 2016
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	Oct 2015
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	Jul 2013
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations	Nov 2015
52.210-1	Market Research	Apr 2011
52.211-5	Material Requirements	Aug 2000
52.211-12	Liquidated Damages – Construction	Sept 2000
52.211-15	Defense Priority and Allocation Requirement	Apr 2008
52.215-2	Audit and Records – Negotiation	Oct 2010
52.215-8	Order of Precedence – Uniform Contract Format	Oct 1997
52.215-12	Subcontractor Certified Cost or Pricing Data	Oct 2010
52.215-13	Subcontractor Certified Cost or Pricing Data Modifications	Oct 2010
52.215-15	Pension Adjustments and Asset Reversions	Oct 2010
52.215-17	Waiver of Facilities Capital Cost of Money	Oct 1997
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	Jul 2005
52.215-19	Notification of Ownership Changes	Oct 1997
52.215-22	Limitations on Pass-Through Charges – Identification of Subcontract Effort	Oct 2009
52.215-23	Limitations on Pass-Through Charges	Oct 2009
52.217-8	Option to Extend Services (a) 30 days	Nov 1999

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.219-8	Utilization of Small Business Concerns	Nov 2016
52.219-9	Small Business Subcontracting Plan, Alt II Nov 2016	Aug 2017
52.219-16	Liquidated Damages – Subcontracting Plan	Jan 1999
52.219-28	Post-Award Small Business Program Representation	Jul 2013
52.222-1	Notice to the Government of Labor Disputes	Feb 1997
52.222-2	Payment for Overtime Premiums	Jul 1990
52.222-3	Convict Labor	Jun 2003
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	May 2018
52.222-6	Construction Wage Rate Requirements	Aug 2018
52.222-7	Withholding of Funds	May 2014
52.222-8	Payrolls and Basic Records	Aug 2018
52.222-9	Apprentices and Trainees	Jul 2005
52.222-10	Compliance With Copeland Act Requirements	Feb 1988
52.222-11	Subcontracts (Labor Standards)	May 2014
52.222-12	Contract Termination – Debarment	May 2014
52.222-13	Compliance With Construction Wage Rate Requirements and Related Regulations	May 2014
52.222-14	Disputes Concerning Labor Standards	Feb 1988
52.222-15	Certification of Eligibility	May 2014
52.222-21	Prohibition on Segregated Facilities	Apr 2015
52.222-24	Preaward On-Site Equal Opportunity Compliance Evaluation	Feb 1999
52.222-26	Equal Opportunity	Sep 2016
52.222-27	Affirmative Action Compliance Requirements for Construction	Apr 2015
52.222-29	Notification of Visa Denial	Apr 2015
52.222-30	Construction Wage Rate Requirements – Price Adjustment (None or Separately Specified Method)	May 2014
52.222-31	Construction Wage Rate Requirements – Price Adjustment (Percentage Method)	May 2014

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.222-32	Construction Wage Rage Requirements – Price Adjustment (Actual Method)	Jan 2017
52.222-35	Equal Opportunity for Veterans	Oct 2015
52.222-36	Equal Opportunity for Workers with Disabilities	Jul 2014
52.222-37	Employment Reports on Veterans	Feb 2016
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	Dec 2010
52.222-50	Combating Trafficking in Persons	Mar 2015
52.222-54	Employment Eligibility Verification	Oct 2015
52.222-55	Minimum Wage Under Executive Order 13658	Dec 2015
52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction FAR Contracts	Sep 2013
52.223-5	Pollution Prevention and Right-to-Know Information, Alternate I (May 2011)	May 2011
52.223-6	Drug Free Workplace	May 2001
52.223-10	Waste Reduction Program	May 2011
52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners	Jun 2016
52.223-13	Acquisition of EPEAT® -Registered Imaging Equipment (Jun 2014) Alt I (Oct 2015) *(b) was EPEAT® silver-registered or gold-registered*	Oct 2015
52.223-14	Acquisition of EPEAT – Registered Televisions Alt I Jun 2014	Jun 2014
52.223-15	Energy Efficiency in Energy-Consuming Products	Dec 2007
52.223-16	Acquisition of EPEAT® -Registered Personal Computer Products (Oct 2015) Alt I (Jun 2014) *(b) were EPEAT® silver-registered or gold-registered*	Oct 2015
52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts	Aug 2018
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	Aug 2011
52.223-19	Compliance With Environmental Management Systems	May 2011

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.223-20	Aerosols	Jun 2016
52.223-21	Foams	Jun 2016
52.224-1	Privacy Act Notification	Apr 1984
52.224-2	Privacy Act	Apr 1984
52.224-3	Privacy Training	Jan 2017
52.225-1	Buy American—Supplies (d) "use" is replaced with the word "deliver"	May 2014
52.225-3	Buy American – Free Trade Agreement – Israeli Trade Act	May 2014
52.225-8	Duty-Free Entry	Oct 2010
52.225-13	Restriction on Certain Foreign Purchases	Jun 2008
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	Jun 2000
52.227-1	Authorization and Consent Alt I (Apr 1984)	Dec 2007
52.227-10	Filing of Patent Applications – Classified Subject Matter	Dec 2007
52.227-23	Rights to Proposal Data (Technical)* Initial Proposal dated, December 11, 2017 and Final Proposal Revision dated, April 5, 2018	Jun 1987
52.228-1	Bid Guarantee	Sep 1996
52.228-2	Additional Bond Security	Oct 1997
52.228-5	Insurance – Work on a Government Installation	Jan 1997
52.228-11	Pledges of Assets	Jan 2012
52.228-12	Prospective Subcontractor Requests for Bonds	May 2014
52.228-14	Irrevocable Letter of Credit	Nov 2014
52.228-15	Performance and Payments Bonds – Construction	Oct 2010
52.229-3	Federal, State, and Local Taxes	Feb 2013
52.230-2	Cost Accounting Standards	Oct 2015
52.230-6	Administration of Cost Accounting Standards	Jul 2010
52.232-5	Payments Under Fixed-Price Construction Contracts	May 2014

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.232-10	Payments Under Fixed Price Architect – Engineering Contracts	Apr 2010
52.232-16	Progress Payments	Apr 2012
52.232-16	Progress Payments – Alternate I (Mar 2000)	Apr 2012
52.232-17	Interest	May 2014
52.232-18	Availability of Funds	Apr 1984
52.232-24	Prohibition on Assignment of Claims	Apr 1984
52.232-26	Prompt Payment for Fixed-Price Architect and Engineering Contracts	Jan 2017
52.232-27	Prompt Payment for Construction Contracts	Jan 2017
52.232-33	Payment by Electronic Funds Transfer – System for Award Management	Jul 2013
52.232-39	Unenforceability of Unauthorized Obligations	Jun 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	Dec 2013
52.233-1	Disputes, Alternate I (Dec 1991)	May 2014
52.233-3	Protest After Award, Alternate I (Jun 1985)	Aug 1996
52.233-4	Applicable Law for Breach of Contract Claim	Oct 2004
52.234-4	Earned Value Management System	Nov 2016
52.236-2	Differing Site Conditions	Apr 1984
52.236-3	Site Investigation and Conditions Affecting the Work	Apr 1984
52.236-5	Material and Workmanship	Apr 1984
52.236-6	Superintendence by the Contractor	Apr 1984
52.236-7	Permits and Responsibilities	Nov 1991
52.236-8	Other Contracts	Apr 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	Apr 1984
52.236-10	Operations and Storage Areas	Apr 1984
52.236-11	Use and Possession Prior to Completion	Apr 1984
52.236-12	Cleaning Up	Apr 1984

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.236-13	Accident Prevention	Nov 1991
52.236-14	Availability and Use of Utility Services	Apr 1984
52.236-15	Schedules for Construction Contracts	Apr 1984
52.236-18	Work Oversight in Cost Reimbursement Construction Contracts	Apr 1984
52.236-19	Organization and Direction of the Work	Apr 1984
52.236-21	Specifications and Drawings for Construction	Feb 1997
52.236-23	Responsibility of the Architect – Engineer Contractor	Apr 1984
52.236-24	Work Oversight in Architect – Engineer Contracts	Apr 1984
52.236-25	Requirements for Registration of Designers	Jun 2003
52.236-26	Preconstruction Conference	Feb 1995
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	Apr 1984
52.237-3	Continuity of Services	Jan 1991
52.237-11	Accepting and Dispensing of $1 Coin	Sep 2008
52.239-1	Privacy and Security Safeguards	Aug 1996
52.242-1	Notice of Intent to Disallow Costs	Apr 1984
52.242-3	Penalties for Unallowable Costs	May 2014
52.242-5	Payments to Small Business Subcontractors	Jan 2017
52.242-13	Bankruptcy	Jul 1995
52.242-14	Suspension of Work	Apr 1984
52.242-15	Stop-Work Order Alternate I (Apr 1984)	Aug 1989
52.243-4	Changes	Jun 2007
52.244-2	Subcontracts	Oct 2010
52.244-5	Competition in Subcontracting	Dec 1996
52.244-6	Subcontracts for Commercial Items	Aug 2018
52.246-4	Inspection of Services – Fixed Price	Aug 1996
52.246-5	Inspection of Services – Cost Reimbursement	Apr 1984
52.246-12	Inspection of Construction	Apr 1996

FAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
52.246-21	Warranty of Construction	Mar 1994
52.247-1	Commercial Bill of Lading Notations *(a) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'.* *(b) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'. Contract No. is 89233218CNA000001..* *Contact is 'the Contracting Officer'.*	Feb 2006
52.247-63	Preference for U.S.-Flag Air Carriers	Jun 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	Feb 2006
52.248-3	Value Engineering – Construction	Oct 2015
52.249-2	Termination for the Convenience of the Government (Fixed Price)	Apr 2012
52.249-2	Termination for the Convenience of the Government (Fixed Price) Alt I (Sep 1996)	Apr 2012
52.249-10	Default (Fixed Price Construction)	Apr 1984
52.249-14	Excusable Delays	Apr 1984
52.251-1	Government Supply Sources	Apr 2012
52.251-2	Interagency Fleet Management System Vehicles and Related Services	Jan 1991
52.253-1	Computer Generated Forms	Jan 1991

B. DEAR CLAUSES INCORPORATED BY REFERENCE

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

DEAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
952.203-70	Whistleblower Protection for Contractor Employees	Dec 2000
952.204-70	Classification/Declassification	Sep 1997
952.204-71	Sensitive Foreign Nations Controls	Mar 2011

DEAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
952.204-75	Public Affairs	Dec 2000
952.204-77	Computer Security	Aug 2006
952.208-7	Tagging of Leased Vehicles	Apr 1984
952.208-70	Printing	Apr 1984
952.209-72	Organizational Conflicts of Interest, Alternate I *(b) (1) (i) Period is 'five (5) years'.*	Aug 2009
952.211-71	Priorities and Allocations (ATOMIC ENERGY)	Apr 2008
952.215-70	Key Personnel *(a) Cross-reference is 'Section J, Appendix D.'*	Dec 2000
952.217-70	Acquisition of Real Property	Mar 2011
952.223-75	Preservation of Individual Occupational Radiation Exposure Records	Apr 1984
952.226-74	Displaced Employee Hiring Preference	Jun 1997
952.235-71	Research Misconduct	Jul 2005
952.236-71	Inspection in Architect – Engineer Contracts	Apr 1994
952.242-70	Technical Direction	Dec 2000
952.247-70	Foreign Travel	Jun 2010
952.251-70	Contractor Employee Travel Discounts	Aug 2009
970.5203-1	Management Controls	Jun 2007
970.5203-2	Performance Improvement and Collaboration	May 2006
970.5203-3	Contractor's organization	Dec 2000
970.5204-1	Counterintelligence	Dec 2010
970.5208-1	Printing	Dec 2000
970.5211-1	Work Authorization	May 2007
970.5217-1	Strategic Partnership Projects Program (Non-DOE Funded Work)	Apr 23, 2015
970.5222-1	Collective Bargaining Agreements-Management and Operating Contracts	Dec 2000
970.5222-2	Overtime Management	Dec 2000

DEAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution *(Apr 2016) PROPOSED DEVIATION – remove "970.2303-3(b)" replace with "970.2303-3(a)"*	Dec 2000
970.5223-4	Workplace Substance Abuse Programs at DOE sites	Dec 2010
970.5223-6	Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management	Oct 2010
970.5223-7	Sustainable Acquisition Program	Oct 2010
970.5225-1	Compliance with Export Control Laws and Regulations (Export Clause)	Nov 2015
970.5226-1	Diversity Plan	Dec 2000
970.5226-2	Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	Dec 2000
970.5226-3	Community Commitment	Dec 2000
970.5227-4	Authorization and Consent	Aug 2002
970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement	Dec 2000
970.5227-6	Patent Indemnity-Subcontracts	Dec 2000
970.5227-8	Refund of Royalties	Aug 2002
970.5228-1	Insurance-Litigation and Claims	Jul 2013
970.5229-1	State and Local Taxes	Dec 2000
970.5232-1	Reduction or Suspension of Advance, Partial, or Progress Payments	Dec 2000
970.5232-3	Accounts, Records and Inspection	Dec 2010
970.5232-4	Obligation of Funds	Dec 2000
970.5232-5	Liability with Respect to Cost Accounting Standards	Dec 2000
970.5232-6	Strategic Partnership Project Funding Authorization	Apr 2015
970.5232-7	Financial Management System	Dec 2000
970.5232-8	Integrated Accounting	Dec 2000
970.5235-1	Federally Funded Research and Development Center Sponsoring Agreement	Dec 2010

DEAR NUMBER	CLAUSE TITLE *(Any insertions appear below the title in italics)*	DATE OF CLAUSE
970.5236-1	Government Facility Subcontract Approval	Dec 2000
970.5242-1	Penalties for Unallowable Costs	Aug 2009
970.5243-1	Changes	Dec 2000

C. FAR AND DEAR CLAUSES INCORPORATED IN FULL TEXT

I-1 FAR 52.202-1 DEFINITIONS (NOV 2013) (AS MODIFIED BY DEAR 952.202-1)

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

(a) The solicitation, or amended solicitation, provides a different definition;

(b) The contracting parties agree to a different definition;

(c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; when a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies; or

(d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

I-2 FAR 52.204-21 BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS (JUN 2016)

(a) Definitions. As used in this clause–

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

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

"Information" means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic,

narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

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

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

(b) Safeguarding requirements and procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I-3 FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2014)

(a) Definitions.

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

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

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

(b) Requirements --

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

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

(i) The name of the supplier;

(ii) The amount of helium purchased;

(iii) The delivery date(s); and

(iv) The location where the helium was used.

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

I-4 FAR 52.216-7 ALLOWABLE COST AND PAYMENT (JUN 2013) (AS MODIFIED BY DEAR 952.216-7)

* This paragraph only applies to the transition term.

(a) *Invoicing*.

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the __30th_____ day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) *Reimbursing costs*.

(1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term *"costs"* includes only --

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check or other form of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns*. A small business concern may receive more frequent payments than every 2 weeks.

(d) *Final indirect cost rates*.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)

(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Occupancy expenses (intermediate indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (*i.e*., General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary

reference information is available at http://www.whitehouse.gov/omb/procurement_index_exec_comp/ .

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changes from the previous year's submission).

(F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, etc.).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this sections, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify

(i) the agreed-upon final annual indirect cost rates,

(ii) the bases to which the rates apply,

(iii) the periods for which the rates apply,

(iv) any specific indirect cost items treated as direct costs in the settlement, and

(v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)

(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d) (5) of this clause, the Contracting Officer may--

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates*. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates --

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit*. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be --

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.*

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

I-5 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days of contract expiration; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

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

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years and four months.

I-6 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997), ALTERNATE I (JUL 1995)

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

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

Material	**Identification No.**
None	

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

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

apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

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

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

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

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

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

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

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

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

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

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

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

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

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

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

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

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

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

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

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

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

(1) Be submitted in writing;

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

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

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

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

(End of Clause)

I-8 FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS (MAY 2008)

(a) Definitions. As used in this clause—

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

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

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

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

(2) Submit this estimate to the Contracting Officer.

(End of Clause)

I-9 FAR 52.223-11 OZONE - DEPLETING SUBSTANCES (JUN 2016)

Definition. As used in this clause–

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

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

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

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

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

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

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

Warning

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

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

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

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

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

(ii) Contract number; and

(iii) Equipment/appliance;

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

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

(ii) At the end of contract performance.

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

(End of clause)

I-10 FAR 52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (APR 2003) (AS MODIFIED BY DEAR 970.2904-1(A))

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Payments and Advances clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the:

State of New Mexico Taxation and Revenue Dept.
Revenue Division
PO Box 630
Santa Fe, New Mexico 87509

When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the Department of Energy and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The Department of Energy may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the

discretion of the Department of Energy, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the Department of Energy to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

(End of Clause)

I-11 FAR 52.245-1 GOVERNMENT PROPERTY (JAN 2017) (AS MODIFIED BY DEAR 952.245-1)

(a) Definitions. As used in this clause—

"Cannibalize" means to remove parts from Government property for use or for installation on other Government property.

"Contractor-acquired property" means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

"Contractor inventory" means—

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

"Contractor's managerial personnel" means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or

direction of—

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

(2) All or substantially all of the Contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

"Demilitarization" means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

"Discrepancies incident to shipment" means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

"Equipment" means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

"Government-furnished property" means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

"Government property" means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

"Loss of Government property" means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to—

(1) Items that cannot be found after a reasonable search;

(2) Theft;

(3) Damage resulting in unexpected harm to property requiring repair to restore

the item to usable condition; or

(4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

"Material" means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

"Nonseverable" means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

"Precious metals" means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Production scrap" means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, e.g., textile and metal clippings, borings, and faulty castings and forgings.

"Property" means all tangible property, both real and personal.

"Property Administrator" means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

"Property records" means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

"Provide" means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

"Real property" See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

"Sensitive property" means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

"Unit acquisition cost" means—

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the Contractor's

records that reflect consistently applied generally accepted accounting principles.

(b) Property management.

(1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(c) Use of Government property.

(1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are—

(i) Reasonable and necessary due to the scope of work under this contract or its

terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

(d) Government-furnished property.

(1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)

(i) The Contracting Officer may by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property

previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) Title to Government property.

(1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable line items under Fixed-Price contracts.

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in contract performance;

(B) Commencement of processing of the property for use in contract performance; or

(C) Reimbursement of the cost of the property by the Government,

whichever occurs first.

(f) Contractor plans and systems.

(1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) Acquisition of Property. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.

(ii) Receipt of Government Property. The Contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) Government-furnished property. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) Contractor-acquired property. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) Records of Government property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the

contract.

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable contract number or equivalent code designation.

(7) Location.

(8) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service (if required in accordance with the terms and conditions of the contract).

(B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) Physical inventory. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) Subcontractor control.

(A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss of Government property.

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) Reports. The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and

self-assessments, corrective actions, and other property-related reports as directed by the Contracting Officer.

(vii) Relief of stewardship responsibility and liability. The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

(1) Date of incident (if known).

(2) The data elements required under (f)(1)(iii)(A).

(3) Quantity.

(4) Accountable contract number.

(5) A statement indicating current or future need.

(6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

(7) All known interests in commingled material of which includes Government material.

(8) Cause and corrective action taken or to be taken to prevent recurrence.

(9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.

(10) Copies of all supporting documentation.

(11) Last known location.

(12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the contract provides otherwise, the Contractor shall be

relieved of stewardship responsibility and liability for property when—

(1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;

(2) Property Administrator grants relief of responsibility and liability for loss of Government property;

(3) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) Utilizing Government property.

(A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

(ix) Maintenance. The Contractor shall properly maintain Government property. The Contractor’s maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) Property closeout. The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and

equipment.

(g) Systems analysis.

(1) The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administer and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) Contractor Liability for Government Property.

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss of Government property furnished or acquired under this contract, except when any one of the following applies—

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property

management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

(5) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

(1) Any delay in delivery of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible. Standard Form 1428

(j) Contractor inventory disposal. Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer or authorizing official.

(1) Predisposal requirements.

(i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract.

Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) Inventory disposal schedules.

(i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report—

(A) Government-furnished property that is no longer required for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(iv) The Contractor shall provide the information required by FAR 52.245-1(f)(1)(iii) and DOE Acquisition Regulation Subpart 945.5 along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous

material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(3) Submission requirements.

(i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

(4) Corrections. The Plant Clearance Officer may—

(i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(5) Postsubmission adjustments. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the

inventory schedule.

(6) Storage.

(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(7) Disposition instructions.

(i) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(ii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(8) Disposal proceeds. As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(9) Subcontractor inventory disposal schedules. The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(3) of this clause.

(k) Abandonment of Government property.

(1) The Government shall not abandon sensitive property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive property in place, at which time all obligations of the Government regarding such property shall cease.

(3) Absent contract terms and conditions to the contrary, the Government may abandon

parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

(4) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) Communication. All communications under this clause shall be in writing.

(m) Contracts outside the United States. If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

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

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

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

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

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

(c) Contractors shall submit the above referenced transportation documents to **the Contracting Officer.** (End of Clause)

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

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

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

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. *"Default"* includes failure to make progress in the work so as to endanger performance.

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

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

(1) Stop work as specified in the notice.

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

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

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

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

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

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

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

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

(7) Complete performance of the work not terminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The amount finally determined on an appeal.

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

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

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

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

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

(m)

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

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

(End of Clause)

I-14 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

Federal Acquisition Regulation: http://farsite.hill.af.mil/vffara.htm or https://www.acquisition.gov/far/index.html

Federal Acquisition Forms: http://www.gsa.gov/portal/forms/type/TOP

Department of Energy Acquisition Regulation: https://www.energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation or http://farsite.hill.af.mil/VFDOE1.HTM http://www.ecfr.gov/cgibin/retrieveECFR?gp=&SID=ccc3d607ed1811c91460147ec7521076&mc=true&r=PART&n=pt48.5.952 or https://www.ecfr.gov/cgi-bin/text-idx?SID=94465c66be4e5295cf64ff8a68b30bd1&mc=true&tpl=/ecfrbrowse/Title48/48chapter9.tpl

I-15 FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

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

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

I-16 DEAR 952.204-2 SECURITY (AUG 2016)

(a) *Responsibility*. It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed

for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

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

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

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

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

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

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

(h) *Access authorizations of personnel.*

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

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

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

(ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

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

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

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

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

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

B. Each entity that provided information concerning the individual;

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

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

E. The results of the test for illegal drugs.

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

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

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

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

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall

comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

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

(k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

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

I-17 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (AUG 2016)

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

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

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

DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

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

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

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

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

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

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

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

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

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

1. Negligence;

2. Contributory negligence;

3. Assumption of risk; or

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

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

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

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

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

(3) The waivers set forth above—

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

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

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

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

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place,

if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

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

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

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

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

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

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

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

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

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

I-18 DEAR 952.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000) (CLASS DEVIATION)

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

(b) Supervisory representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site, and any work off-site, at all times. For purposes of this contract, the [insert name or title of resident supervisory representative of the contractor] is the resident supervisory representative of the contractor.

(c) Control of employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the Contracting Officer may require, with the approval of the Administrator of the NNSA or the Secretary of Energy, the Contractor to remove the employee from work under the contract. This includes the right to direct the Contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies. Furthermore, nothing contained in this paragraph (c) shall in any way impair the statutory or contractual collective bargaining rights of union-represented contractor employees.

(d) Standards and procedures. The Contractor shall establish such standards and

procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the Contracting Officer.

(e) Nothing in this clause or its implementation is intended to conflict with 42 U.S.C. §7274p, or to otherwise affect the scientific integrity of persons required to provide independent technical judgments to provide the President or the Congress assurances on the safety, security, reliability, or effectiveness of the US nuclear weapons stockpile.

(End of Clause)

I-19 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000) (CLASS DEVIATION)

(a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency.

(b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, and National Nuclear Security Administration Policy Letters identified in the contract's Section J Appendix entitled *"List of Applicable Directives"* (the List). Except as otherwise provided for in paragraph (d) of this clause, the Contracting Officer may, from time to time and at any time, revise the List by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising the List, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise the List and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise the List and so advise the Contractor not later than 30 days prior to the effective date of the revision of the List. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of the List and fee may be adjusted pursuant to the clause of this contract entitled, *"Changes."*

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled *"Integration of Environment, Safety, and Health into Work Planning and Execution."* When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into the List as contract requirements with full force and

effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously applicable to the contract by the List. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(End of Clause)

I-20 DEAR 970.5204-3 ACCESS AND OWNERSHIP (CLASS DEVIATION)

(a) *Government-owned records.* Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 CFR, Chapter XII, Subchapter B, *"Records Management."* The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 *"Privacy Act."*

(b) *Contractor-owned records.* The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause, excluding records operated and maintained in DOE Privacy Act system of records].

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, excluding records operated and maintained by the Contractor in Privacy Act system of records. Employee-related systems of record may include, but are not limited to: Employee Relations Records (DOE-3), Personnel Records of Former Contractor Employees (DOE-5), Payroll and Leave Records (DOE-13), Report of Compensation (DOE-14), Personnel Medical Records (DOE-33), Employee Assistance Program (EAP) Records (DOE-34) and Personnel Radiation Exposure Records (DOE-35).

(2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) *Contract completion or termination.* Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(d) *Inspection, copying, and audit of records.* All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) *Applicability.* This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) *Records maintenance and retention.* Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 CFR Chapter XII, Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) *Subcontracts.* The contractor shall include the requirements of this clause in all subcontracts that contain the *Integration of Environment, Safety and Health into Work Planning and Execution* clause at 952.223-71 or, the *Radiation Protection and Nuclear Criticality* clause at 952.223-72.

(End of clause)

I-21 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES—FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALTERNATE II (AUG 2009) (NNSA CLASS DEVIATION MAY 2016)

(a) General.

(1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon—

(i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, *"Security"* and *"Laws, Regulations, and DOE Directives,"* as well as in other terms and conditions.

(4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract, earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount.

(1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

(vi) Event caused by *"Good Samaritan"* act by the Contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(4) (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.

(ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the contracting officer or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor *"has earned"* reflects any reduction made under this or any other clause of the contract.)

(v) At the end of the contract—

(A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or

(B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor *"has earned"* reflects any reduction made under this or any other clause of the contract.)

(c) Environment, Safety and Health (ES&H). Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

(i) Type A accident (defined in DOE Order 225.1B, Accident Investigations, or its successor).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1B, Accident Investigations, or its successor).

(ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential

breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 231.2, or its successor, requirements; or internal oversight of DOE Order 440.1B, or its successor, requirements.

(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d) (1) (iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(End of Clause)

I-22 DEAR 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER (DEC 2000) ALTERNATE I (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)

(a) Definitions.

(1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (*h*) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (*i*) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(8) *Open Source Software, as used in this clause, means computer software that is distributed under a license in which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).*

(9) *Patent Counsel means the National Nuclear Security Administration (NNSA) Patent Counsel assisting the DOE/NNSA contracting activity.*

(b) Allocation of Rights.

(1) *Except as may be otherwise expressly provided or directed in writing by the Patent Counsel* the Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE*/NNSA*, appropriate instances of the DOE */NNSA* Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE*/NNSA* personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may

from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software. the rights of the Government in such data shall be governed solely by the provisions of paragraph (*h*) of this clause (*"Rights in Limited Rights Data"*) or paragraph (*i*) of this clause *("Rights in Restricted Computer Software"*); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE*/NNSA* concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE*/NNSA* will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE*, NNSA* or a third party, including a DOE *or NNSA* contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE*/NNSA*, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles)

(1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by Triad National Security, LLC under Contract No. 89233218CNA000001 with the U.S. Department of Energy/*National Nuclear Security Administration*. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE *and NNSA* to retain duplicates of such documents and to use such

documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

(i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes,

(B) The program under which it was funded,

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement,

(D) Whether the data is subject to export control,

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, *"Technology Transfer Mission,"* within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's and NNSA's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE *or NNSA* funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE/*NNSA* will be expressly withheld. Such excepted categories include data whose release

(A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes,

(B) would not enhance the appropriate transfer or dissemination and commercialization of such data,

(C) would have a negative impact on U.S. industrial competitiveness,

(D) would prevent DOE *or NNSA* from meeting its obligations under treaties and international agreements, or

(E) would be detrimental to one or more of DOE's *or NNSA's* programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property *and/or the NNSA Patent Counsel*. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE *or NNSA* may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.

(2) DOE*/NNSA* Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE*/NNSA*'s permission for the Contractor to assert copyright or advise the Contractor that DOE*/NNSA* needs additional time to respond, and the reasons therefor.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and

Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

(A) An abstract describing the software suitable for publication,

(B) the source code for each software program, and

(C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software.

The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE/*NNSA* designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e) (2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, *NNSA*, and its contractors and to the public identifying its availability from the copyright holder.

(iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE/*NNSA* approval. The DOE/*NNSA* approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship

and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by Triad National Security, LLC under Contract No. 89233218CNA000001with the Department of Energy*/National Nuclear Security Administration*. For (period approved by *NNSA* Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE*/NNSA*. Neither the United States nor the United States Department of Energy*/National Nuclear Security Administration*, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE*/NNSA* has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e)*(3)(iii)* of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE*/NNSA* determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE*/NNSA* shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE*/NNSA* to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 --*"Appeals."*

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE *or NNSA* Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the *DOE/NNSA* to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by Triad National Security, LLC and the individual author], hereinafter the Contractor, under Contract No. 89233218CNA000001 with the Department of Energy*/National Nuclear Security Administration* (DOE*/NNSA*). All rights in the computer software are reserved by DOE*/NNSA* on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of Notice)

(5) A similar notice can be used for data, other than computer software, upon approval of Patent Counsel.

(f) *Open Source Software. The Contractor may release computer software first produced by the Contractor in the performance of this Contract under an open source software license. Such software shall hereinafter be referred to as Open Source Software or OSS, subject to the following:*

(1) *Obtain Program Approval*.

(i) *The Contractor shall ensure that the DOE or NNSA Program or Programs that have provided funding (Funding Source) to develop the software have approved the distribution of the software as OSS. The funding Program(s) may provide blanket approval for all software developed with funding from that Program. However, OSS release for any one such software shall be subject to approval by all other funding Programs which provide a substantial portion of the funds for the software, if any. If approval from the funding Program(s) is not practicable, Patent Counsel may provide approval instead. For software jointly developed under a CRADA or User Facility, or SPP, authorization from the CRADA Participant(s) or User Facility User(s), or SPP, as applicable, shall be additionally obtained for OSS release.*

(ii) *If the software is developed with funding from a federal government agency or agencies other than DOE or NNSA, then authorization from all the funding source(s) shall be obtained for OSS release, if practicable. Such federal government agency (ies) may provide blanket approval for all software developed with funding from that agency. However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If majority approval from such federal government agency(s) is not practicable, Patent Counsel may provide approval instead.*

(2) *Assert Copyright in the OSS. Once the Contractor has obtained Funding Source approval in accordance with subparagraph (1) of this section, copyright in the software to be distributed as OSS, may be asserted by the Contractor, or, for OSS developed under a CRADA or User Facility, or SPP, either by the Contractor, CRADA Participant, or User FacilityUser, or SPP, as applicable, which precludes marking such OSS as Protected Information.*

(3) *Form DOE F 241.4 for OSS to ESTSC. The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE or NNSA) to DOE's Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.*

(4) *OSS Record. The Contractor must maintain a record, available for inspection by DOE or NNSA, of software distributed as OSS. The record shall contain the following information: (i) name of the computer software (or other identifier), (ii) an abstract with description or purpose of the software, (iii) evidence of the funding Program's or source's approval, (iv) the planned or actual OSS location on the Contractor's webpage or other publicly available location (see subparagraph (5) below); (v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered; (vi) the type of OSS license used; and (vii) release version of the software for OSS containing derivative works. Upon request of Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the record.*

(5) *Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible as an open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, NNSA, or other industry standard means.*

(6) *Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property and/or NNSA Patent Counsel may periodically issue guidance on OSS licenses. Each Contractor created OSS license, must contain, at a minimum, the following provisions:*

(i) *A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and*

(ii) *A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (10) below). This provision might allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.*

(7) *Collection of administrative costs is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.*

(8) *Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled Technology Transfer Mission (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties as set forth elsewhere in this clause is not modified by this section.*

(9) *Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews of the derivative versions.*

(10) *Determine if Trademark Protection for the OSS is Appropriate. DOE and NNSA Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the Program or the Contractor may want to seek trademark protection. If the OSS is protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.*

(11) *Government License. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.*

(12) *Availability of Original OSS. The object code and source code of the original OSS developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is publicly available. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.*

(g) Subcontracting.

(1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, *"Rights in Data-General"* at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE*/NNSA*.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(h) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the *"Limited Rights Notice"* set forth below. All such limited rights data shall be marked with the following *"Limited Rights Notice:"*

Limited Rights Notice

These data contain *"limited rights data,"* furnished under Contract No. 89233218CNA000001with the United States Department of Energy/*National Nuclear Security Administration* which may be duplicated and used by the Government with the express limitations that the *"limited rights data"* may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This *"limited rights data"* may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This *"limited rights data"* may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the *"limited rights data"* be retained in confidence and not be further disclosed;

(d) This *"limited rights data"* may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the *"limited rights data"* be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(i) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following *"Restricted Rights Notice:"*

Restricted Rights Notice --Long Form

(a) This computer software is submitted with restricted rights under Department of Energy/*National Nuclear Security Administration* Contract No. 89233218CNA000001. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice --Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE/*NNSA* Contract No. 89233218CNA000001with Triad National Security, LLC.

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo./yr.) in brackets or a box, a [R-

mo./yr.], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice *"Unpublished-rights reserved under the Copyright Laws of the United States."*

(j) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

I-23 DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002) ALTERNATE I (AUG 2002), ALTERNATE II (DEC 2000) (NNSA CLASS DEVIATION OCT 2011) [MODIFIED BY MODIFICATION P00008]

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority.

(1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Facilities, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Facilities consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 *et seq.*); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Facili*ties*; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Facili*ties* that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Strategic Partnership Projects (SPP) ;

providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, SPP, science education activities, consulting, personnel *exchanges*, assignments, and licensing in accordance with this clause.

(3) Nothing in this, or any other section of this contract provides the Contractor with any property right, including the right to license, in data first produced in the performance of this contract, except as expressly provided in the contract or approved in writing by the Contracting Officer.

(b) Definitions.

(1) Contractor's Facilities Director means the individual who has supervision over all or substantially all of the Contractor's operations at the facilities.

(2) Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Facilities, and one or more parties including at least one non-Federal party under which the Government, through its Facilities, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Facilities; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Facilities Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) Assignment means any agreement by which the Contractor transfers ownership of Facilities' Intellectual Property, subject to the Government's retained rights.

(6) Facilit*ies'* Biological Materials means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Facilit*ies'* employees or through the use of *F*acilities*' research resources*.

(7) *F*acilit*ies'* Tangible Research Product means tangible material results of research which

(i) Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(ii) Are not materials generally commercially available; and

(iii) Were made under this contract by *F*acilit*ies'* employees or through the use of *F*acilities*' research resources*.

(8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of *F*acilit*ies'* Biological Materials or *F*acilit*ies'* Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(9) Privately funded technology transfer means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(c) Allowable Costs.

(1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Strategic Partnership Projects) of the Facilit*ies* for that fiscal year without written approval of the contracting officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance -- Litigation and Claims" of this contract.

(d) Conflicts of Interest -- Technology Transfer. The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to all persons participating in *the F*acilit*ies* research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with *research involving nonfederal sponsors and for* CRADA activity in accordance with the provisions of paragraph (n) (5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE *and NNSA* projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or SPP activities of the Contractor;

(5) Conduct DOE- *and NNSA*-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE *or NNSA* or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a Facilit*ies* employee within the previous two years or to the company in which the individual is a principal;

(9) Notify non-Federal sponsors of SPP activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of SPPs or user agreements; *and*

(10) Notify *NNSA* prior to *the Contractor's acting in an advisory role for evaluation of a technical proposal for funding by a third party or a DOE or NNSA Program*, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

(e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Facilit*ies* and by entities other than the Contractor.

(f) U.S. Industrial Competitiveness.

(1) In the interest of enhancing U.S. Industrial Competitiveness in its licensing and assignments of Intellectual Property, *the Contractor shall* give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its *decisions involving* licensing *or* assignment *of* Facilit*ies'* intellectual property where the *Contractor* obtains rights during the course of the Contractor's operation of the Facilit*ies* under this contract:

(i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) whether a proposed licensee or an assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) in licensing *or assigning* any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights; *and*

(C) if the proposed licensee, assignee, or parent of either type of entity is subject to the control of a foreign company or government, the Contractor, with the assistance of the Contracting Officer, in considering the factors set forth in paragraph (B) herein, may rely upon the following information; (1) U.S. Trade Representative Inventory of Foreign Trade Barriers, (2) U.S. Trade Representative Special 301 Report, and, (3) such other relevant information available to the contracting officer. The Contractor should review the U.S.

Trade Representative web site at: http://www.ustr.gov for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a complete and informed decision.

(2) If the Contractor determines that neither of the conditions in paragraphs (f) (1)(i) or (ii) of this clause is likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(g) Indemnity -- Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) Disposition of Income.

(1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Facilit*ies*, consistent with the research and development mission and objectives of the Facilit*ies* and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Facilit*ies'* budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Facilit*ies* Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Facilit*ies*, and at the end of the year, provide a separate

accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall *notify* the *C*ontracting *O*fficer *of any changes to its policy* for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer. *Such changes shall be subject to the approval of the Contracting Officer.*

(i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Facilit*ies* shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Facilit*ies*, to the successor contractor or to the Government as directed by the contracting officer.

(j) Technology Transfer Affecting the National Security.

(1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable *NNSA* to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE/*NNSA*'s nuclear weapon production complex. *NNSA* shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and *NNSA* shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) Records. The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE/*NNSA* and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the

contracting officer to enable DOE/*NNSA* to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE/*NNSA* and in such a format which will serve to adequately inform DOE/*NNSA* of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) Reports to Congress. To facilitate DOE/*NNSA*'s reporting to Congress, the Contractor is required to submit annually to DOE/*NNSA* a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Facili*ties* innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.

(m) Oversight and Appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Facili*ties* Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) Technology Transfer through Cooperative Research and Development Agreements. Upon approval of the contracting officer and as provided in a *NNSA*-approved Joint Work Statement (JWS), the Facili*ties* Director, or designee, may enter into CRADAs on behalf of the DOE/*NNSA* subject to the requirements set forth in this paragraph. *Also, under such circumstances as DOE or NNSA considers appropriate, the DOE or NNSA may waive the following requirements associated with the submission and approval of JWS and CRADA agreements, as legislated by the 2001 National Defense Authorization Act.*

(1) Review and Approval of CRADAs.

(i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's Facili*ties* Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the

Contractor's Facilit*ies* Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

(iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter.

(2) Selection of Participants. The Contractor's Facilit*ies* Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) Withholding of Data.

(i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE*/NNSA* shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE *or NNSA* facilities for use by DOE*/NNSA* or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) Strategic Partnership Projects and User Facility Programs.

(i) Strategic Partnership Projects (SPP) and User Facility Agreements (UFAs) *are* available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, who are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., SPP and UFA, and of the Class Patent Waiver provisions associated therewith*, when conditions associated with the activity under the agreement can appropriately be performed under such alternative agreement(s)*.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in SPP and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE*/NNSA* approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE*/NNSA* class waiver (including Strategic Partnership Projects and User Class Waivers) or individually negotiated waiver that applies to the agreement.

(5) Conflicts of Interest.

(i) Except as provided in paragraph (n) (5) (iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee –

(1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(End of Clause)

(p) Technology Partnership Ombudsman.

(1) The Contractor agrees to establish a position to be known as *"Technology Partnership Ombudsman,"* to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the Facilit*ies*, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contractor's Facilit*ies* staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the Facilit*ies*, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include:

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the Facilit*ies* regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE *and NNSA*, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.

(q) Inapplicability of Provisions to Privately Funded Technology Transfer Activities. Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity -- Product Liability, (h) Disposition of Income, and (item 7) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

I-24 RESERVED [MODIFIED BY MODIFICATION NO. P00008]

I-25 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) ALTERNATE II (DEC 2000) [MODIFIED BY MODIFICATION P00006]

(a) The Department of Energy agrees to reimburse the Contractor, and the Contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the Contractor arising out of any condition, act, or failure to act which occurred before the Contractor assumed responsibility on **November 1, 2018**. To the extent the acts or omissions of the Contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to **November 1, 2018,** the Contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

(End of clause)

Alternate II (DEC 2000). As prescribed in 970.3170 (b), add the following paragraph (c) to the basic clause in contracts with management and operating contractors not previously working at that particular site or facility:

(c) The Contractor has the duty to inspect the facilities and sites and timely identify to the Contracting Officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The Contractor has the responsibility to take corrective action, as directed by the Contracting Officer and as required elsewhere in this contract.

(End of Clause)

I-26 DEAR 970.5232-2 PAYMENT AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000) ALTERNATE III (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)

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

(b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-G. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall

promptly make such disposition of the excess as the Contracting Officer may direct.

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

(e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after—

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

(2) The furnishing by the Contractor of—

(i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
(ii) A closing financial statement;
(iii) The accounting for Government-owned property required by the clause entitled "Property"; and
(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, 48 CFR 970.5228-1, "Insurance— Litigation and Claims");
(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and
(D) Claims recognizable under the clause entitled, Nuclear Hazards

Indemnity Agreement.

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

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

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

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

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

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

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

(j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

(k) Review and approval of costs incurred. The Contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent

adjustments, or for errors later becoming known to DOE.

(End of Clause)

I-27 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (JAN 2013) (NNSA CLASS DEVIATION MAY 2016)

(a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of subpart 970.41.

(c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.

(d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) *Audit of Subcontractors.*

(1) The Contractor shall provide for—

(i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and

(ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).

(f) *Bonds and Insurance.*

(1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of $150,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $100,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than $35,000, but not greater than $150,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) *Buy American.* The Contractor shall comply with the provisions of the Buy American as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of $500,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at $500,000 or less.

(h) *Construction and Architect-Engineer Subcontracts*.

(1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) *Prevention of Conflict of Interest.*

(i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) *Contractor-Subcontractor Relationship.* The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.

(l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) *Leasing of Motor Vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.

(n) [Reserved]

(o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be

reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:

(1) Motor vehicles—48 CFR 908.7101

(2) Aircraft—48 CFR 908.7102

(3) Security Cabinets—48 CFR 908.7106

(4) Alcohol—48 CFR 908.7107

(5) Helium—48 CFR subpart 8.5

(6) Fuels and packaged petroleum products—48 CFR 908.7109

(7) Coal—48 CFR 908.7110

(8) Arms and Ammunition—48 CFR 908.7111

(9) Heavy Water—48 CFR 908.7121(a)

(10) Precious Metals—48 CFR 908.7121(b)

(11) Lithium—48 CFR 908.7121(c)

(12) Products and services of the blind and severely handicapped—41 CFR 101-26.701

(13) Products made in Federal penal and correctional institutions—41 CFR 101-26.702

(r) *Purchase versus Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made—

(1) At time of original acquisition;

(2) When lease renewals are being considered; and

(3) At other times as circumstances warrant.

(s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) *Setoff of Assigned Subcontractor Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) *Strategic and Critical Materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) *Subcontract Flowdown Requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

(1) Construction Wage Rate Requirements (formerly known as the Davis-Bacon Act) clauses prescribed in 48 CFR 22.407.

(2) Foreign Travel clause prescribed in 48 CFR 952.247-70.

(3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).

(4) Service Contract Labor Standards clauses prescribed in 48 CFR 22.1006.

(5) State and local taxes clause prescribed in 48 CFR 970.2904-1.

(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

(7) Nondisplacement of Qualified Workers clause prescribed by 48 CFR 22.1207.

(8) Service Contract Reporting clause prescribed in 48 CFR 4.1705.

(9) Minimum Wages under Executive Order 13658 clause prescribed in 48 CFR 22.1906

(10) Rights to Proposal Date (Technical) clause prescribed in 48 CFR 27.209(l).

(11) Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000 (formerly known as the Walsh-Healy Public Contracts Act) clause prescribed in 48 CFR 22.610.

(12) Patent Indemnity clause prescribed in 48 CFR 27.201-2(c).

(y) Legal Services. Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

(End of Clause)

I-28 DEAR 970.5245-1 PROPERTY (AUG 2016)

(a) *Furnishing of Government property.* The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) *Title to property.* Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) *Identification.* To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(d) *Disposition.* The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be

otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all government property which had come into the possession or custody of the Contractor under this contract.

(e) *Protection of government property—management of high-risk property and classified materials.* (1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.

(2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) *Risk of loss of Government property.* (1)(i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) *Steps to be taken in event of loss.* In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor —

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only*. Government property shall be used only for the performance of this contract.

(i) *Property Management—(1) Property Management System.* (i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for—

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) [Reserved]

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by “best in class” performers.

(iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) *Property Inventory.* (i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term “contractor's managerial personnel” as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of—

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

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

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

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or

(5) A separate and discrete major task or operation in connection with the performance of this contract.

(k) The Contractor shall include this clause in all cost reimbursable subcontracts.

(End of clause)

I-29 FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984) ALTERNATE I (APR 1984) MODIFIED BY MODIFICATION P00008

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

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

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

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

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

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

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

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

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

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

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

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

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

the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.

(f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall—

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

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

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

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

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

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

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

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

(End of clause)

I-30 FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AN OTHER COVERED ENTITIES (JUL 2018) [MODIFIED BY MODIFICATION P00008]

(a) Definitions. As used in this clause—

Covered article means any hardware, software, or service that—

(1) Is developed or provided by a covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means—

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab;

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) prohibits Government use of any covered article. The Contractor is prohibited from—

(1) Providing any covered article that the Government will use on or after October 1, 2018; and

(2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.*

(1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at *https://dibnet.dod.mil.* For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at *https://dibnet.dod.mil.*

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

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

(End of clause)

I-31 DEAR 970.5227-10 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (DEC 2000) ALTERNATE I (DEC 2000) [MODIFIED IN MODIFICATION P00008]

(a) *Definitions.* (1) *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

(2) *Exceptional circumstance subject invention* means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii) and in accordance with 37 CFR 401.3(e).

(3) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(6) *Patent Counsel* means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.

(7) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, are used.

(9) *Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(10) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs , including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) *Allocation of Principal Rights.* (1) Retention of title by the Contractor. Except for exceptional circumstance subject inventions, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(3) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [*Insert Reference*] to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(4) *Contractor request for greater rights in exceptional circumstance subject inventions.* The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

(5) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.

(6) *Government assignment of rights in Government employees' subject inventions.* If a Government employee is a joint inventor of a subject invention or of an exceptional

circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304-1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee.

(7) *Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have the right to retain title to any weapons related subject inventions.

(c) *Subject invention disclosure, election of title and filing of patent application by contractor—* (1) *Subject invention disclosure.* The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. The disclosure shall include a written statement as to whether the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(2) *Election by the Contractor.* Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) *Filing of patent applications by the Contractor.* The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after

election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) *Contractor's request for an extension of time.* Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.

(5) *Publication approval.* During the course of the work under this contract, the Contractor or its employees may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor, approval for release or publication shall be secured from the Contractor personnel responsible for patent matters prior to any such release or publication. Where DOE's approval of publication is requested, DOE's response to such requests for approval shall normally be provided within 90 days except in circumstances in which a domestic patent application must be filed in order to protect foreign rights. In the case involving foreign patent rights, DOE shall be granted an additional 180 days with which to respond to the request for approval, unless extended by mutual agreement.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the DOE, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or to elect within the specified times.

(2) In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(e) *Minimum rights of the Contractor and protection of the Contractor's right to file*—(1) *Request for a Contractor license.* The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) *Revocation or modification of a Contractor license.* The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and DOE licensing regulations at 10 CFR Part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.

(3) *Notice of revocation of modification of a Contractor license.* Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest*—(1) *Execution of delivery of title or license instruments.* The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and

(ii) Convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this

contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Notification of discontinuation of patent protection.* The contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) *Notification of Government rights.* The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(5) *Invention identification procedures.* The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(6) *Invention filing documentation.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR part 40.

(g) *Subcontracts*—(1) *Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 48 CFR 952.227-11.

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause.

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) *Subcontractor refusal to accept terms of patent clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to

provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) *DOE approval of assignment of rights.* Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

(2) *Small business firm licensees.* It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

(3) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(l) *Communications.* The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.

(m) *Reports*—(1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(n) *Examination of Records Relating to Subject Inventions*—(1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions,

DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(o) *Facilities License.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(p) *Atomic Energy*—(1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(q) *Classified inventions*—(1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(r) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(s) *Educational awards subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(t) *Annual appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(End of clause)

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J – LIST OF ATTACHMENTS [MODIFIED IN MODIFICATION P0006 & P00016]

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Appendix B List of Applicable Directives [Modified by Modification P00006]
Appendix C Personnel Appendix [Modified by Modififation P00024]
Appendix D Key Personnel
Appendix E Small Business Subcontracting Plan
Appendix F Diversity Plan Guidance
Appendix G Special Financial Agreement
Appendix H ITER Agreement
Appendix I Performance Guarantee Agreement [Modified by Modification P00006]
Appendix J Transition Plan [Modified by Modification P00006]
Appendix K Program Management and Cost Reports
Appendix L Contractor Community Commitment Plan [Modified by Modification P00006]
Appendix M Regional Purchasing Program
Appendix N Technology Commercialization
Appendix O Performance Evaluation and Measurement Plan [Modified by Modification P00016. The Performance Evaluation and Measurement Plan(s) can be found at the following Web Site: https://www.energy.gov/nnsa/los-alamos-national-laboratory-contract]

PART III – SECTION J

APPENDIX A

STATEMENT OF WORK

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CHAPTER I. Background, Objectives, and Requirements

1.0 THE NATIONAL NUCLEAR SECURITY ADMINISTRATION (NNSA) MISSION

NNSA is responsible for the management and security of the nation's nuclear weapons, nuclear nonproliferation, and naval reactor programs. It also responds to nuclear and radiological emergencies in the United States and abroad. Additionally, NNSA federal agents provide safe and secure transportation of nuclear weapons and components and special nuclear materials alongwith other missions supporting national security. NNSA was established by Congress per the NNSA Act (Title XXXII of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65) as a semiautonomous element within Department of Energy (DOE).

2.0 MANAGEMENT & OPERATIONS

The NNSA's nuclear security enterprise spans eight sites, including three national laboratories, four plants, and the Nevada National Security Site (NNSS). Each site's technical expertise enables NNSA to accomplish its work across NNSA's four mission areas.

NNSA relies on Management and Operating (M&O) Contractors to manage day-to-day site operations of its laboratories, production plants, and other facilities in the National Security Enterprise (NSE) in compliance with legal requirements and DOE/NNSA policies. Los Alamos National Laboratory (LANL) (herein referred to as "LANL", "the Laboratory" is operated under an M&O contract, as defined in Federal Acquisition Regulation (FAR) 17.6). LANL is also a multi-program DOE/NNSA Federally Funded Research and Development Center (FFRDC), as defined in FAR 35.017, whose primary mission is to function as a nuclear weapons research, development, and engineering laboratory.

NNSA establishes the work to be accomplished by the Contractor and will provide program and performance direction regarding what NNSA wants in each of its programs. The Contractor is accountable for assuring safe, secure, effective, and efficient operations, and providing directed deliverables in accordance with the terms and conditions of this Contract.

NNSA's M&O Contractors implement NNSA's all-encompassing Stockpile Stewardship Program that includes operations associated with research, development, qualification, and certification efforts as well as surveillance, assessment, maintenance, refurbishment, manufacture, and dismantlement of the nuclear weapons stockpile. In addition, there is work managed by the Laboratory that is performed for other sponsors within the DOE, NNSA, Department of Defense (DoD), Department of Homeland Security, other government agencies, and private industry.

3.0 REQUIREMENTS

The Contractor shall manage, operate, protect, sustain, and enhance the Laboratory's ability to function as a NNSA Multi-Program Laboratory, while assuring accomplishment of the Laboratory's primary mission - strengthening the United States' security through development and application of world-class science and technology to enhance the nation's defense and to reduce the global threat from terrorism and weapons of mass destruction. The Contractor shall, with the highest degree of vision, quality, integrity, efficiency, and technical excellence, maintain a strong, multi-disciplinary scientific and engineering capability and technical depth that is responsive to scientific issues of

national importance in addition to national security responsibilities, including broadly based programs in such areas as the environment, national infrastructure, health, energy, economic and industrial competitiveness, and science education to achieve the mission. The scope of work of this Contract generally includes:

- Providing research and development and scientific capabilities that enable safe nuclear explosive operations;
- Assuring the safety, security, reliability, and performance of the national nuclear weapons stockpile pursuant to national security policy and Presidential and Congressional directives;
- Providing scientific and engineering capabilities that support assessment, dismantlement, manufacturing and refurbishment of the enduring stockpile at a number of sites;
- Manufacturing selected stockpile components, ranging from high explosive pellets to the primaries (pits), for use in the nuclear weapon stockpile;
- Ensuring the secure handling and safe disposition of plutonium, highly enriched uranium, and tritium;
- Helping to deter, detect, and respond to the proliferation of weapons of mass destruction;
- Conducting fundamental science research and nuclear energy development in support of other DOE programs;
- Contributing to civilian, Homeland Security, and industrial needs, and other defense activities by using the scientific and technical expertise that derives from carrying out the Laboratory mission;
- Advancing of science, mathematics, and engineering education;
- Performing technology transfer and strategic partnership programs including programs designed to enhance national competitiveness in the global economy;
- Managing and operating the Laboratory facilities and infrastructure in an efficient, cost effective, innovative manner;
- Remediating and restoring the Los Alamos National Laboratory site;
- Managing waste minimization, treatment, storage, and disposal of newly generated wastes; and
- Assisting the Nuclear Security Enterprise in waste stabilization, storage and disposition technologies.

Assigned missions and requirements are dynamic; therefore, this SOW is not intended to be all-inclusive or restrictive, but is intended to provide a broad framework and general scope of the work to be performed at the Laboratory. This SOW does not represent a commitment to, or imply funding for, specific projects or programs. NNSA projects and programs, or other work sponsors, will be authorized individually by NNSA in accordance with the terms and conditions of this Contract.

This Contract is for the management, operation, and staffing of LANL to accomplish the missions assigned by the NNSA to the Laboratory; to achieve Presidential and Congressional directives; to fully support the Nuclear Posture Review; to enhance and promote communication, cooperation, integration, and interdependency that will result in improvements in the performance of the NSE as a whole; to perform the Laboratory's role as a lead element for the nuclear weapons program; and to provide cross-site coordination with NNSA's other NSE elements for program and project management. The Contractor shall integrate excellence in Laboratory operations, business operations, and laboratory management with the performance of world-class science and technology.

Work under this Contract shall be conducted in a manner that will protect the environment; assure the safety and health of employees and the public; safeguard classified information and hardware; and protect special nuclear material. In performing work under this Contract, the Contractor shall assure and maintain the following:

(i) An effective and integrated quality assurance program;
(ii) A documented approach for implementation of a certified Earned Value Management System compliant with ANSI/EIA-748C for Capital Asset Projects will be submitted to the Contracting Officer for approval in accordance with the DOE.413.3B.
(iii) A documented approach for a tailored EVMS system compliant with ANSI/EIA-748 on Nuclear Weapons activities will be submitted to the Contracting Officer for approval. The tailored earned value management system will be commensurate with program scope, complexity, and risk to be implemented for tracking performance, cost effectiveness of work activities, and increased transparency. All Weapon Activities funded programs and projects will follow the NNSA Defense Programs Work Breakdown Structure (WBS).
(iv) Integrated, resource-loaded plans and schedules using software that is compatible with NNSA and other NNSA Contractors to achieve program objectives, incorporating input from NNSA, DOE and stakeholders;
(v) Technical depth to manage activities and projects throughout the life cycle of a program;
(vi) Appropriate technologies to reduce costs and improve performance;
(vii) A system of management and business internal controls to assure the safeguarding of government funds and assets; and
(viii) Management, maintenance, and refurbishment of Government-owned facilities to accomplish assigned missions.

The Contractor shall engage in strategic and institutional planning necessary to ensure that the Contractor maintains a posture aimed at anticipating national needs and that is dedicated to providing practical solutions. The Contractor shall also study and explore innovative concepts to minimize or mitigate possible national security threats, current and future. The Contractor shall carry out these plans consistent with NNSA guidance and strategic planning material to assure uniformity with DOE and NNSA missions and goals.

The activities in the SOW are in support of scientific and technical programs sponsored by major NNSA and DOE organizations. Primary NNSA and DOE sponsors include:

(i) Defense Programs
(ii) Defense Nuclear Nonproliferation
(iii) National Incident Response
(iv) Safety, Infrastructure, and Operations
(v) Defense Nuclear Security
(vi) Environmental Management
(vii) Science
(viii) Nuclear Energy
(ix) Energy Efficiency and Renewable Energy
(x) Fossil Energy
(xi) Counter-terrorism and Counter-proliferation

Additionally, the Contractor will pursue other DOE and non-DOE science and technology initiatives that enhance NNSA missions and utilize the Laboratory's core competencies in nuclear weapons science and technology, earth and environmental science, materials, plasmas and beams, pulsed power, complex experimentation and measurements, theory, modeling, high- performance computing, and analysis and assessment.

4.0 LOCATION OF PERFORMANCE

The following are the sites where work is performed.

4.1 Principal Place of Performance - Los Alamos National Laboratory, New Mexico (LANL/NM)

Located in Los Alamos, New Mexico, this site is a multi-program engineering and science laboratory supporting the nuclear weapons stockpile program, energy and environmental research, non-proliferation of weapons of mass destruction, developing technologies and strategies for responding to emerging threats, micro-and nano-technologies, and basic science and engineering research.

4.2 Other Locations

Work is also performed on a smaller scale at various secondary locations and is formally authorized under this contract.

CHAPTER II. Work Scope Structure

Below are three general Performance Group Activities critical to the Laboratory's management and performance of the corresponding programs, projects, and processes: Science and Technology, Laboratory Operations, and Laboratory Management.

1.0 SCIENCE & TECHNOLOGY

In support of major DOE/NNSA sponsor organizations, the Contractor shall serve as a national resource in science, technology, and engineering, focused on national security, energy, and the environment, with special responsibility for nuclear weapons stockpile maintenance and stewardship. The Contractor shall use multidisciplinary capabilities and apply expertise to conduct research within the capabilities and approved operational analyses for the Laboratory.

1.1 Stockpile Stewardship and Management

The Contractor shall support the NNSA to ensure the long-term safety, reliability, and security of the nation's nuclear weapons stockpile as detailed in the annual Stockpile Stewardship and Management Plan. The Contractor shall meet the near-term scientific and technical demands of the Laboratory's stockpile stewardship goals while strengthening its longer-term, technical, capability-based deterrent posture. The Contractor shall support the science-based Stockpile Stewardship Program that underpins the scientific and technical basis for all nuclear warheads in the United States stockpile. Under this Program, the Contractor shall conduct the fundamental research, the development of physical models, the integration of these models into computer simulation codes, the experimental validation, and the engineering that are

required to maintain the nuclear deterrent as modern, robust, flexible, resilient, ready, and appropriately tailored to deter the 21st century threats and reassure allies. The Contractor shall provide technical specifications, engineering drawings and releases that direct planned and corrective activities both by NNSA production activities and by the DoD depots that support warhead and bomb component weapon manufacturing, maintenance, assembly and surveillance operations. The Program relies on three interconnected areas of surveillance activity which examine and diagnose aging phenomena in stockpile weapons, assess physical observations by calculations and experiments to evaluate safety and performance, and develop responses to assessments to provide the basis for continued stockpile certification and reliability assurance. The Contractor shall also provide support in the development of an overall strategic plan and execute the plan as it pertains to the LANL.

1.1.1 Certification and Support of Stockpile

(i) Conduct stockpile assessment of nuclear weapons components and the analysis of surveillance findings through the use of nuclear weapon simulation codes, computational resources, full-scale flight tests, and experiments;
(ii) Laboratory Director's annual assessment of the stockpile;
(iii) A nuclear weapons quality assurance and stockpile evaluation program to detect defects and determine their effect on safety, security and reliability of the stockpile, support joint DoD/NNSA weapons system testing, perform reliability assessments and calculations, prepare reliability reports for all Laboratory assigned nuclear weapons in the stockpile; and
(iv) Continue technical support, and military liaison and training programs for the DoD in support of Laboratory assigned nuclear weapons in the stockpile.

1.1.2 Simulation Codes and Computational Resources

(i) Develop high-performance computing and computational simulations to validate and certify the safety, reliability, and performance of the weapon system in the absence of nuclear testing;
(ii) Support the design, development, and engineering stockpile life cycle acquisition phases with modeling and simulation activities;
(iii) Perform core stockpile computing and participation in the Advanced Simulation and Computing (ASC) initiative to enable model and simulation based life cycle engineering; and
(iv) Archiving of previously recorded nuclear weapons data for assessment of stockpile weapons systems and improving models and codes.

1.1.3 Surveillance and Surety

(i) Conduct core stockpile surveillance on NNSA hardware to evaluate safety, security, and effectiveness of the stockpile.

Surveillance shall be structured to detect defects and aging trends in order to determine their effect on safety, security, and reliability of the stockpile through assessments; calculations, laboratory testing, and full-scale flight tests;

(ii) Support joint DoD/NNSA weapons system surveillance testing through planning, full-scale flight testing, and post data analysis;

(iii) Establish technical requirements for disassembly and testing processes;

(iv) Provide technical support in developing and implementing processes, procedures, tooling, and test systems to perform surveillance;

(v) Develop and document specialized equipment and test systems for surveillance of components and systems;

(vi) Participate in the Enhanced Surveillance program to develop capabilities to diagnose and predict age-related phenomena in the stockpile;

(vii) Document stockpile surveillance results and analyses on hardware designed by NNSA for inclusion in the overall weapon system assessments;

(viii) Participate in the review and approval of disassembly and inspection processes and services for components and systems;

(ix) Provide formal requirements and approval for disassembly, inspection, and testing processes; and

(x) Support for Nuclear Explosive Safety evaluations for the approval of nuclear explosive operations.

1.1.4 Scientific Capabilities, Experiments and Tests

(i) Improve the scientific basis for stockpile assessment through a balanced experimental and theoretical approach that includes developing new scientific tools and capabilities that address fundamental questions relating to the stockpile;

(ii) Support or conduct high hazard experiments at the Nevada National Security Site, consistent with U.S. policy, to improve knowledge of the properties of materials, components, and systems;

(iii) Conduct experiments, including hydrodynamic tests, that provide non-nuclear testing capability to address the functionality and safety of the nuclear weapon primary and capability to study and understand high-energy density physics of nuclear devices;

(iv) Maintain nuclear underground test readiness through the conduct of a robust experimental program

(v) Maintain a program to conduct laboratory and full-scale testing of nuclear weapons components and systems through the use of experiments and flight tests;

(vi) Maintain a capability to fabricate and test prototype components for design maturation of future designs and evaluation of current weapon systems; and

(vii) Maintain capabilities for qualifying systems and components to

support assigned activities for current and future programs.

1.1.5 Production Support

The Contractor shall provide technical production support to the NNSA at nuclear weapon production plants for tasks related to nuclear and non-nuclear components and systems, modification and enhancement of non-nuclear component production hardware qualification program consistent with production assignments and production rates, support DoD deliverables, correct production issues, and process improvements for hardware production at risk. These tasks include:

(i) Establish technical requirements for production, testing, and inspection processes;
(ii) Participate in the review and approval of production and inspection processes and services for components and systems.
(iii) Provide the requirements for, and documentation of, the formal approval of the production and inspection processes;
(iv) Contribute to the development of training requirements;
(v) Develop and document acceptance equipment and test systems for product acceptance of components and systems;
(vi) Establish testing and acceptance criteria; participate in approval of test procedures and results;
(vii) Provide expertise in specialized technologies to include components manufacturing and systems assembly, systems integration, transportation systems, information management, and development of specialized facility criteria;
(viii) Provide technical support to develop and implement processes, procedures, tooling, and test systems to perform production;
(ix) Conduct transportation technology development to ensure that base technology is available to support the design, test, fabrication, and certification of radioactive, energetic and hazardous material packaging for defense applications;
(x) Provide safe storage, transportation of nuclear weapons and special materials, weapon design and performance information, and establishment of technical requirements for production processes;
(xi) Providing development of specialized facility criteria; recommending and managing R&D and testing for emerging technologies;
(xii) Providing technical support and independent technical oversight for needed physical rearrangements;
(xiii) Provide weapon response for the hazard analysis and evaluation of changes in support of the operations at Pantex;
(xiv) Participate in the development of the Documented Safety Analysis to support safe operations at Pantex and Nevada;
(xv) Support for Nuclear Explosive Safety evaluations for the approval of nuclear explosive operations;
(xvi) Support NNSA initiatives for development and deployment of advanced design and manufacturing processes for weapon components;

(xvii) Evaluate weapon response to hazard analysis scenarios in support of the Seamless Safety for the 21st Century (SS-21) activity;
(xviii) Provide technical support in developing and implementing necessary toolingand procedures to perform production that meets SS-21 standards;
(xix) Support the implementation of steps that support the NNSA responsive infrastructure vision that supports the complex of the future; and
(xx) provide the necessary documentation for the items listed above to support nuclear weapons production.

1.1.6 Production and Manufacturing

(i) Develop and maintain manufacturing capability for plutonium-based pits at required capacities of various designs for the primary of nuclear weapons. This activity implements specialized manufacturing and testing techniques for this warhead component. The Contractor shall manufacture pits for the stockpile in quantities specified by NNSA. Further, the Contractor shall provide engineering testing and production process development guidance for plutonium-based pits to other contractors as directed by the Contracting Officer;
(ii) Maintain and enhance Laboratory facilities to perform small quantity production of selected non-nuclear components and the manufacture of selected components and related items used in the Nuclear Weapons program, including associated product and process engineering;
(iii) Develop specialized techniques and processes for manufacturing and testing warhead components including plutonium pits, detonators and high explosives, and other special materials that influence nuclear performance;
(iv) Support production to ensure the safety, security, reliability and maintenance of the enduring stockpile;
(v) Perform all life cycle management responsibilities in design, engineering development, component acceptance and stockpile certification to support weapon alterations, modifications, refurbishments and replacements.

1.1.7 Nuclear Materials Management

The Contractor shall conduct a Nuclear Materials and Stockpile Management Program that has four strategic thrusts: nuclear materials; manufacturing and surveillance; materials and process technologies; and stabilization technologies. The Program includes:

(i) Ensuring, through a nuclear-materials-based approach, stockpile evaluation;
(ii) Weapons dismantlement and component disassembly;
(iii) Nuclear materials storage, processing, and disposition;

(iv) Residue elimination, waste minimization, and environmental and mixed-waste management;
(v) Test-component remanufacture;
(vi) Materials characterization;
(vii) Site cleanup and materials stabilization;
(viii) Contamination control;
(ix) Health and safety issues;
(x) Managing and operating highly specialized facilities that are key to Laboratory efforts in this program; and,
(xi) Providing support to DOE/NNSA for stabilizing nuclear materials and overseeing a core technology program that will improve the understanding of underlying material interactions.

1.1.8 Dismantlement

(i) Provide expertise in weapons dismantlement and component disassembly including weapon component material characterization and material disposition processes;
(ii) Contribute to the development of training requirements for weapon dismantlement and disposition; Provide technical support to develop and implement processes, procedures, tooling, and test systems to perform dismantlement;
(iii) Provide technical assistance in material disposition analysis ofthe functionality of safety of disassembly techniques and tools;
(iv) Support prescriptions for material recovery and reuse;
(v) Participate in review and approval of production and inspection processes for dismantlement at NNSA plants; and
(vi) Provide the requirements for formal approval of the disassembly or dismantlement processes.

1.1.9 Criticality Safety Analysis

The Contractor shall conduct experiments, training and analysis on criticality safety, materials detection and improvised nuclear devices in support of a broad range of national programs. The Contractor shall perform operations, unless otherwise directed by the Contracting Officer, in the National Criticality Experiments Research Center (NCERC) at the Device Assembly Facility located at the NNSS.

1.1.10 Inertial Confinement Fusion

The Contractor shall participate in the inertial confinement fusion program, in coordination with other NNSA laboratories that maintain United States leadership in high energy density physics. This includes achieving ignition and using ignition facilities to gather information relevant to stockpile stewardship. The program of ignition is a national effort that depends on cooperation and collaboration with multiple NNSA contractors and includes major experimental activities at the National Ignition Facility and other NNSA sites. As part of this effort, the contractor will participate as a member of a

national team that supports all aspects of the national program; including target physics, target fabrication, diagnostics, experimental planning, and any other activities necessary to achieve the ignition program goals.

1.2 Defense Nuclear Nonproliferation

The Contractor shall develop and apply the science and technology, and perform appropriate related analytical tasks required to advance capabilities that inform policy and support negotiations of nuclear agreements, detect and monitor non-compliance with treaties, eliminate proliferation-sensitive materials, and limit or prevent the spread of materials, technology, and expertise related to nuclear and radiological weapons and programs, and detect, deter, prevent and respond to proliferation of weapons of mass destruction worldwide.

1.2.1 Global Threat Reduction Programs

The Contractor shall develop and apply the science and technology, perform appropriate related analytical tasks and provide necessary resources required to reduce inventories of weapons-useable nuclear materials and dangerous radiological materials, including: converting U.S. and foreign research reactors to the use of low enriched uranium fuel or other proliferation-resistant technologies; removing and/or consolidating Highly Enriched Uranium and other vulnerable nuclear materials to secure storage locations for disposition and down-blending; and securing, transporting, storing and/or dispositioning nuclear and radiological materials and components.

1.2.2 Office of Research and Development

The Contractor shall develop and apply the science and technology, and perform appropriate related analytical tasks required to develop advanced remote sensing, monitoring and assessment technologies to address the most challenging problems related to detection, location, and analysis of global proliferation of nuclear weapon technology, and the diversion of special nuclear materials. This includes detecting and identifying emanations, effluents, and other distinctive signatures of potential nuclear weapons research and development efforts.

1.2.3 Nuclear Risk Reduction

The Contractor shall develop and apply the science and technology, and perform appropriate related analytical tasks required to eliminate surplus inventories of weapons-useable materials, including materials from dismantled weapons and production reactors and facilities, to support verification of international agreements, and to strengthen foreign and international efforts to respond effectively to nuclear emergencies.

1.2.4 Nonproliferation and International Security

The Contractor shall develop and apply the science and technology, and perform appropriate related analytical tasks required to:

(i) Support the application and strengthening of international nuclear safeguards;

(ii) Support U.S. Government negotiations and policy analysis;
(iii) Strengthen U.S. and foreign partner export control policy and system development;
(iv) Enhance scientists engagement efforts around the world;
(v) Improve workforce transition and scientist engagement efforts around the world;
(vi) Improve regional and international security;
(vii) Permit intelligence monitoring and arms control treaty verification;
(viii) Strengthen global controls on nuclear materials and weapons;
(ix) Protect nuclear materials from theft or diversion;
(x) Assess foreign weapons of mass destruction programs and support interdiction activities; and
(xi) Develop tools and techniques to encourage safeguards and security by design, including development of more 'safeguardable' fuel cycle technologies.

1.2.5 International Material Protection and Cooperation - Securing Nuclear Weapons and Materials

The Contractor shall develop and apply the science and technology, and perform appropriate related analytical tasks required to secure nuclear weapons and materials in weapons states, including both military and civilian facilities, support the blend-down of excess weapons- useable Highly Enriched Uranium to Low Enriched Uranium, deploy radiation detection monitors at strategic border crossings and transit points, and to expand the capacity of other countries to properly secure their nuclear weapons and materials.

1.2.6 International Material Protection and Cooperation - Eliminating Surplus Plutonium and Highly Enriched Uranium

The Contractor shall develop and apply the science and technology, and perform appropriate related analytical tasks required to eliminate surplus plutonium and Highly Enriched Uranium.

1.2.7 Nonproliferation, National Security and Verification Technology

The Contractor shall conduct a nonproliferation, national security, treaty verification technology program, and dismantlement verification program; including the development of methods for detection/verification of underground nuclear testing and of undeclared enrichment and reprocessing activities. The Contractor shall perform R&D for nuclear security, nonproliferation of weapons of mass destruction (nuclear, chemical and biological, and of missile delivery systems), and treaty verification technologies; including application of remote sensing technology to the detection of nuclear explosions and other national security applications. Also perform and assist with the application of security technology to international nuclear materials and weapons protection.

In addition, the Contractor shall support the NNSA in nuclear counterterrorism response in the areas of containment, weapon expertise, weapons surety, environment, health and safety, and other areas requiring specialized training, expertise, planning and response to nuclear weapons.

1.3 Science Programs

1.3.1 Basic Science Programs

The Contractor shall conduct research in the areas of materials sciences, chemistry, and geosciences, providing knowledge essential to defense, energy efficiency, industrial competitiveness, engineering sciences, atomic physics, computational sciences, biological sciences, nano-science, and other areas of national interest, including scientifically tailored materials and mathematics, and advancing the state of science for the benefit of DOE/NNSA.

1.3.2 Biological and Environmental Research

The Contractor shall conduct research in structural biology, genomics, cellular response to low doses of radiation, climate change research, environmental remediation, advanced medical imaging, and other health and environmental sciences.

1.3.3 High Energy and Nuclear Physics

The Contractor shall conduct high energy and nuclear physics research involving experimental and theoretical programs in nuclear and particle physics.

1.3.4 Fusion Energy Sciences

The Contractor shall conduct fusion energy efforts aimed at modest scale experimental, theoretical, and technological studies to advance plasma science, fusion science, and fusion technology.

1.3.5 Computing, Modeling and Simulation Research

The Contractor shall maintain state of the art technologies and capabilities to support: high-performance computing, modeling, and simulation; communications; cyber- security; and information management. The Contractor shall participate in the Accelerated Strategic Computing Initiative, the Advanced Computational Technology Initiative, the Strategic Simulator Initiative, and other associated research on complex and large-scale national problems in computational science.

1.4 Energy Technology

The Contractor shall conduct research and studies to address national energy needs in fundamental areas including integrated chemical and materials processing, energy supply and the environment, and transportation and infrastructure.

1.4.1 High-Temperature Superconductivity

The Contractor shall conduct research into development of practical high-temperature, high-current- density superconductors and form partnerships with U.S. industry to expedite the development of commercially feasible high-temperature superconductor technology.

1.4.2 Radioisotope Power System Program

The Contractor shall sustain the technical capabilities to process and encapsulate the isotope plutonium-238 into fuel forms that will be provided for use in the development and fabrication of radioisotope power systems that are delivered to other agencies for space exploration and national security missions.

1.4.3 Energy Supply

The Contractor shall conduct research that addresses energy supply issues by applying capabilities in the areas of exploration, reservoir modeling, integrated assessments, and environmental transport. The Contractor shall support DOE/NNSA's efforts in the broad areas of energy efficiency, renewable energy, fossil energy, and nuclear energy.

1.4.4 Transportation and Infrastructure

The Contractor shall conduct research, development, and demonstration of fuel cell and hydrogen production, delivery, and storage technologies to accelerate the introduction of hydrogen-powered fuel cell vehicles into the transportation sector.

1.4.5 Transportation and Packaging

The Contractor shall conduct transportation technology development to ensure base technology is available to support NNSA in the design, test, fabrication, and certification of radioactive, energetic and hazardous material packaging for applications that are complementary with the NNSA's mission.

1.4.6 Magnetic Fusion

The Contractor shall maintain a technology base to support the design of components that will perform satisfactorily in fusion plasma environments in support of the DOE and NNSA mission.

1.4.7 Combustion Research

The Contractor shall conduct research and development (R&D) to include combustion diagnostics, combustion chemistry, reacting flows, combustion modeling and high-temperature materials in support of the DOE and NNSA mission.

1.4.8 Nuclear Energy Research

The Contractor shall support reactor development initiatives focused on developing and implementing features and concepts that offer significant improvements in efficiency, maintenance, operability, nuclear reactor and power plant safety, security, reliability, economics, and longer operating life; and shall develop approaches for improving the reactor licensing process.

1.5 Environmental Technologies

The Contractor shall apply scientific and engineering capabilities to facilitate the development of new technologies for timely, cost-effective, and comprehensive solutions for local, regional, and global environmental problems, and environmental resource problems. This includes, but is not limited to, waste management, environmental stewardship, support to the Waste Isolation Pilot Plant (WIPP), and environmental resource problems. Emphasis will be on new approaches to treatment, disposal, storage, and reduced generation of waste. Emphasis will also include the safety, security, reliability and sustainability of environmental resources, technologies, engineered systems, and public policies to produce, deliver and utilize the resources where needed. The Contractor shall apply, with Contracting Officer approval, capabilities to environmental restoration, and facility stabilization problems at the Laboratory, within the NNSA Nuclear Security Enterprise and other locations.

1.5.1 Energy Efficiency and Renewable Energy

The Contractor shall provide research, design and manufacturing capabilities for solar electric technologies (solar thermal and photovoltaic), wind energy, geothermal energy systems, industrial and transportation applications, fossil energy programs, electric power systems, hydrogen power technologies and battery systems for utilities and transportation in support of the DOE and NNSA mission.

1.6 Department of Homeland Security Programs

The Contractor shall make available its personnel, capabilities and facilities to assist the Department of Homeland Security (DHS) in executing its mission pursuant to Public Law 107-296, Section 309, Utilization of Department of Energy National Laboratories and Sites in Support of Homeland Security Activities.

1.7 Strategic Partnership Projects (SPP) (Non-Department of Energy Funded Work)

The Contractor shall conduct Strategic Partnership Projects (SPP) for non-DOE entities and agencies, as approved by the Contracting Officer. All such work shall be consistent with and complementary to mission assigned to the Contractor by NNSA. Full cost recovery and cost transparency shall be maintained for SPP programs consistent with the Economy Act of 1932, Cost Accounting Standards, applicable DOE Orders, and shall be conducted with other applicable laws, regulations, and policies.

1.8 Laboratory-Directed Research and Development (LDRD)

The Contractor shall submit a LDRD Program Plan for approval by the Contracting Officer to conduct a LDRD program that encourages multidisciplinary and multidivisional research on complex scientific and engineering problems and on individual basic and applied research projects to enhance the core capabilities and competencies required to fulfill the Laboratory's missions.

1.9 Industrial Partnerships and Technology Transfer Programs

The Contractor shall submit industrial partnerships and technology transfer programs/agreements to the Contracting Officer for approval. The Contractor shall make

available to private industry the unique capabilities of the Laboratory in order to enhance the industrial competitiveness and national security. Safeguards & Security Technology Program

The Contractor shall support NNSA programs to develop technology and systems for protecting facilities and information, and safeguarding nuclear materials. This will include developing a technology base and systems concept for physical protection and accountability; providing technical support for improving international safeguards; and strengthening physical protection of NNSA facilities and nuclear materials.

2.0 LABORATORY AND SITE OPERATIONS

The Contractor shall manage, operate, protect, maintain and enhance the Laboratory's ability to function as a DOE multi-program laboratory, provide the infrastructure and support activities, support the accomplishment of the Laboratory's missions, and assure the accountability to the NNSA under the results-oriented, performance-based provisions of this Contract.

2.1 Safeguards and Security

The Contractor shall conduct a security program that fosters an institutionalized security conscious culture that performs work securely and assigns unambiguous roles, responsibilities, authorities, and accountability while integrating excellence in safeguards and security into all Laboratory activities. The safeguards and security program includes Integrated Safeguards and Security Management (ISSM); physical security; protection of Government property; classification, declassification and protection of information; cyber security; nuclear materials protection, control and accountability; and, personnel security including access control for Laboratory staff and visitors. The Contractor shall support NNSA and DOE overarching security initiatives including safeguards and security technology deployment efforts.

2.2 Environment, Safety and Health

The Contractor shall conduct an Environment, Safety and Health (ES&H) program, including environmental protection and compliance, and safety and health management that (1) achieves an institutionalized ES&H conscious culture that embraces Conduct of Operations and ensures work is performed safely, (2) assigns unambiguous roles, responsibilities, authorities, develops appropriate work controls and ensures accountability for the performance of work in a manner that ensures protection of workers, the public and the environment, and (3) integrates excellence in ES&H into all Laboratory activities. The Contractor shall implement an environmental management system (waste minimization, pollution prevention, etc.) within the Integrated Safety Management system. The Contractor shall conduct cultural resource compliance and protection programs including monitoring, surveillance, and reporting with respect to all natural and cultural resources; obtaining and maintaining required permits and licenses from regulatory agencies; and, certification and training programs. Through an Integrated Safety Management System, ES&H management processes, formal work control and work performance processes, the Contractor shall ensure the safe performance of all Laboratory work. The Integrated Safety Management System shall be applied to all Contractor, including subcontractors or other entities, activities conducted at the Laboratory.

The safety management program shall be comprehensive in nature covering all work

performed under this Contract. The Contractor shall ensure implementation of a safety management system addressing safety requirements for nuclear and high hazard activities including (1) a robust safety authorization basis process, (2) system engineering and configuration management of structures, systems and components important to safety, (3) quality assurance, (4) stabilization and disposition of nuclear materials, and (5) startup and restart of nuclear facilities.

The Contractor shall also conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) contained in Secretary of Energy's implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support, as directed by the Contracting Officer, preparation of DOE responses to DNFSB issues and recommendations accepted by the Secretary of Energy which affect Contract work. The Contractor shall fully cooperate with the DNFSB and provide access to facilities, information and Contractor personnel. The Contractor shall maintain a document process consistent with the DOE Manual on interfacing with the DNFSB. The Contractor shall ensure that subcontractors adhere to these requirements.

The Contractor shall implement a hazard categorization and analysis process, a startup and restart process, as well as a safety authorization basis process for non- nuclear facilities that includes approval by the Contracting Officer for moderate hazard facilities/operations and high hazard facilities/operations. The Contractor shall ensure implementation of a formal ES&H performance based self-assessment process addressing both ES&H program and line management implementation that is (1) risk based and has the requisite depth, breadth, rigor and defensibility, (2) conducted with the appropriate subject matter expertise, (3) performance and behavior based, and (4) tied to an institutional issues management program that ensures closure of findings and opportunities for improvement.

The Contractor shall ensure implementation of an ES&H performance measurement program that ensures comprehensive gathering of operational data, adequate causal analysis, risk analysis, trending, comparison to metrics, includes leading and lagging indicators, dissemination of operational data, and measures both worker and subcontractor performance. The Contractor shall perform ES&H occurrence/event investigation ensuring that root cause analysis is performed, corrective actions address the systemic problems identified at the Laboratory, and use a Lessons Learned program to implement improvements to the Laboratory operations. The Contractor shall provide oversight of contractual ES&H standards and requirements appropriate to subcontractors and other entities performing work at the Laboratory.

The Contractor shall cooperate with worker health studies conducted by other Federal agencies and contract researchers under NNSA/DOE sponsorship.

2.3 Environmental Management [Modified in Modification P00006]

For all Laboratory sites, the Contractor shall: (1) manage newly generated waste to support Laboratory missions including treatment, storage, and disposal of solid, hazardous, mixed, and radioactive wastes **pursuant to all applicable statutes, regulations and DOE orders**; (2) coordinate and implement waste minimization and pollution prevention initiatives; (3) implement an Environmental Management System under Integrated Safety Management; (4) commission and manage the necessary waste

management facilities and equipment to ensure uninterrupted waste management operations; (5) facilitate the remediation and conveyance of Land Transfer parcels pursuant to applicable law, **which may include performing additional remediation of specific designated parcels to achieve the most appropriate future land use as determined by NNSA**; (6) complete the Annual Site Environmental Report (ASER); and (7) perform all work pursuant to DEAR 970.5223-1, *Integration of Environment, Safety, and Health Into Work Planning and Execution*.

2.4 Financial Management System

The Contractor shall maintain a financial management system that provides sound financial stewardship and public accountability. The overall system shall be suitable to collect, record, and report all financial activities and contain an effective internal control system for all expenditures. Furthermore, the Contractor shall support the DOE/NNSA Planning, Programming, Budgeting and Evaluation (PPBE) process by including a budgeting system for the formulation and execution of all resource requirements. The Contractor's financial systems shall support NNSA's systems and processes.

The Contractor shall maintain a transparent financial cost reporting system, at the task level and as defined by NNSA, to provide detailed and accurate cost reports for cost, scope, and accurate schedule estimating for mission and mission support functions performed under this Contract. The cost reports shall include labor costs, leave/hours not worked, staff augmentation, fringe, pension, legacy materials, services/subcontractors, direct service centers, other expenses, capital, labor category, and full-time equivalent (FTE) resource usage for all direct and indirect costs and utilize cost benefit analyses to determine the appropriate level of support functions and risks. The Contractor shall provide NNSA full transparency into all financial cost reporting systems and shall provide reports, as requested by the Contracting Officer, to allow NNSA visibility into program and cost management. The Contractor shall collaborate with the NNSA complex to identify and collect common productivity and labor cost data needed to seek complex-wide solutions, as requested by the Contracting Officer.

2.5 Work Authorization (WA) System

Specific work requirements under this Contract will typically be established annually and updated as needed by the Contracting Officer in accordance with the applicable DOE Orders and the Section I clause DEAR 970.5211-1, *Work Authorization*.

2.6 Information Technology (IT) and Cyber Security

The Contractor shall support NNSA's efforts to optimize the efficiency of the NSE by consolidating IT infrastructure/services and eliminating redundant systems, to increase efficiency and to improve business processes to better integrate across sites. The Contractor must develop a single, integrated "to-be" vision that utilizes the best available technologies and management practices from both Government and commercial sources to improve and achieve performance excellence, including fiscal efficiency. Desktop and "back-office" computing capabilities shall be compatible with those used by NNSA. "Back-office" functions shall include, but are not limited to, payroll, finance, project management, and human resources. Prior to using any solution, the Contractor shall obtain the Contracting Officer's approval.

In the area of cybersecurity, the Contractor shall implement an approved Risk Management Approach which ensures data confidentiality, integrity, and availability; and technology designs that provide effective network monitoring, limit an intruder's ability to traverse the network and mitigate new vulnerabilities in a timely manner. The Contractor shall develop enhanced information security protection tools for information systems, applications, and networks within both classified and unclassified environments; and ensure compliance with NNSA's defense- in-depth cybersecurity strategy.

All deliverables that involve information technology that use internet protocol (products, services, software, etc.) shall comply with Internet Protocol version 6 (IPv6) standards, the Homeland Security Presidential Directive-12 (HSPD-12), and interoperate with both IPv6 and IPV4 systems and products. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor shall (1) obtain Contracting Officer's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 and HSPD-12 compatibility for all application and product features, and (3) have IPv6 technical support for fielded product management, development and implementation available.

Prior to using any Contractor or parent-owned software and systems where reimbursement is expected, the Contractor shall obtain the Contracting Officer's approval.

2.7 Intelligence/Counterintelligence Program

The Contractor shall conduct an ongoing and comprehensive effort to assess, detect and deter foreign intelligence and terrorist threats to the personnel, facilities, and technologies within the NNSA directed mission.

2.8 Business Operations

The Contractor shall manage and administer a system of internal controls for all business and administrative operations. Management of the Laboratory business and administrative operations shall include (1) integrating common systems of internal controls across the Laboratory and implementing business processes that are risk-based, cross-functional, cost effective, optimize and streamline operations, increase efficiency and enhance productivity; and (2) supporting NNSA in the identification and application of enterprise-wide electronic processes throughout the Nuclear Security Enterprise to streamline business practices.

2.9 Contractor Assurance System (CAS)

The Contractor shall have and utilize a Contractor-designed system to manage performance consistent with Contract requirements, and shall be transparent to the Government. The CAS shall provide the Contractor and Government assurance that: the Contractor's policies and practices are meeting the requirements of the Contract; those policies and practices are being implemented throughout the Laboratory; and continual improvement through self-identification of deficiencies is occurring. The CAS shall be a primary tool used by Contractor management to: measure and improve performance; ensure that mission objectives and Contract requirements are met, to include individual

Work Authorizations; ensure that workers, the public and the environment are protected; and ensure that operations, facilities, and business systems are efficiently and effectively operated and maintained. An effective CAS integrates Contractor management, supports corporate parent governance, and facilitates Government oversight systems. The Contractor is fully accountable for performing its own assessment of these areas. NNSA oversight shall not be relied upon by the Contractor in place of its CAS system, and does not affect the Contractor's accountability for performance. The CAS shall be approved and monitored by the Contractor's Parent Organization or Board of Directors. An effective working CAS will provide the Government the opportunity to reduce transactional oversight.

2.10 Integrated Safety Management, Integrated Safeguards and Security Management, Environmental Management System, and Quality Assurance Systems

The Contractor shall ensure that management systems such as Integrated Safety Management (ISM), Integrated Safeguards and Security Management (ISSM), Environmental Management System (EMS), and Quality Assurance Systems (QAS) are integrated into its operations and culture. Integration of management systems and performance of implementation shall be reflected in the CAS. The Contractor shall emphasize safety culture/safety conscious work environment through integrated management strategies. Positive and negative performance issues shall be routinely reviewed, in the aggregate at all management and organizational levels, to drive continuous improvement. Lessons learned from events shall include extent of condition reviews to reduce the probability of recurrence elsewhere at the site. The Contractor shall continuously assess and improve its QAS to include enhancements to management assessment, issue management, procedure quality/compliance, and effective metrics to monitor performance.

2.11 Environmental Permits and Applications

In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor is responsible for signing environmental permits and applications as "operator" or "co-operator" of the Laboratory.

2.11.1 If bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are

determined by NNSA to be excessive or unreasonable, NNSA will provide the regulatory agency with an acceptable form of financial responsibility.

2.11.2 The Contractor shall notify the Contracting Officer promptly when it receives service from the regulators of Notices of Violation/Notices of Alleged Violation (NOVs/NOAVs), fines, and penalties. Nothing stated above shall affect the Contractor's right to challenge or contest the applicability or validity of such NOVs/NOAVs, fines, and penalties.

2.11.3 In the event of termination or expiration of this Contract, NNSA will require the new Contractor to accept transfer of all environmental permits executed by the previous Contractor.

2.11.4 When providing NNSA with documents that are to be signed or co-signed by NNSA, the Contractor shall accompany such document with a certification statement, signed by a Contractor Key Person for the subject matter, attesting to NNSA that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.

2.12 Environmental Restoration and Waste Management

The Contractor shall conduct compliant environmental restoration activities; characterize soil and groundwater and remediate contamination; provide management of waste necessary to support Laboratory missions including storage, treatment, and disposal of solid, hazardous, mixed, and radioactive wastes; decontaminate and decommission facilities and sites; and coordinate and implement waste minimization and pollution prevention initiatives.

2.13 Facility Operation and Infrastructure

The Contractor shall manage Government-owned and Contractor-operated (GOCO) facilities to further national interests and to perform NNSA statutory missions. The Contractor shall perform overall integrated planning, acquisition, maintenance, operation, management and disposition of GOCO facilities, infrastructure, and real property used by the Laboratory in accordance with applicable terms and conditions of this contract. The Contractor shall provide a Preliminary Real Estate Plan (PREP) for all proposed real property actions for approval by NNSA. These facilities, infrastructure, and real property may also be made available, upon appropriate agreements, to private and public sector entities including universities, industry, and local, state, and other government agencies. The Contractor shall maintain sufficient facilities and plan new facilities to support the Stockpile Life Extension Program design, development, qualification, and certification. The Contractor shall ensure the allocation of Government-owned facilities include appropriate office space for the NNSA Field Office and other NNSA Programs as requested by the Contracting Officer.

The Contractor shall use a performance-based approach to real property life-cycle asset management to perform overall integrated planning, acquisition, upgrades, and

management of Government-owned, leased or controlled facilities and real property accountable to the Laboratory. The Contractor shall employ facilities management practices that are best-in-class and integrated with mission assignments and business operations. The Contractor's maintenance management program shall be based on best practices to maintain Government property in a manner which: (1) promotes and continuously improves operational safety, environmental protection and compliance, property preservation and cost effectiveness, (2) ensures continuity and reliability of operations, fulfillment of program requirements and protection of life and property from potential hazards, and (3) ensures the condition of all assets will continuously improve over the period of performance.

2.14 Construction

The Contractor shall ensure the construction of facilities is safe, secure, reliable and cost effective. In doing so, the Contractor shall:

(i) Perform design and construction activities for all projects as assigned;
(ii) Document project management requirements in accordance with DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets,* or its successor;
(iii) Cooperate, collaborate, and interface with other NNSA Contractors to maximize efficiencies;
(iv) Perform initial project development (for all projects regardless of dollar value), project management, design, and construction management activities in accordance with required DOE Orders; and
(v) Maintain project baselines, comply with required reporting, develop Documented Safety Analyses, define quality requirements, ensure National Environmental Policy Act compliance, provide quarterly reports to the NNSA for assigned projects, support external reviews, and meet other requirements as defined in the Contract and as directed by the Contracting Officer.

The Contractor shall effectively use an Earned-Value/resource loaded Project Management System across the Laboratory to deliver projects on schedule, within budget, and to meet mission performance. The Contractor shall provide design and risk analysis, value engineering, configuration management, conceptual designs, preliminary designs, material testing, and surveying in support of engineering designs (Title I); final designs and construction drawings (Title II); and as-built drawings pursuant to construction inspections, surveying, and material testing (Title III) services for activities supporting NNSA and its programmatic customers. The Contractor shall provide the skills necessary to accomplish this work to the safety and quality levels required for all facilities up to and including nuclear facilities, as applicable, while meeting demanding customer time constraints and milestones.

2.15 Training

The Contractor shall maintain training and educational services including general training activities, involving individual employee development, educational and professional advancement, required technical training, environment, safety and health training, and safeguard security training, and contract compliance training.

All Laboratory training and qualification programs shall emphasize the environment, safety and health (ES&H), and safeguards and security aspects of job and position responsibilities. The Contractor's training and qualification program shall be an element of the laboratory integrated safety management process. The Contractor shall provide other training programs and opportunities as approved by the Contracting Officer. The Contractor shall ensure the continuing involvement by senior laboratory line management in directing and evaluating the training and qualification program.

2.16 Purchasing Management

The Contractor shall have an NNSA-approved purchasing system to provide required purchasing support and subcontract administration.

2.17 Personal Property Management

The Contractor shall have and maintain an NNSA-approved personal property management system for acquisition, accountability, utilization, and disposal of Government personal property. The Contractor shall manage Government personal property in accordance with applicable regulations, directives, terms and conditions of this contract. The Contractors property management plan, manual, procedures and processes shall be reviewed by NNSA to ensure compliance with applicable requirements. The contractor shall not incorporate any industry leading practices or voluntary consensus standards that conflict with applicable requirements.

2.18 Emergency Management

The Contractor shall conduct an effective emergency management program that includes the following, but is not limited to:

(i) Emergency preparedness plans and procedures;
(ii) An occurrence notification and reporting system;
(iii) An effective "lessons learned" capture and dissemination process;
(iv) Operation of an Emergency Operations Center; and
(v) Emergency response capabilities for local, regional, and national missions to include a Radiological Assistance Program, an Accident Response Group, and a Joint Technical Operations Team in the areas of nuclear weapons expertise, nuclear weapon surety, environment, safety and health, waste management, transportation and other areas requiring specialized planning, training, and responses to nuclear weapon accidents or incidents.

2.19 Other Administrative Services

The Contractor shall perform the following, but is not limited to:

(i) Operate communications systems;
(ii) Operate transportation and traffic management services;
(iii) Maintain a list of all deliverables required to be submitted to NNSA;
(iv) Manage and operate a National Archives and Records Administration compliant records management system;
(v) Operate a system of records for individuals including those related to personnel radiation exposure information, medical, safety and health; and
(vi) Provide logistics support to the NNSA when approved by the Contracting Officer.

The Contractor shall maintain the inter-site and intra-site classified and unclassified information system for technical programs, organizational, business and operations functions and for activities including general purpose programming, data collection, data processing, report generation, software, electronic and telephone communications. The Contractor shall provide computer resource capacity and capability sufficient to support (1) Laboratory-wide information management requirements and (2) Laboratory wide classified computing infrastructure. The Contractor shall also maintain a records management program. The Contractor shall, with Contracting Officer approval, standardize non-scientific software and hardware programs/platforms within the Laboratory for generating and storing electronic information.

2.20 User Facilities

The Contractor shall manage all Laboratory User Facilities. User Facilities are a unique set of scientific research capabilities and resources whose primary function is to satisfy DOE/NNSA programmatic needs, while being accessible to outside users within the capabilities and approved operational and safety envelope. With approval of the Contracting Officer, the Contractor shall make available for use by the private sector the Laboratory's research facilities that are designated by NNSA as Technology Deployment Centers or User Facilities, which may consist of physical facilities, equipment, instrumentation, scientific expertise, and necessary operational personnel. These facilities are available to U.S. industry, universities, academia, other laboratories, state and local governments, and the scientific community in general.

2.21 Operating and Managing Nuclear Facilities

The Contractor shall have a safety management system that addresses nuclear safety requirements. The system shall also:

(i) Achieve an institutionalized nuclear safety conscious work environment that embraces Conduct of Operations and allows work to be performed safely;

(ii) Assign unambiguous roles, responsibilities, authorities, developing appropriate work controls and ensuring accountability for the performance of work in a manner that ensures protection of workers, the public, and the environment;
(iii) Integrate excellence in nuclear safety into all appropriate Laboratory activities;
(iv) Use a robust safety authorization basis process;
(v) Use system engineering and configuration management of structures, systems, and components important to safety;
(vi) Assure quality;
(vii) Stabilize and disposition nuclear materials; and
(viii) Startup and restart nuclear facilities.

2.22 Contractor Services Provided to DOE Environmental Management Contractor and Contractor Acquisition of Services from EM Contractor.

Contractor may provide certain limited direct funded services to the Department of Energy (DOE) Environmental Management Contractor (EMC). The DOE EMC at Los Alamos National Laboratory is Newport News Nuclear BWXT-Los Alamos, LLC (N3B) hereinafter referred to as the Federal Prime Contractor. Services will be performed in accordance with each Contractor's applicable DOE prime contract, policies, procedures, and quality assurance programs.
The Parties agree to the following regarding Contractor's entitlement to cost for the provision of shared services to N3B in support of their Environmental Management Contact (DOE Contract# 8930331 8CEM000007). Contractor reserves the right to claim entitlement to fee associated with this change in the character of work described in the Statement of Work of Contract No. Contract No. 89233218CNA000001 and may file a claim for equitable adjustment under DEAR 970.5243-1 CHANGES (DEC 2000). Such claim for fee is not limited by this Modification, enabling the Contractor to claim a fee that is not duplicative of the CLIN 002 “Fixed Fee” and “Award Fee” contained elsewhere within this Contract.
All services the Contractor is authorized to provide will be as described in the resultant Service Agreement/Work Authorizations (SAWAs). The Contractor may make minor and administrative changes to the SAWAs without further modifications to this Prime Contract. The SAWAs consist of the following areas:
SAWA M&O-001 - Emergency Management Services
SAWA M&O-002 - Security and Safeguard Services
SAWA M&O-003 - Environmental Services
SAWA M&O-004 - Radiation Protection Support Services
SAWA M&O-005 - Utility, Road, Utility, Road, Transportation, and Planning Services
SAWA M&O-006 - Facilities Management Support Services
SAWA M&O-007 - Communications, Information Technology Infrastructure, Training, and Historical Records Support Services
SAWA M&O-008 - Waste Support Services
SAWA M&O-009 - Access Control and Coordinated Data Support Services
SAWA M&O-010 - Short Term Services

2.22.1 Site Services the Contractor Obtains from N3B

The Contractor is authorized to obtain the services under the following Service Agreement/Work Authorizations:
SAWA LLCC-001 - Support Services from N3B
SAWA LLCC-002 - Access Control and Coordinated Data Support from N3B

2.22.2 Changes to Service Agreement/Work Authorizations

All changes to a Service Agreement/Work Authorization must be authorized and signed by the Contractor, N3B, NNSA Los Alamos Field Office Contracting Officer, and DOE/EM Field Office Contracts Officer, before the Contractor may perform work associated with the change. The Contractor is not required to agree or perform any change inconsistent with DOE/NNSA direction or its obligations under its Prime Contract. The Contractor will provide timely notification to N3B of its inability to perform a requested change due to inconsistency with its Prime Contract obligations or DOE/NNSA direction.

3.0 LABORATORY MANAGEMENT

3.1 Accountability

The Contractor is responsible for the quality of its products and services. The Contractor is also responsible for assessing its operations, programs, projects and business systems, identifying deficiencies and implementing needed improvements. Where NNSA oversight has evaluated the Contractor's performance in meeting its obligations under this Contract, the Contractor is nonetheless accountable for performance. The Contractor is also responsible for improving and sustaining healthy communications with DOE/NNSA Senior Leadership, including the Los Alamos Field Office (LFO) on issues and decisions, and demonstrating better partnering, particularly regarding stakeholder discussions and messaging.

3.2 Enterprise Success

The Contractor shall actively identity and participate with NNSA, and other NNSA Contractors, to evaluate, plan, develop, and implement strategic enterprise-wide initiatives that optimize mission and business operations across the NNSA. The goal of these initiatives is to increase the efficiency and cost effectiveness from a business and mission perspective, to include:

- Improved partnering collaborations with the National Security Laboratories to integrate more effectively and efficiently;
- Improved cost estimation practices for all Contractor work;
- Streamlined business operations and reduced operational costs enterprise-wide;
- Implementation of best practices enterprise-wide for efficient, safe, secure high-paced parallel nuclear operations;
- Improved risk-management practices, including risk-informed, mission supportive, cost-efficient, safety basis processes;
- More consistent work practices and operational processes;
- Better pricing, better products, more timely delivery;

- Reduced administrative costs and lead times for both the Contractor and the DOE/NNSA;
- Greater standardization and interchangeability of processes and priorities across the NSE; and
- Increased awards to small business entities.

NNSA expects these and other initiatives to result in a shift to an enterprise focus, based on the Contractor who possesses the most expertise and experience level within the NSE.

The Contractor shall cooperate with NNSA and NSE Contractors in identifying potential cross-NSE benefits to be derived from implementing common practices and goals across the NSE in the areas of mission workload and enterprise functional support.

The Contractor and NNSA shall establish performance incentives with performance measures and targets for strategic efforts that result in enterprise performance improvement overall for the Government.

33 Parent Organization(s)

(i) The Contractor is encouraged to identify opportunities to use parent corporate systems and corporate home and branch office personnel for Laboratory operations for the purposes of monitoring Laboratory performance, assisting the Laboratory in meeting its mission and operational requirements, streamlining the Contractor's administrative and business systems, improving performance, and adapting private sector expertise to Laboratory issues.

(ii) The term "systems" means any discrete process, procedure, program, document, or instrument where cost of use under this Contract can be identified and quantified to the parent corporation.

(iii) The Contractor, prior to using any parent corporate systems or home and branch office personnel, where reimbursement is expected, shall submit a plan to the Contracting Officer for review and approval. In reviewing the plan, the Contracting Officer will consider the extent to which each separate element of the plan is: more efficient in meeting mission and operational requirements: represents an overall cost savings to the Government; brings value-added expertise; assists the monitoring performance; and whether data is readily transferable to a successor Contractor.

(iv) The parent organization(s) shall establish an oversight entity, independent and autonomous from Laboratory management that shall ensure successful contract performance and that shall identify opportunities for the parent organization(s) to engage with Laboratory management to address Laboratory performance issues. The parent organization shall discuss

oversight mechanism results and initiatives with senior NNSA leadership each quarter.

(v) The parent organization(s) shall also establish an audit entity (e.g., audit committee), independent and autonomous from Laboratory management, that shall perform financial reporting, risk management, internal control, ethics, compliance with laws and regulations and the laboratory code of conduct, and the internal audit and external audit and review processes. The audit entity shall be established consistent with best practices identified by the Institute of Internal Auditors (IIA) and The Sarbanes Oxley Act of 2002, Section 301.

(vi) The audit entity shall provide the Contracting Officer with annual reports of its activities. On an annual basis the audit entity shall brief the Contracting Officer, or other delegate, as to its perspective on the:

(1) Health of the Contractor's control environment;
(2) Effectiveness of corrective action plans resulting from audit and review findings;
(3) Significant financial and operational risk facing the organization; and
(4) Adequacy of the Contractor's internal audit activity and staffing.

3.4 Education Programs

The Contractor shall conduct a program of support for science, mathematics and engineering education at both the precollege and university levels. Subject to applicable contract terms, policies, laws, and regulations, this support may include: technical assistance; loans of scientific equipment; programs of "hands on" research experience for students, teachers and faculty members; a program of encouraging volunteerism and community service; and cooperative programs.

3.5 Privacy Act System of Records

The Contractor shall design, develop, and maintain a system of records on individuals to accomplish an agency function in accordance with Section I clause FAR 52.224-2, *Privacy Act*. The applicable systems of records are available in the Federal Register. A list of applicable records will be finalized after Contract award.

3.6 Communications and Public Affairs

The Contractor shall conduct communications, information, and public affairs programs including internal and external communications; community involvement and outreach; interactions with the media, businesses, and the scientific and technical community; and liaison with local, state, Native American, and federal agencies. The Contractor will operate within an NNSA-approved Public Affairs Program plan.

3.7 Self-Assessment Program

The Contractor shall conduct a self-assessment program that will be used, in part, to assess: (1) the overall performance in Laboratory operations and administration, (2) delivery of scheduled nuclear weapons components and capabilities, and (3) science and technology programs performance. The Contractor's self-assessment program shall be a key element of the Contractor's Assurance System and supports the self-assessment report required by the Contract Section H clause entitled "Performance Based Management."

3.8 Audits and Assessments

The Contractor shall conduct an audit program which provides capabilities for both internal and subcontractor audits and supports external audits, reviews, and appraisals.

3.9 Community Support

The Contractor shall, with Contracting Officer approval, provide community support to facilitate Laboratory operations, including coordination with the County of Los Alamos. The Contractor shall perform a periodic needs assessment to determine what support to the community is necessary to facilitate Laboratory operations.

3.10 Freedom of Information Act (FOIA)

The Contractor shall promptly review FOIA requests and provide timely and quality responses consistent and compliant with federal law and regulations (including DOE regulations at 10 CFR 1004) and the NNSA FOIA program as implemented by the NNSA FOIA Officer, or as may otherwise be directed by the Contracting Officer.

3.11 National Environmental Policy Act (NEPA)

The Contractor shall assist in the NNSA's NEPA implementation, in a manner consistent and compliant with federal law and regulations (including DOE regulations at 10 CFR 1021) and the NNSA NEPA program as implemented by the NNSA LFO NEPA Compliance Officer (NCO), or as may otherwise be directed by the Contracting Officer. The Contractor may not undertake on DOE's behalf an action that is subject to NEPA until the NCO has notified the Contractor that DOE/NNSA has satisfied applicable NEPA requirements.

3.12 Legal Affairs

The Contractor shall maintain a legal program to support Contract activities related to the Laboratory's management of programs, projects and processes necessary to accomplish the mission assigned by NNSA, including without limitation, those related to: patents, licenses, and other intellectual property rights; subcontracts and procurement issues; technology transfer; records management; environmental compliance and protection;

safety and health; security; operations; employment and labor relations; and litigation and claims and proactive management of the Laboratory's legal risk.

3.13 Other Government Agencies Support

The Contractor shall support NNSA requests in interfacing with various Government agencies, to include, but not limited to, federal, state, local and tribal regulatory agencies. The Contractor shall ensure its employees cooperate fully and promptly with all Government agencies. The Contractor's personnel policies shall provide for appropriate discipline, as determined by the Contractor, for any employee who does not fully and promptly cooperate or who impedes, or attempts to impede, a government audit, investigation, inspection, or other type of review or inquiry.

3.14 Other Administrative Services

The Contractor shall provide other administrative services to include operating communications systems; operating transportation and traffic management services, managing and operating a records management system; and operating a systems of records for individuals including those related to personnel radiation exposure information, medical, safety and health; logistics support to the NNSA Los Alamos Field Office, when approved by the Contracting Officer; and, support other NNSA Nuclear Security Enterprise initiatives, when approved by the Contracting Officer.

3.15 Reports and Other Deliverables

The Contractor shall prepare, submit, disseminate, or otherwise publish financial, schedule, scientific, and technical performance plans and reports; and other information and deliverables consistent with the needs of the various programmatic sponsors and other customers or as required elsewhere in this Contract or as specifically required by the Contracting Officer.

CHAPTER III. Human Resources

1.0 DEFINITIONS

Incumbent Employees: Los Alamos National Security, LLC employees in good standing under Contract DE-AC52-06NA25396 as of the day preceding the first day of the Base Period of the Contract..

Non-Incumbent Employees: new hires, i.e., employees other than Incumbent Employees, who are hired by the Contractor on or after the first day of the Base Period of the Contract.

2.0 WORKFORCE TRANSITION

The following are requirements the Contractor shall carry out during the Transition Period, prior to the beginning of the Base Period. After the effective date of the Contract, the Contractor may propose alternate due dates for the deliverables described in 2.1 Staffing Plan, 2.2 Pay & Benefits, and 2.3 Incumbent Employees Right of First Refusal, and 2.4 Personnel Appendix (*Section J Appendix C*). The Contracting Officer may approve such changes provided the deliverable dates make transition more effective and efficient for both parties.

2.1 Staffing Plan

No later than 30 calendar days after the effective date of the Contract the Contractor shall provide NNSA its plan for achieving the right workforce size and skills mix and an estimate of the number of employees at each site to whom it expects to make employment offers. This staffing plan shall highlight essential skills and personnel that must be retained, by position, to ensure continuity of essential mission, safety, security, and safeguards programs.

2.2 Pay & Benefits

Consistent with the requirements identified in 3.0 COMPENSATION and 4.0 BENEFITS below, the Contractor shall develop and submit for NNSA approval a pay and benefits program to cover non-bargaining unit Incumbent Employees and non-bargaining unit Non-Incumbent Employees. It is expected that the benefits program will be developed using best practice and market-based design concepts to achieve maximum efficiency and lower cost.

The Contractor will be required to become a sponsor of the existing retirement plans, and other Post Retirement Benefit Plans (PRB), as applicable, with responsibility for management and administration of the plans, including maintaining the tax-qualified status of those plans, if applicable. Incumbent Employees shall remain in their existing defined benefit (DB) pension plan (or comparable successor plan if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law. The Contractor shall carry over the length of service credit and leave balances for Incumbent Employees accrued as of the day preceding the first day of the Base Period.

2.2.1 No later than 45 calendar days after the effective date of the Contract, the Contractor shall submit for NNSA approval all proposed benefit plans including but not limited to retirement plans, disability, healthcare, and paid time off. The submission shall include all plan documents that describe benefits provided to employees including existing plans to which the Contractor becomes a sponsor at the beginning of the Base Period (with proposed changes to existing plans) as well as newly proposed plans.

2.2.2 The submission shall also include an *"Employee Benefits Value Study"* comparing the proposed benefits for non-bargaining unit Incumbent Employees and non-bargaining unit Non-Incumbent Employees using the Consolidated Employee Benefit Value Study methodologies and comparator companies, to be provided by the Contracting Officer, described in 4.1.5 below. The Contractor shall submit for Contracting Officer approval a benefits program for non-bargaining unit Non-Incumbent Employees and non-bargaining unit Incumbent Employees that does not exceed the net benefit value of the comparator group by more than five percent. Alternatively, the Contractor may submit to the Contracting Officer, for Contracting Officer approval, a strategy to realign employee benefits to within the 105 ceiling in a specified period of time.

2.2.3 No later than 90 calendar days after the effective date of the Contract, the Contractor shall submit a plan with a timeline for implementing a Compensation system that meets the criteria defined in 3.0 COMPENSATION below.

2.3 Incumbent Employees Right of First Refusal

The Contractor shall use the Transition Period to make hiring decisions. The Contractor shall give a right of first refusal of employment for every position identified by the Contractor as necessary for completing the requirements of the Contract (other than positions occupied by Key Personnel and managers who directly reported to them) under this Contract to Incumbent Employees as defined in **1.0 DEFINITIONS** who meet the qualifications for a particular position. The Contractor shall provide a written offer of employment that identifies the individual's pay and a summary of the benefits package that will be available to the individual. Incumbent Employees offered the same position shall be provided their same base salary/pay rate in existence at the time the offer is made. Incumbent Employees offered a different position than the position they are performing at the time the offer is made shall be provided pay commensurate with the offered position. Such offers shall be provided to employees as soon as possible, however, no later than 90 calendar days after the effective date of the Contract.

2.4 Personnel Appendix

The Personnel Appendix (*Section J Appendix C*) sets forth certain Contractor Human Resources Management policies and related expenses that have cost implications under this Contract and are not covered explicitly in the FAR or DEAR cost principles. No

later than 120 days after the effective date of the Contract, the Contractor shall submit a plan to address the open items in the Personnel Appendix Section J- Appendix C, unless the Personnel Appendix sets forth an alternative submission date. The Contractor shall obtain Contracting Officer approval of Personnel Appendix proposals before implementation.

3.0 COMPENSATION

The Contractor shall establish an integrated market-based pay and benefit program to recruit and retain a highly skilled, motivated, and experienced workforce capable of carrying out the technical and other requirements set forth elsewhere in the SOW.

3.1 Total Compensation System

Consistent with the requirement in 2.2, Pay and Benefits, the Contractor shall establish a market-based pay and benefit program. The objective is to provide a level of total compensation, which, within available funds, attracts, motivates and retains a highly competent workforce and maintains a competitive position in the applicable labor markets.

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6, *Compensation for Personal Services*. In addition, the Contractor's total compensation system shall include the following components:

(i) Philosophy and strategy for all pay delivery programs;
(ii) System for establishing a job worth hierarchy;
(iii) Method for relating internal job worth hierarchy to external market;
(iv) System that includes a documented method and process for evaluating individual job performance and that bases individual and/or group compensation decisions on individual performance and Contractor performance as appropriate. In addition, the system must show the link to the annual evaluation of Contractor performance for individual compensation actions if appropriate;
(v) Method for planning and monitoring the expenditure of funds;
(vi) System for internal controls and self-assessment;
(vii) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be pro-rated according to the amount of time the employee spent performing work under this Contract;
(viii) Means for communicating the pay programs to employees; and
(ix) Methodology for ensuring compliance with applicable wage payment laws and regulations (e.g., FLSA).

Any changes to the Total Compensation System shall be submitted to the Contracting Officer 60 days prior to implementation. Changes that increase current or future costs shall be approved by the Contracting Officer prior to implementation.

3.2 Cash Compensation

The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

3.2.1 An Annual Compensation Increase Plan (CIP). The contractor shall submit the CIP to the Contracting Officer by October 1 annually and shall include the following components and data:

(i) Comparison of average pay to market average pay;

(ii) Information regarding surveys used for comparison;

(iii) Aging factors used for escalating survey data and supporting information;

(iv) Projection of escalation in the market and supporting information;

(v) Information to support proposed structure adjustments, if any;

(vi) Analysis to support special adjustments;

(vii) Comparison of average pay to market average total cash compensation (TCC), if applicable;

(viii) Funding requests and supporting analysis for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement;

A. The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year.

B. All pay actions covered under the CIP are fully charged at the beginning of the CIP year, without regard to the time of CIP year in which the employee actually receives the pay or without regard to the fact that an employee may terminate before realizing the entire allocated CIP amount.

C. Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer.

D. The Contracting Officer may unilaterally adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or a significant ramp-up).

E. The Contractor is authorized to make minor shifts (up to 10%) in funds between payroll groups without prior Contracting Officer approval. The Contractor shall notify the Contracting Officer at the time funds are shifted.

(ix) A discussion of the impact of the proposed CIP on the site budget;

(x) Discussion of relevant factors other than market average pay (e.g., turnover and offer-to-acceptance statistics, collective bargaining provisions, geographic considerations, total compensation);

(xi) Contracting Officer approval is not required for the CIP under the following circumstances: 1) the Contractor's CIP request is equal to or less than the professionally recognized salary survey's salary increase projection (e.g. World at Work projection) and implementation of the survey's salary increase projection does not result in an overall over market salary position upon implementation of the CIP; and 2) NNSA does not notify the Contractor of any questions or concerns that may negate cost allowability. NNSA will provide notification whether NNSA has questions or concerns with the CIP within the two weeks following the last NNSA Contractor's CIP submission and presentation (the exact notification date will be identified in the annual NNSA CIP guidance.

(xii) Contracting Officer approval is required for the CIP under the following circumstances: (1) the Contractor's CIP request exceeds the professionally recognized salary budget survey's salary increase projection (e.g. World at Work projection provided in the annual NNSA CIP guidance); (2) the Contractor's position to market warrants less than the survey's salary increase projection such that application of the CIP at the full increase projection would result in the overall position to be above market; and/or (3) the contractor's overall position to market is already above market such that application of the CIP at the full increase projection would result in an even greater above market position; and

(xiii) Contracting Officer approval is not required for any salary structure adjustments that do not exceed the professionally recognized salary budget survey's mean structure adjustments projected for the CIP year (e.g. World at Work projection provided in the annual NNSA CIP guidance).

3.2.2 When any Key Personnel Person is replaced, the compensation for the replacement shall be submitted for approval by the Contracting Officer. The top contractor official (i.e., Laboratory Director or equivalent) salary actions including merit pay increases shall be

submitted annually to the Contracting Officer for approval. The top contractor official's approved reimbursed base salary will serve as the maximum allowable salary reimbursement for any individual performing work under the Contract. With these proposed compensation actions, the Contractor shall submit supporting justification related to internal and external equity, individual performance and the Application for Contractor Compensation Approval Form (DOE 3220.5). This documentation shall be provided to the Contracting Officer at least 30 days before the proposed effective date of the action.

3.2.3 If the Contractor proposes to establish or modify a Non-base Incentive Compensation Plan, documentation shall be provided to the Contracting Officer, for approval, no later than 60 days prior to proposed implementation. The dollar amount authorized to fund the Incentive Compensation Plan shall not exceed 2.0% of the total annual salary base as of the end of the previous plan year. Such proposal must contain:

(i) A description of the design of the Incentive Compensation Plan, including the funding methodology to be used, the total percentage of annual salary base, the eligible positions, the performance period, and how pay pursuant to this plan will be linked to Contract performance goals;

(ii) A description of the specific pass-over rate, i.e., percent of participants who will not receive an incentive;

(iii) A description of how the plan includes pay at risk; and

(iv) Any other information the Contracting Officer requests to assist understanding of the Incentive Compensation Plan.

3.2.4 The Contractor shall submit a severance plan within 60 days of the effective date of the Base Period, which must include the notification period, pay-in-lieu of notice policy, and the severance schedule. Supporting documentation must include information regarding standards from nationally recognized sources and or comparator firms (including corporate parents).

Severance Pay will not be an allowable cost under this Contract if the recipient employee:

(i) Voluntarily separates or resigns from employment, except in the event the Contractor conducts an NNSA approved voluntary separation program;

(ii) Is offered employment with a successor/replacement Contractor;

(iii) Is offered employment with the Contractor at a different

Contractor facility or with a subsidiary, parent or affiliate of the Contractor;

(iv) Is discharged for cause; or

(v) Is currently in a Key Personnel position.

Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

3.3 Reports and Information: Compensation

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

(i) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure, showing actual against approved amounts, no later than 30 days after CIP plan year expenditures;

(ii) Other compensation reports and/or information as requested by the Contracting Officer.

4.0 BENEFITS

4.1 Establishment of New Benefit Plans and/or Changes to Existing Benefit Plans

4.1.1 To the extent the Contractor seeks to establish new benefit plans or change existing benefit plans, plan design, or funding methodology the Contractor shall provide justification to the Contracting Officer. Proposed changes must also include cost impact, and the basis of determining cost. The Contractor must obtain approval from the Contracting Officer prior to implementation of a new benefit plan and prior to making changes to existing benefit plans that increase cost or which are contrary to written Departmental policy. The Contractor shall provide 60 day advance notification to the CO of changes to benefit plans that do not increase costs or long-term liabilities.

4.1.2 Cost reimbursement for retirement plans and other benefit programs sponsored by the Contractor for non-bargaining employees will be based on conformance with the "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" requirements as described in 4.2.5.1 and 4.2.5.2 below.

4.1.3 If the Contractor seeks to terminate any benefit plan during the term of the Contract, the Contractor must obtain Contracting Officer approval for such termination. In addition, a Contractor proposal to terminate a

pension plan must be provided to the Contracting Officer at least 60 days prior to the scheduled date of plan termination.

4.1.4 Service Credit for cost reimbursement for employee benefits to include PRB eligibility will be determined in accordance with NNSA Supplemental Directive NA SD O 350.1, *Management and Operating Contractor Service Credit Recognition*.

4.1.5 Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall participate in and/or submit the studies required in paragraphs 4.1.5.1 and 4.1.5.2 below. The studies shall be used by the Contractor in calculating the cost of the benefits under existing benefit plans. In addition, the Contractor shall submit updated values to the Contracting Officer for approval prior to the adoption of any change that will increase costs to a pension or other benefit plan.

4.1.5.1 The Consolidated Employee Benefits Value Study for non-bargaining unit employees, shall be completed every two years and submitted to the Contracting Officer no later than July 31 of the applicable year. An Employee Benefits Value Study **(Ben Val)** is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to employees measured against the RV of benefit programs offered by comparator companies. The Contractor shall use the comparator companies previously used in the last Consolidated Benefit Value Study. If any of the comparator companies no longer participate, the Contractor shall recommend replacement companies for approval by the Contracting Officer. The Contractor shall include major non-statutory benefit plans offered by the Contractor, including qualified defined benefit (DB) and defined contribution (DC) retirement plans; capital accumulation plans; and death, disability, health, and paid time off welfare benefit programs in the Value Study. Any M&O Contractor defined benefit pension plans, closed to new entrants, do not have to be included in the Ben Val measurement. To the extent that the value studies do not address postretirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the postretirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources.

If applicable, a Ben Val for bargaining unit employees shall be submitted to the Contracting Officer no later than 60 days before the commencement of bargaining. The Ben Val for bargaining unit employees must include at least 15 comparator companies approved by the Contracting Officer. The Ben Val must include major non-statutory benefit plans offered by the Contractor, including qualified DB & DC retirement plans; capital accumulation plans; and death, disability, health, and paid time off welfare benefit programs. Any M&O Contractor defined benefit pension plans, closed to new entrants, do not have to be included in the Ben Val measurement. To the extent that the Ben Val does not address post-retirement benefits other than pensions,

the Contractor shall provide a separate cost and plan design data comparison for the post- retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources.

4.1.5.2 With respect to the Ben Val that must be submitted every two years, per 4.1.5.1 above, when the average net benefit value for non-bargaining employees (including different tiers of benefits or groups of employees) exceeds the comparator group average by more than five percent, the Contractor is required to provide, for Contracting Officer approval, a Corrective Action Plan describing the specific actions they plan to take to get to 105% within a specified period of time.

4.1.5.3 An Employee Benefits Cost StudyComparison (Cost Study) for non-bargaining and bargaining unit employees if applicable, shall be completed annually and submitted to the Contracting Officer no later than July 31. The Cost Study must use a professionally recognized measure approved by the Contracting Officer that analyzes the Contractor's employee benefits cost for employees on a per capita basis per full time equivalent employee and compares it with appropriate comparator data.

4.1.5.4 When the average of the Contractor's Cost Study total benefit per capita cost for the non-bargaining employees exceeds the comparator group's total benefit per capita cost by more than five percent, the Contractor shall submit an analysis to determine the particular benefits that have driven the per capita costs in excess of 105% of the comparator group's benchmark. Based on this analysis, the Contracting Officer will determine whether a corrective action plan is necessary and the specified period of time

4.2 Reports and Information: Benefits

4.2.1 The Contractor shall provide to the Contracting Officer:

- All data requested to be entered into DOE's iBenefits management system (or any successor database) including but not limited to the Compensation and Benefits Report.

4.3 Workers' Compensation

4.3.1 The Contractor, unless workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new workers' compensation policies and all initial proposals for self-insurance (Contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).

4.3.2 Workers' compensation loss income benefit payments when supplemented by other programs (such as salary continuation, short term disability) are to be administered so that the total benefit payments from all sources shall not exceed 100% of employee's net pay.

4.4 Retirement Plans and Other Post Retirement Benefit Plans

For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established by the Contractor and any DB or DC plans for which the Contractor assumes sponsorship upon the start of the Base Period, shall be maintained consistent with the requirements of the Internal Revenue Code (IRC), Employee Retirement Income Security Act of 1974 as amended (ERISA) and any other applicable laws.

4.4.1 Any DB or DC plan maintained by the Contractor, for which NNSA reimburses costs, shall be maintained as a separate plan distinct from any other plan which provides credit for service not performed under this Contract. Each applicable Contractorplan shall be subjected to a limited-scope audit annually that satisfies the requirements of Employee Retirement Income Security Act (ERISA) section 103, except that every third year the Contractor shall conduct a full-scope audit satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor shall submit the audit results to the Contracting Officer within 30 days from the completion of the audit. In years in which a limited scope audit is conducted, the Contractor shall provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

4.4.2 The Contractor will be reimbursed for DB pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum required contribution under ERISA, as amended. If an additional DB pension contribution over and above the minimum required contribution would have the effect of avoiding benefit restrictions to DB plan participants, the Contractor shall notify the Contracting Officer at least 60 days prior to the date the payment would be due. Reimbursement above the annual ERISA required minimum contribution will require prior approval of the Contracting Officer. The Contracting Officer will take into consideration all pre-funding balances and funding standard carryover balances when evaluating whether to approve reimbursement above the minimum required contribution. The timing and amount of contributions to the plan will be made to satisfy the Section 430 of the Internal Revenue Code and Section 302 of ERISA and avoiding any penalties associated with contributions made after a required installment date.

4.4.3 The Contractor shall obtain the Contracting Officer's advance written approval for any proposed changes to DB and/or DC plans that are not required by law and that may increase costs and/or liabilities. In addition, the Contractor shall obtain the Contracting Officer's advance written approval for

any proposed changes to the DB plan that are contrary to written Departmental policy. The Contractor shall submit the proposal at least 60 days prior to the proposed effective date of the change(s). In addition, any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) shall be submitted to the Contracting Officer for prior approval with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, or cost per capita, if applicable. The analysis should also describe the potential impact on the plan's qualified status at present and the potential impact of the special programs on the qualified status through the duration of the Contract.

4.4.3.1 For proposed changes to DB and DC plans that are not mandated by law and which increase plan costs and/or liabilities, the Contractor shall provide the following to the Contracting Officer:

(i) A clean copy of the current plan document (as conformed to show all prior plan amendments), with the proposed changes identified using redlines/strikeouts;

(ii) An analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value and a cost study index;

(iii) Except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the Contractor's legal counsel for purposes of compliance with all legal requirements applicable to private sector DB/DC pension plans;

(iv) The Summary Plan Description; and

(v) Any such additional information as requested by the Contracting Officer.

4.4.3.2 When changes to DB and/or DC plans are required by law, or the changes do not increase costs or liabilities under the plan(s), the Contractor must provide a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout no later than 60 days before the new amendment is proposed to take effect.

4.4.4 When operations at a designated NNSA facility are terminated and no further work is to occur under the Contract, the following apply:

4.4.4.1 No further benefits for service shall accrue;

4.4.4.2 The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the NNSA Contract;

4.4.4.3 The Contractor shall base its DB pension liabilities attributable to NNSA Contract work on the market value of annuities or dispose of such liabilities through a competitive purchase of annuities. The Contractor, as pension plan sponsor, must adhere to Department of Labor guidance set forth at 29 CFR 2509.95-1 regarding selection of an annuity provider for the purpose of benefit distributions from a DB pension plan;

4.4.4.4 Assets shall be determined using the "accrual-basis market value" on the date of termination of operations.

4.4.4.5 The Contracting Officer and the Contractor shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all NNSA assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's "AA."

4.4.5 Terminating Plans

4.4.5.1 If the Contractor seeks to terminate any pension plan during the term of the Contract, the Contractor must obtain Contracting Officer approval for such termination. In addition, a Contractor proposal to terminate a pension plan must be provided to the Contracting Officer no later than 60 days prior to the scheduled date of plan termination.

4.4.5.2 To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or through lump sum payouts. The Contractor, as pension plan sponsor, must adhere to Department of Labor guidance set forth at 29 CFR 2509.95-1 regarding selection of an annuity provider for the purpose of benefit distributions from a DB pension plan. With respect to standard plan terminations, the Contractor must adhere to all Pension Benefit Guaranty Corporation regulations regarding the termination of a pension plan.

4.4.5.3 Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.

4.4.5.4 If ERISA or the Internal Revenue Code prevents a full transfer of excess NNSA reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to NNSA according to a schedule of payments to be negotiated by the Parties.

4.4.5.5 On the same day as the Contractor notifies the IRS of the plan termination, all NNSA plan assets will be placed in a low-risk liability

matching portfolio until full disposition of the terminating plan's liabilities. The portfolio shall be rated no lower than Standard & Poor's "AA."

4.4.5.6 NNSA liability to a commingled pension plan shall not exceed that portion which corresponds to participants' service accrued for their work under an NNSA Contract. The NNSA shall have no other liability to the plan, to the plan sponsor, or to the plan participants.

4.4.5.7 After all liabilities of the plan are satisfied, the Contractor shall return to NNSA an amount equaling the asset reversion from the plan termination and any earnings that accrue on that amount because of a delay in the payment to NNSA. Such amount and such earnings shall be subject to NNSA audit. To affect the purposes of this paragraph, NNSA and the Contractor may stipulate to a schedule of payments.

4.4.6 Post Contract Responsibilities for Pension and Other Benefit Plans

4.4.6.1 If this Contract expires or terminates and NNSA has awarded a Contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired Contractor employees with respect to service, the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management, and administration of the plans consistent with direction from the Contracting Officer. If a comingled plan is involved, the Contractor shall:

(i) Spin off the NNSA portion of any commingled plan that provides benefits for employees working at the NNSA facility into a separate plan. The new plan shall provide benefits similar to those provided by the commingled plan and shall carry with it the NNSA assets on an accrual basis market value, including NNSA assets that have accrued in excess of NNSA liabilities.

(ii) Bargain in good faith with NNSA or the successor Contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. NNSA and the Contractor(s) shall establish an effective date of spinoff. On the same day as the Contractor notifies the IRS of the spinoff, all NNSA plan assets assigned to a spun-off plan shall be placed in a low-risk liability matching portfolio until the successor trustee is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's "AA."

4.4.6.2 If this Contract expires or terminates and NNSA has not awarded a contract to a new contractor under which the new contractor becomes a

sponsor and assumes responsibility for management and administration of the plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract completion" for purposes of this paragraph), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination elsewhere in this Contract, the following actions shall occur regarding the Contractor's obligations regarding the plans at the time of Contract completion:

(i) Subject to paragraph 4.4.6.2 (ii) below, and notwithstanding any legal obligations independent of the Contract that the Contractor may have regarding responsibilities for sponsorship, management, and administration of the plans, the Contractor shall remain the sponsor of the plans, in accordance with applicable legal requirements.

(ii) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the plans prior to or at the time of Contract completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the plans prior to or at the time of Contract completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the plans, including but not limited to continued sponsorship of the plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable Contract provisions.

4.4.7 Reports and Information - Retirement Plans

For each DB and DC pension plan as applicable or portion of a pension plan for which NNSA reimburses costs, the Contractor shall provide the Contracting Officer with the following information within ten months of the last day of the current pension plan year except for the Pension Management Plan which must be submitted by January 30 of each year.

(i) The annual actuarial valuation report for each NNSA-reimbursed pension plan. When a pension plan is commingled, the Contractor shall submit separate reports for NNSA's portion and the plan total/

(ii) Copies of IRS Forms 5500 with Schedules for each NNSA-funded pension plan.

(iii) Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

4.5 Pension Management Plan

No later than January 31 of each applicable year, the Contractor shall submit a plan for management and administration (Pension Management Plan) via iBenefits for each defined benefit pension plan (DB Plan) consistent with the terms of the Contract. The PMP shall include the DB plans' projected assets, projected liabilities, and estimated contributions and the prior year's actuarial valuation report. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.

5.0 LABOR RELATIONS

(i) The Contractor shall comply with the National Labor Relations Act, DEAR Subpart 970.2201, and all applicable Federal and State labor laws.

(ii) No later than 60 days before the commencement of bargaining, the Contractor shall provide to the Contracting Officer in writing 1) the proposed changes to the current collective bargaining agreement that will increase costs over and above the current collective bargaining agreement costs; 2) the proposed savings to the current collective bargaining agreement; 3) the dollar amounts associated with the proposed changes to reflect a total cost and total net cost (or savings) and 4) a strike contingency plan.. Cost increase figures shall be provided for each of the following distinct categories: wages, health benefits, retirement benefits and all other benefits that increase costs under the existing collective bargaining agreement. To the extent that wage increases are proposed, provide upon request the full financial impact of the proposed

increases, including but not limited to the impact on overtime and shift differential costs and overhead burden amounts associated with the proposed cost increases over the life of the collective bargaining agreement.

The Contractor will provide regional wage survey information, Benefits Value study information (if applicable), Cost Study information (if applicable), and any other information to support the collective bargaining cost figures set forth in the Contractor's proposal no later than 60 days before the commencement of bargaining.

Prior to the commencement of collective bargaining, the Contracting Officer will communicate to the Contractor the total approved, aggregate cost ceiling for the cost associated with the successor collective bargaining agreement. Once the aggregate ceiling is determined and provided to the Contractor, no further approval of economic parameters is required unless 1) the changes would exceed the aggregate figure or 2) the changes proposed are contrary to Departmental policy or written instructions. To the extent the Contractor assumes savings from new negotiation positions not set forth in the Contractor's initial cost proposal, the Contractor must notify the Contracting Officer of such assumed savings by no later than 15 days after the collective bargaining agreement is executed.

(iii) The Contractor shall provide an electronic copy of the bargaining agreement to the Contracting Officer not later than 30 days after formal ratification. The Contractor shall provide to the Contracting Officer the "Report of Settlement" no later than 30 days after formal ratification. The Contractor shall provide information requested by the Contractor Officer regarding ratified collective bargaining agreements to which the Contractor is a party. The Contractor shall enter information, including but not limited to the executed collective bargaining agreements, into the iBenefits system (or any successor database) quarterly, or upon Contracting Officer request.

(iv) The Contractor shall notify the Contracting Officer in a timely fashion of labor relations issues that may cause a significant impact to the workforce.

(v) The Contractor shall immediately (within twenty-four hours) advise the Contracting Officer of the following:

(A) Possible strike situations or other actions affecting the continuity of operations including work stoppages and picketing;

(B) Formal action by the National Labor Relations Board (NLRB) including but not limited to issuance of a complaint against the Contractor. Copies of complaints, settlement agreements, judgments and any other documents issued in connection with Contractor actions with respect to labor practices shall be provided to the Contracting Officer;

(C) Recourse to procedures under the Labor-Management Relations Act of 1947 as amended or any other state law;

(D) Any grievance scheduled for arbitration under any collective bargaining agreement that has the potential for significant economic or other impact as well as the decision of the arbitrator; and

(E) Other significant issues that may involve review by other federal or state agencies.

6.0 WORKFORCE PLANNING

In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the NNSA or the Government. Nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

6.1 Workforce Planning General

The Contractor shall annually analyze workforce requirements consistent with current and future mission requirements and develop appropriate workforce transition strategies to ensure appropriate skills are available at the right time, in the right number, in the right place. Particular attention shall be paid to current and future critical skills. This analysis shall be available for review upon Contracting Officer request.

6.2 Reductions in Contractor Employment – Workforce Restructuring

6.2.1 Voluntary Separations

In order to minimize the number of involuntary separations and mitigate the impact on affected employees, in consultation with the Contracting Officer the Contractor shall consider the use of a Voluntary Separation Program (VSP) before consideration is given to conducting an Involuntary Separation Program (ISP) when workforce restructuring is necessary. The Contractor shall submit the VSP to the Contracting Officer for approval prior to implementation regardless of the number of employees involved. Advance approval of a VSP by the Contracting Officer is required for any such costs to be considered to be allowable.

6.2.2 Involuntary Reductions in Contractor Employment

6.2.2.1 If the restructuring involves between 10-99 employees in a rolling twelve month period, the Contractor shall notify the Contracting Officer no later than 15 days in advance of the action.

6.2.2.2 For restructuring actions that involve separating between 50-99 employees, the Contractor shall prepare a specific workforce restructuring plan and submit the plan to the Contracting Officer for informational purposes. The workforce restructuring plan must include: the rationale for the proposed separations, costs, timelines for

notifications, the job classifications of the Contractor employees involved, numbers of impacted employees and any other information specified by the Contracting Officer. In addition, the Contractor shall perform an adverse impact analysis and provide a copy of the analysis to the NNSA Field Counsel for any restructuring actions that involve 50 or more employees within a 12-month period.

6.2.2.3 If the restructuring may involve the separation of 100 or more employees within a 12-month period, the Contractor shall submit a specific workforce restructuring plan for approval by the Contracting Officer, to enable compliance with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 at a minimum, no later than 90 days in advance of the date the Contractor needs to begin notification to employees in accordance with the law and its attendant timeframes to effect the separations.

6.2.2.4 All notifications to the NNSA regarding contractor workforce restructuring must contain the rationale for the proposed separations, costs, timelines for notifications, the job classifications of the Contractor employees involved and the numbers of impacted employees.

6.2.2.5 The Contractor may submit a multi-year workforce restructuring plan for consideration and approval.

6.2.2.6 Any payment of separation benefits beyond those alreadyapproved under the Contract must be approved bythe Contracting Officer.

PART III - SECTION J
APPENDIX B
LIST OF APPLICABLE DIRECTIVES

In addition to the list of applicable directives listed below, the Contractor shall also comply with supplementary directives, (e.g., manuals) which are invoked by a Contractor Requirements Document (CRD) attached to a directive. Electronic copies of these documents are available at the following Websites:

https://www.directives.doe.gov
http://www.nnsa.energy.gov/aboutus/ouroperations/managementandbudget/policysystem/nnsapolicies
http://nnsa.energy.gov/aboutus/ouroperations/managementandbudget/supplementaldirectives
http://energy.gov/hss/information-center/department-energy-technical-standards-program
http://lanl.gov/org/dir/pcm/applicable-directives/index.shtml

DIRECTIVE NUMBER	DATE	DOE DIRECTIVE TITLE	Mod #
APPH Ch X Review Revision 10	9/8/1998	Product Cost Accounting	Award
BOP-003.0404	7/28/2004	Requests to Defense Contracting Audit Agency (DCAA) for Audit of M&O Contractor Subcontracts	Award
DOE P 112.1	11/23/2016	DOE Roles and Responsibilities	Award
DOE O 130.1, Attachment 1 CRD	9/29/1995	Budget Formulation	Award
DOE O 140.1, Interface with the Defense Nuclear Facilities Safety Board	**5/14/2018**	**Interface with the Defense Nuclear Facilities Safety Board**	**Mod 6**
DOE O 142.2A, Admin Chg 1, Attachment 2 CRD	6/27/2013	Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency	Award
DOE M 142.2-1, Admin Chg 1, Attachment 1 CRD	6/27/2013	Manual for Implementation of the Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency	Award
DOE O 142.3A, Chg 1, Attachment 1 CRD	1/18/2017	Unclassified Foreign Visits and Assignments Program	Award
DOE O 144.1, Chg 1, Attachment 1 CRD	11/6/2009	Department of Energy American Indian Tribal Government Interactions and Policy	Award
DOE O 150.1A, Attachment 1 CRD	3/31/2014	Continuity Programs	Award
DOE O 151.1C, Attachment 2 CRD	**11/2/2005**	**Comprehensive Emergency Management System NOTE: Removal upon full implementation of DOE O 151.1D as cited by NA-LA direction OPS:4EW-763996 dated 1/02/18.**	**Mod 6**
DOE O 151.1D, Attachment 1 CRD	8/11/2016	Comprehensive Emergency Management System **NOTE: Implementation as cited by PCM-17-062 dated 5/19/17, PCM-17-111 dated 9/14/17, and as cited by NA-LA direction OPS:4EW-763996 dated 1/02/18**	Award
DOE G 151.1-5	7/11/2007	Biosafety Facilities	Award
DOE O 153.1, Attachment 2 CRD	6/27/2007	Departmental Radiological Emergency Response Assets	Award
DOE O 200.1A Attachment 1 CRD	12/23/2018	Information Technology Management	Award
DOE O 203.1	1/7/2005	Limited Personal Use of Government Office Equipment including Information Technology	Award

DOE O 205.1B, Chg 3, Attachment 1 CRD	4/29/2014	Department of Energy Cyber Security Program	Award
DOE O 206.1, Attachment 1 CRD	1/16/2009	Department of Energy Privacy Program	Award
DOE O 206.2, Attachment 1 CRD	2/19/2013	Identity, Credential, and Access Management (ICAM)	Award
DOE O 210.2A, Attachment 2 CRD	4/8/2011	DOE Corporate Operating Experience Program	Award
DOE O 221.1B, Attachment 1 CRD	9/27/2016	Reporting Fraud, Waste, and Abuse to the Office of Inspector General	Award
DOE O 221.2A, Admin Chg 1, Attachment 1 CRD	2/25/2008	Cooperation With The Office of Inspector General	Award
DOE O 224.2A	11/9/2007	Auditing of Programs and Operations	Award
DOE O 225.1B, Attachment 1 CRD	3/4/2011	Accident Investigations	Award
DOE O 226.1B, Attachment 1 CRD	4/25/2011	Implementation of Department of Energy Oversight Policy	Award
DOE P 226.2	8/9/2016	Policy for Oversight and Contractor Assurance Systems	Award
DOE O 227.1A, Attachment 1 CRD	12/21/2015	Independent Oversight Program	Award
DOE O 231.1B Admin Chg 1, Attachment 1 CRD	11/28/2012	Environment, Safety, and Health Reporting	Award
DOE O 232.2A, Attachment 1 CRD	1/17/2017	Occurrence Reporting and Processing of Operations Information	Award
DOE O 241.1B, Chg 1, Attachment 1 CRD	4/26/2016	Scientific and Technical Information Management	Award
DOE O 243.1B, Chg 1, Attachment 1 CRD	7/8/2013	Records Management Program	Award
DOE O 252.1A, Admin Chg 1, Attachment 1 CRD	3/12/2013	Technical Standards Program	Award
DOE O 325.2, Admin Chg 1	4/1/2015	Position Management and Classification	Award
DOE O 341.1A, Attachment 1 CRD	10/18/2007	Federal Employee Health Services	Award
DOE O 350.1, Chg 6, Attachment 1 CRD	**2/1/2018**	**Contractor Human Resource Management Programs**	**Mod 6**
DOE O 410.2, Admin Chg 1, Attachment 1 CRD	4/10/2014	Management of Nuclear Materials	Award
DOE O 411.2, Attachment 1 CRD	1/4/2017	Scientific Integrity	Award
DOE P 411.2A	1/4/2017	DOE Scientific Integrity	Award
DOE O 412.1A	**5/21/2014**	**Work Authorization System**	**Mod 6**
DOE O 413.1B, Attachment 1 CRD	10/28/2008	Internal Control Program	Award
DOE O 413.2C, Chg 1, Attachment 1 CRD	**8/2/2018**	**Laboratory Directed Research and Development**	**Mod 6**
DOE O 413.3B, Chg 5, Attachment 1 CRD	**4/12/2018**	**Program and Project Management for the Acquisition of Capital Assets**	**Mod 6**
DOE O 414.1D, Admin Chg 1, Attachment 1 CRD	5/8/2013	Quality Assurance	Award
DOE O 415.1, Chg 2, Attachment 1 CRD	1/17/2017	Information Technology Project Management	Award
DOE O 420.1C, Chg 1, Attachment 1 CRD	2/27/2015	Facility Safety	Award

DOE O 420.2C, Attachment 1 CRD	7/21/2011	Safety of Accelerator Facilities	Award
DOE O 422.1, Admin Chg 2, Attachment 1 CRD	12/3/2014	Conduct of Operations	Award
DOE O 425.1D, Admin Chg 1, Attachment 1 CRD	4/2/2013	Verification of Readiness to Start Up or Restart Nuclear Facilities	Award
DOE O 426.2, Admin Chg 1, Attachment 1 CRD	7/29/2013	Personnel Selection, Training, Qualification, and Certification Requirements for DOE Nuclear Facilities	Award
DOE O 430.1C, Attachment 2 CRD	8/19/2016	Real Property Asset Management NOTE: Implementation as cited by PCM-17-102 dated 8/29/17	Award
DOE O 433.1B, Admin Chg 1, Attachment 1 CRD	3/12/2013	Maintenance Management Program for DOE Nuclear Facilities	Award
DOE O 435.1 Chg 1, Attachment 1 CRD	**8/28/2001**	**Radioactive Waste Management**	**Mod 6**
DOE M 435.1-1, Chg 2	6/8/2011	Radioactive Waste Management Manual	Award
DOE N 435.1	8/9/2011	Contact Handled remote handled Transuranic Waste Package	Award
DOE O 436.1, Attachment 1 CRD	5/2/2011	Departmental Sustainability	Award
DOE O 440.2C, Chg 1, Attachment 1 CRD	6/22/2011	Aviation Management and Safety	Award
DOE M 441.1-1, Admin Chg 1, Attachment 1 CRD	2/24/2016	Nuclear Material Packaging Manual	Award
DOE O 442.1A, Attachment 1 CRD	6/6/2001	Department Of Energy Employee Concerns Program	Award
DOE O 442.2, Chg 1, Attachment 1 CRD	10/5/2016	Differing Professional Opinions for Technical Issues Involving Environment, Safety, and Health Technical Concerns	Award
DOE O 443.1B, Chg 1, Attachment 1 CRD	4/21/2016	Protection of Human Research Subjects	Award
DOE N 443.1, Attachment 1 CRD	1/21/2016	Protection of Human Subjects in Classified Research	Award
DOE O 452.1E, Attachment 1 CRD	1/26/2015	Nuclear Explosive and Weapon Surety Program	Award
DOE O 452.2E, Attachment 1 CRD	1/26/2015	Nuclear Explosive Safety	Award
DOE O 452.3, Attachment 2 CRD	6/8/2005	Management of the Department of Energy Nuclear Weapons Complex	Award
DOE O 452.4C, Attachment 1 CRD	8/28/2015	Security and Use Control of Nuclear Explosives and Nuclear Weapons	Award
DOE O 452.6A, Attachment 1 CRD	4/14/2009	Nuclear Weapon Surety Interface with the Department of Defense	Award
DOE O 452.7, Attachment 1 CRD	5/14/2010	Protection of Use Control Vulnerabilities and Designs	Award
DOE O 452.8, Attachment 1 CRD	7/21/2011	Control of Nuclear Weapon Data	Award
DOE O 456.1A, Attachment 1 CRD	7/15/2016	The Safe Handling of Unbound Engineered Nanoparticles	Award
DOE O 457.1A, Attachment 2 CRD	8/26/2013	Nuclear Counterterrorism	Award
DOE O 458.1, Chg 3, Attachment 1 CRD	1/15/2013	Radiation Protection of the Public and the Environment	Award

DOE O 460.1D, Attachment 1 CRD	12/20/2016	Hazardous Materials Packaging and Transportation Safety	Award
DOE O 460.2A, Attachment 2 CRD	12/22/2004	Departmental Materials Transportation and Packaging Management	Award
DOE M 460.2-1A, Attachment 1 CRD	6/4/2008	Radioactive Material Transportation Practices Manual For Use With DOE O 460.2A	Award
DOE O 461.1C, Attachment 1 CRD	7/20/2016	Packaging and Transportation for Offsite Shipment of Materials of National Security Interest	Award
DOE O 461.2	11/1/2010	Onsite Packaging and Transfer of Materials of National Security Interest	Award
DOE O 462.1, Admin Chg 1	7/10/2013	Import and Export of Category 1 and 2 Radioactive Sources Aggregated Quantities	Award
DOE O 470.3C, Attachment 1 CRD	11/23/2016	Design Basis Threat (DBT) Order	Award
DOE O 470.4B, Chg 2, Attachment 1 CRD	1/17/2017	Safeguards and Security Program	Award
DOE M 470.4-4A	10/12/2010	Information Security Program	Award
DOE O 470.5, Attachment 1 CRD	6/2/2014	Insider Threat NOTE: Implementation as cited by PCM-15-005 dated January 8, 2015	Award
DOE O 470.6, Chg 1	**1/11/2017**	**Technical Security Program NOTE: Implementation as cited by PCM-18-066 dated 5/22/18**	**Mod 6**
DOE O 471.1B, Attachment 1 CRD	3/1/2010	Identification and Protection of Unclassified Controlled Nuclear Information	Award
DOE O 471.3, Admin Chg 1, Attachment 1 CRD	1/13/2011	Identifying and Protecting Official Use Only Information	Award
DOE M 471.3-1, Admin Chg 1, Attachment 1 CRD	1/13/2011	Manual for Identifying and Protecting Official Use Only Information	Award
DOE O 471.5, Attachment 1 CRD	3/29/2011	Special Access Programs	Award
DOE O 471.6, Admin Chg 2, Attachment 1 CRD	5/15/2015	Information Security	Award
DOE O 472.2, Chg 1, Attachment 1 CRD	7/9/2014	Personnel Security	Award
DOE O 473.3A, Chg 1, Attachment 1 CRD	**1/2/2018**	**Protection Program Operations**	**Mod 6**
DOE O 474.2, Chg 4, Attachment 1 CRD	9/13/2016	Nuclear Material Control and Accountability	Award
DOE O 475.1, Attachment 2 CRD	12/10/2004	Counterintelligence Program	Award
DOE O 475.2B, Attachment 1 CRD	10/3/2014	Identifying Classified Information	Award
DOE M 481.1-1A, Chg 1	9/28/2001	Reimbursable Work for Non-Federal Sponsors Process Manual	Award
DOE O 483.1B, Attachment 1 CRD	12/20/2016	DOE Cooperative Research and Development Agreements	Award
DOE O 484.1, Chg 2, Attachment 1 CRD	6/30/2014	Reimbursable Work for Department of Homeland Security	Award
DOE P 485.1	1/19/2017	Foreign Engagements with DOE National Laboratories	Award
DOE O 522.1 Attachment 2 CRD	11/3/2004	Pricing of Departmental Materials and Services	Award
DOE O 534.1B, Attachment 1 CRD	1/6/2003	Accounting	Award

DOE O 551.1D, Chg 2, Attachment 1 CRD	8/9/2016	Official Foreign Travel	Award
DOE O 5480.30, Chg 1	3/14/2001	Nuclear Reactor Safety Design Criteria	Award
DOE O 5639.8A	7/23/1993	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities	Award
DOE O 5670.1A	1/15/1992	Management and Control of Foreign Intelligence	Award
DOE-STD-3013-2012	**3/1/2012**	**Stabilization, Packaging, and Storage of Plutonium-Bearing Materials**	**Mod 6**
NNSA SD 205.1 Attachment A CRD	**7/6/2017**	**Baseline Cybersecurity Program**	**Mod 6**
NNSA SD 206.1 Attachment 1 CRD	**6/22/2018**	**Privacy Program**	**Mod 6**
NNSA SD 226.1B, Attachment 1 CRD	8/12/2016	NNSA Site Governance	Award
NNSA SD 251.1A	**1/17/2018**	**Admin Change 1 Policy Letters: NNSA Policies, Supplemental Directives, and Business Operating Procedures**	**Mod 6**
NA SD O 350.1	2/5/2009	M&O Contractor Service Credit Recognition	Award
NA SD 415.1	9/3/2014	Project Oversite for IT	Award
NA SD 430.1 Attachment 1 CRD	**1/18/2017**	**Real Property Asset Management NOTE: Implementation as cited by PCM-17-102 dated 8/29/17**	**Mod 6**
NNSA SD 452.2A Attachment 1 CRD	**10/20/2017**	**Nuclear Explosive Safety Evaluation Processes**	**Mod 6**
NNSA SD 452.3-1A	2/25/2016	Defense Programs Business Process System NOTE: Include RMI Chapters: R001, R002, R003, R006, R007, R008, R010, R016, R018	Award
NNSA SD 452.3-2, Attachment 1 CRD	1/19/2017	Phase 6.X Process	Award
NNSA SD 470.4-2 Attachment 1 CRD	**6/23/2018**	**Enterprise Safeguards and Security Planning and Analysis Program**	**Mod 6**
NNSA SD 473.3 Attachment 1 CRD	9/10/2014	Enterprise Mission Essential Task List-Based Protective Force Training Program	Award
NAP 23, Admin Chg 1	2/9/2015	Atomic Energy Act Control of Import and Export Activities	Award
NAP 24A	11/24/2015	Weapon Quality Policy NOTE: Implementation as cited by NA-LA direction: QA-16-019-JS-668036, dated 3/15/16	Award
NAP 25, Admin Chg 1	10/10/2013	Management and Operating Contractor Business Meals and Light Refreshment	Award
NAP 30	12/1/2016	Stewardship and Long-Term Strategic Planning for the Laboratories	Award
NAP 31	11/22/2016	NNSA M&O Offsite Extended Duty Assignments	Award
NNSA DP G PPBE-001	10/21/2011	Defense Programs (DP) Work Breakdown Structure (WBS)	Award
QP 100-1	3/1/2013	Quality Requirements to UK and US Procurement Contracts and Loan Authorizations for Research, Design, and Development	Award

PART III – SECTION J

APPENDIX C

PERSONNEL APPENDIX

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1.0 Introduction

This Appendix sets forth certain Contractor Human Resources Management policies and related expenses that have cost implications under this Contract and are not covered explicitly in the Federal Acquisition Regulations (FAR) or Department of Energy Acquisition Regulations (DEAR) cost principles. This Appendix identifies those costs eligible for reimbursement when incurred in keeping with FAR part 31 and the other terms of the Contract. The Contractor shall seek Contracting Officer approval prior to incurring personnel-related costs not specifically identified as allowable in this Appendix. The Contractor shall identify and treat all unallowable costs and directly associated unallowable costs in accordance with the Contractor's Cost Accounting Disclosure Statement, including but not limited to placing unallowable costs in appropriate allocation bases.

Approval of personnel policies under contract DE-AC52-06NA25396 does not transfer to this Contract. All of the Contractor's personnel policies shall comply with the terms and conditions of this Contract and the relevant provisions of FAR part 31, *Contract Cost Principles and Procedures*. For purposes of cost reimbursement, if there is a conflict between the Contractor's policies and the terms of this Contract, the Contract will govern. Nothing in this Personnel Appendix makes costs allowable that would otherwise be unreasonable.

The Contractor will obtain prior Contracting Officer approval of changes to its existing policies in those areas identified within the scope of the Personnel Appendix when such changes are expected to increase costs to the Government. In situations where changes may set a precedent among the Department of Energy/National Nuclear Security Administration (DOE/NNSA) contractors, the Contractor will consult with the Contracting Officer regarding program cost reimbursement prior to implementation, even if there is no expected increase in cost. This requirement is not intended to prohibit the Contractor from taking advantage of efficiency gains realized from new and innovative approaches in providing human resources services.

The Contractor shall establish effective management review procedures and internal controls to ensure that requirements set forth herein are met. For areas that require prior approval of the Contracting Officer, the Contractor will submit required documents and seek Contracting Officer approval, prior to incurrence of costs.

Management controls shall be put into place (see DEAR 970.5203-1) to ensure that Human Resources Programs of the Contractor:

a) Are market based as evidenced by comparisons with applicable industry comparators;

b) Fulfill the requirements of the DOE/NNSA mission, meet the strategic direction of DOE/NNSA, and are in the best interests of the Government;

c) Are adopted to support the business needs of the Contractor and/or local conditions above;

d) Apply to all employees of the Contractor engaged in the work under this Contract, to the extent practicable, irrespective of the place of performance of work, and are consistent with collective bargaining agreements, as applicable;

e) Are documented in Contractor policies and/or in Summary Plan Descriptions and are available to DOE/NNSA;

f) Are in compliance with rules and regulations incorporated into this Contract and applicable laws; and

g) Are affordable within the constraints of the resources available to the Contractor.

Either party may request revisions to this Appendix, and both the parties agree to give consideration in good faith to any such request. When revisions to this Appendix are made, a Contract modification will be executed to effect the changes.

The Contract, including this Appendix, is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, or conferring any right or benefit upon past, present, or future employees of the Contractor, or upon any other third party.

2.0 Definitions

The following terms as used in this Appendix have the meaning defined herein.

a) Exempt Employees: Employees who are not eligible for overtime pay because they are executive, administrative or professional employees and meet other applicable criteria under the Fair Labor Standards Act (FLSA) and FLSA implementing regulations.

b) Non-Exempt Employees: Employees not meeting the definition of "Exempt Employee."

c) Overtime: Time worked that exceeds 40 hours on pay status in a workweek. Holiday Pay, Report Pay, Voting Time Pay, and Fitness For Duty Pay hours count as hours on pay status for purposes of overtime. However, sick leave, vacation leave, and any other paid leave do not count as hours on pay status for purposes of overtime. Overtime is reported and compensated to the nearest quarter hour.

d) Red-Circled Salaries: Employee salaries that are above the maximum salary of the associated job band. The employee is *not eligible* for additional pay increases until the range maximum exceeds the individual's salary and the manager recommends the

employee for an increase. However, based on performance, the employee may be eligible for a non-base building merit lump sum.

e) Casual Employees: Employees who work no more than 40 percent of full-time hours (104 days or 832 hours) in a consecutive 12-month period.

f) Part-time employees: Employees who are in pay status an average of 20 to 39 hours per workweek (from 50% to 98% of full-time). An employee in part-time status throughout a consecutive 12-month period must have been in pay status at least 1,040 hours, but not more than 2,038 hours, in the period.

g) Full-time employees: Employees who are regularly scheduled to work 80 hours over a two-week pay period and who do not meet the definition of part-time or casual employees.

3.0 Compensation (Note: This Compensation section does not apply to bargaining unit employees. Section 4.0 sets forth allowable costs associated with bargaining unit employees.)

a) Acting Pay. The Contractor may assign an employee to a management position when the incumbent manager is temporarily absent or when the management position is vacant. The Contractor may provide a stipend of up to 15 percent of an employee's base pay to an employee serving in an acting management position in excess of 90 days. Approval of Acting Pay is subject to prior approval by the Laboratory Director (or designee). Acting Pay may not exceed 365 days.

b) Variable Pay. Consistent with Section J, Appendix A, Statement of Work 3.2.3, the Contractor is authorized to fund an incentive compensation program for non-Key Personnel through a recurring non-base incentive authorization not to exceed 2% of the total annual base salary of the previous plan year.

c) Compensation Exceeding Salary Range. The Contractor shall obtain Contracting Officer advance approval for any salary amount paid an employee in excess of the Contractor-established salary range for the position. Red-Circled Salaries resulting from a demotion of an employee that results in a lower salary range do not require Contracting Officer approval.

d) Severance Pay. The Contractor may provide one week's pay for each complete year of service, not to exceed a total of 26 weeks of pay. Employees in the first year of service who are subject to a reduction in force may be eligible to receive 1 week of severance.

Service	**Benefit**
Less than 1 year of Service	1 week of base pay

<1 and >26 years of Service	1 week of base pay per year of completed service
>26 years of Service	26 weeks of base pay

e) Service Credit. Service Credit for cost reimbursement for employee benefits to include post-retirement benefit (PRB) eligibility generally will be determined in accordance with NNSA Supplemental Directive NA SD 350.1, *M&O Contractor Service Credit Recognition* (the "Directive") and any exception to this Directive granted to Triad National Security, LLC.

After Contract transition, the Contractor sought from NNSA and was granted an exception to NA SD 350.1. Pursuant to that exception, the Contractor is authorized to recognize prior accrued service for employees transferring from the following companies that are comprised of at least one of the parent companies of the Contractor (Affiliated Companies):

UT Battelle, LLC (Management & Operating Contractor at the Oak Ridge National Laboratory),
Battelle Energy Alliance, LLC (Management & Operating Contractor at the Idaho National Laboratory),
Brookhaven Science Associates, LLC (Management & Operating Contractor at Brookhaven National Laboratory),
Alliance for Sustainable Energy, LLC (Management & Operating Contractor at the National Renewable Energy Laboratory) and
Lawrence Livermore National Security, LLC (Management & Operating Contractor at the Lawrence Livermore National Laboratory).

This list of Affiliated Companies is complete; the Contractor may not recognize service credit with any other company that is comprised of a parent company of the Contractor without express Contracting Officer approval. With respect to the NNSA SD 350.1 exception that was granted to the Contractor, the Contractor is authorized to recognize previous years of service with the Affiliated Companies only with respect to the following benefits:

- Eligibility for and accrual rate for vacation benefit
- Eligibility for and accrual rate for sick leave and other leaves of absence
- Eligibility for vesting and receipt of benefit for market-based retirement plans
- Determination of severance benefits
- Eligibility for dental and life insurance benefits
- Eligibility and/or determination of benefit for long- and short-term disability
- Eligibility for access only (no employer subsidy) to retiree welfare benefits

The Contractor is not authorized to recognize service credit with Affiliated Companies for any other benefits not specifically set forth above. In no circumstance is the

Contractor authorized to provide hire-on incentives to employees who transfer employment from any Affiliated Companies to the Contractor.

f) Modified Work Week. The Contractor may designate a work week of less than five days within a pay week for selected employees, or groups of employees, when warranted.

g) Ancillary Pay. Six months after the effectuation of the modification incorporating the Personnel Appendix, the Contractor will submit for approval to the Contracting Officer a proposal that assesses, and proposes to modify, where appropriate, the components of the Ancillary Pay section set forth below.

The Contractor may provide the following types of Ancillary Pay.

(1) **Shift Differential** - Applies to Exempt and Non-Exempt Employees who are assigned by their manager to work a regular shift in which four or more hours are scheduled either before 8:00 a.m. or after 4:00 p.m.

Swing shift- Normally 4:00 p.m. to 12 midnight. 12.0% of the basic hourly rate or the hourly equivalent rate for Exempt Employees.

Graveyard shift-Normally 12 midnight to 8:00 a.m. 15.0% of the basic hourly rate or the hourly equivalent rate for Exempt Employees.

(2) **Saturday/Sunday Premium** - The Contractor may provide a premium of 5.0% of the basic hourly rate to Non-Exempt Employees, or the hourly equivalent rate to Exempt Employees, whose regular assignment includes work between midnight on Friday and midnight on Sunday.

The premium is in addition to any shift differential pay and is not applicable to wages earned from sick leave, vacation, or any other authorized absences.

(3) **Sunday Overtime** - The Contractor may provide to Non-Exempt Employees a premium rate of two times the regular rate of pay for Overtime worked on Sunday.

(4) **Special Pay Provisions for Exempt Employees - Extended Workweek -** The Contractor may elect to place Exempt Employees on an extended workweek if it is anticipated that they will work more than of 10 hours per week in excess of their regular scheduled workweek for a time period of at least 90 days.

The Contractor may provide Exempt Employees on an extended workweek additional pay at their hourly equivalent rate for hours worked

in excess of 5 hours over their regular scheduled workweek (e.g., if an Exempt Employee's regular scheduled workweek is 40 hours and the Exempt Employee worked 50 hours per week on an extended workweek, the employee would be paid for five hours at the employee's hourly equivalent rate).

(5) **On-Call Pay** - The Contractor may provide to Non-Exempt Employees on-call pay under the following conditions:

(i) they must be assigned to on-call status;

(ii) they must ensure that they can be reached during the period of on-call status; and

ii) they must be able to report for emergency work within the time specified by the organization.

Exempt Employees are not eligible for on-call pay status when the on-call responsibility is occasional, intermittent, or not assigned by their manager.

The Contractor may provide to Non-Exempt Employees assigned to on-call duty an amount not to exceed 14% of their hourly base rate for each on-call duty hour.

The Contractor may provide to Exempt Employees who are assigned to on-call duty a flat rate amount not to exceed $80 for each 24-hour period. Such Exempt Employees must be on-call for a minimum of 15 hours (or 13 hours for eligible employees on a four-day, ten hour alternate work schedule or 14 hours for eligible employees on the nine hour day of their nine-day 9/80 work schedule) within a 24-hour period during the Exempt Employee's normal workweek.

Employees who are assigned to on-call duty in support of the National Incident Response Team shall be paid a flat rate amount not to exceed $105 for each 24-hour period and must be on-call for a minimum of 15 hours (or 13 hours for eligible employees on a four-day, ten hour alternate work schedule or 14 hours for eligible employees on the nine hour day of their nine-day 9/80 work schedule) within a 24-hour period during the employee's normal workweek. Any increase in on-call rates shall be approved by the Contracting Officer prior to implementation.

(6) **Duty Officer Pay** - Duty officers are Contractor employees who are required to remain on site outside of normally scheduled working hours so as to be promptly available.

The Contractor may provide Exempt Employees assigned as Duty Officers $115.00 for each 24-hour weekend or holiday shift worked.

(7) **Call Pay** - The Contractor may provide call pay to Non-Exempt Employees who are called in by their manager for emergency work outside of regularly scheduled hours if the work is directly related to the operation or project being charged.

For each occurrence, Non-Exempt Employees will receive pay equivalent to the greater of:

- 1.5 times the straight-time hourly rate for hours worked or
- 4 hours at the straight-time hourly rate.

If the emergency work occurs on the seventh consecutive day of work in the established workweek, Non-Exempt Employees will receive pay equivalent to the greater of:

- 2 times the straight-time hourly rate for hours worked or
- 4 hours at the straight-time hourly rate.

h) Special allowances.

(1) Uniform allowance. For health service employees, the Contractor may provide a uniform allowance of up to $300 per year per employee.

(2) Isolation allowance. The Contractor may provide an isolation allowance of up to a maximum of 25% of the employee's basic salary or monthly equivalent for work performed in remote geographical areas. The Contractor Officer shall notify the Contracting Officer if it provides an employee with the isolation allowance.

(3) Nevada National Security Site (NNSS) allowance.

i. The Contractor may provide employees whose permanent work assignment is at the Mercury location, in addition to their regular pay, a daily allowance of $5.00 for each day worked at Mercury.

ii. The Contractor may provide employees whose permanent work assignment is other than Mercury but within NNSS, in addition to their regular pay, a daily allowance of $7.50 for each day worked at the assigned work place.

iii. In addition to the daily allowance prescribed above in this paragraph, the Contractor may provide an overnight allowance of $10.00 when individuals' work schedule requires them to remain overnight at NNSS.

The Contractor may provide travel allowances to employees assigned on a temporary basis to the NNSS in accordance with Section 9.0 of the Personnel Appendix, titled "Travel, Relocation and Meals and Incidental Expenses." However, temporarily assigned employees shall not be entitled to the NNSS allowances described in subparagraphs above.

i) Hire–on Incentive.

The Contractor is authorized to provide a one-time hire-on incentive to an eligible external hire. Hire-on incentives are not included in base payroll for the computation of benefits.

Eligible Positions. The Contractor is authorized to provide hire-on incentives for the following positions: Laboratory Exempt, Laboratory Non-Exempt or Laboratory Post-Doctoral. Part-time, student, and casual positions are not eligible for this incentive.

Eligible Candidates. The Contractor is authorized to provide hire-on incentives only to external candidates. Potential candidates that are i) currently employed by the Regents of University of California, Battelle Memorial Institute, Texas A&M University Systems (Contractor Parent Companies) or Affiliated Companies (as defined in Section 3.0(e)); ii) have left Contractor Parent Company employment under a special incentive program or Affiliated Company employment under a special incentive program; iii) or have retired from Contractor Parent Companies or from Affiliated Company employment ***are not*** eligible for the hire-on incentive.

Criteria: Hire-on incentives are to be used in exceptional cases only if all criteria apply:

- The applicant has critical knowledge, experience, and/or skill essential to the success of LANL programs;
- There is documented difficulty recruiting applicants with this critical knowledge, experience, and/or skill over a period of time and
- There is a documentable reason to believe that the applicant will not accept the offer without this incentive, such as a competitive offer from another company.

Hire-on Incentive Table:

Incentive Amounts	
Base Salary	**Percent of Salary / Gross Incentive**
Up to $75,000	Up to 15% of base or $10,000 – whichever is less
$75,001 to $99,999	Up to 20% of base or $20,000 – whichever is less
$100,000 and above	Up to 20% of base or $25,000 – whichever is less

Service Level Agreement: The Contractor agrees that if the employee voluntarily terminates or is terminated for cause before the end of one year of employment, the Contractor will seek full repayment from the employee of the entire hire-on incentive amount. The Contractor will include such a provision in the offer letter and will obtain the agreement of the applicant.

j) Special Incentives.

(1) Retention

The Contractor is authorized to provide retention incentives subject to funding availability within the Compensation Increase Plan. If the employee voluntarily terminates before the end of the specified period of retention, the Contractor will seek repayment of the remaining prorated amount of the retention incentive.

(2) Environmental Pay Program.

The Contractor is authorized to provide a $500 monthly, non-base retention incentive for eligible Non-Exempt Employees, (prorated based on scheduled work week for part-time employees), who have a primary work assignment in a radiological control or beryllium contamination area of LANL.

(3) Operator Supervisory Incentive Pay

The Contractor may provide up to $200/day non-base incentive when a qualified non-exempt Operator is required to perform all of the TA-55 Operations Center Supervisor responsibilities in addition to the Operator responsibilities. Regular/term, full-time or part-time Non-Exempt, technicians are eligible for this program. However, support, professional, management, and R&D job classifications are not eligible for this program.

(4) Nuclear Criticality Program

The Contractor has established a Nuclear Criticality Safety Incentive Program that provides financial incentives to motivate employees to complete nuclear criticality safety program requirements. Contractor employees need significant time in grade to learn the nuclear processes and how to efficiently apply the principles of the program in the evaluations. The Contractor is authorized to provide the following lump-sum, non-base building retention payments associated with the Nuclear Criticality Safety Incentive Program:

- $10,000 upon successful completion of the LANL Nuclear Criticality Safety Analyst Program (the date of successful completion is herein referred to as the "qualification date");
- $10,000 one year after the qualification date, provided all requirements of the nuclear criticality safety position continue to be met;
- $10,000 two years after the qualification date, provided all requirements of the nuclear criticality safety position continue to be met;
- $10,000 three years after the qualification date, provided all requirements of the nuclear criticality safety position continue to be met;
- $10,000 four years after the qualification date, provided all requirements of the nuclear criticality safety position continue to be met and
- $10,000 five years after the qualification date, provided all requirements of the nuclear criticality safety position continue to be met.

4.0 Labor Relations – Collective Bargaining Agreements

Costs of wages and benefits to employees represented by collective bargaining units and all other costs and expenses incurred pursuant to the provisions of collective bargaining agreements and revisions thereto are allowable costs to the extent consistent with the Contract, in particular, Section J Appendix A, *Statement of Work*, Chapter III, Section 5.0, *Labor Relations*.

The Contractor is party to the collective bargaining agreements with the following titles, as transferred effective November 1, 2018:

- Triad National Security, LLC Master Labor Agreement with Local Signatory Unions
  - Southwest Regional Council of Carpenters
  - International Association of Heat & Frost Insulators and Asbestos Workers Local Union No. 76
  - International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers Local Union No. 495

    - Laborers' International Union of North America Local No. 16
    - International Association of Operative Plasterers and Cement Masons Local No. 254
    - International Union of Operating Engineers Local Union No. 953
    - International Union of Painters and Allied Trades Local Union No. 823
    - United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 123
    - International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers, Local Union No. 492
- International Brotherhood of Electrical Workers Local Union No. 611 (Maintenance Agreement and Construction Agreement)
- International Association of Sheet Metal, Air, Rail and Transportation Workers Local Union No. 49
- United Association of Pipefitters, Local Union No. 412

Expenses associated with employee representation activities, including the settlement of grievances, that are not prohibited by Section 302 of the Labor Management Relations Act, 29 U.S.C. § 186, or any other applicable law or regulation, are allowable costs.

5.0 Group Insurance

Costs incurred in implementing, administering, and funding comprehensive DOE/NNSA approved group insurance plans are allowable to the extent consistent with the Contract. Administrative costs associated with the effective administration of the plans include such items as publicizing, enrolling, maintaining records, and providing employees with assistance in understanding and collecting their benefits.

Annual renewal of the group insurance policies, certificates and accounts, group insurance plan employer/employee cost-sharing arrangements, renewal of Group Services Agreements, including new premium rates and the implementation of administrative changes do not require Contracting Officer approval, provided the underlying benefits have not materially changed.

Current Group Insurance Plans as of November 1, 2018:

- Triad Welfare Benefit Plan (for Employees)
- Triad Welfare Benefit Plan for Retirees
- Triad Cafeteria Plan (Section 125)
- Triad Senior Life Management Life Insurance

5.1 Displaced Workers Medical Benefits Program (DWMBP)

The Contractor may provide Displaced Workers Medical Benefits to displaced workers if provision of such benefit is set forth in the Contractor's workforce restructuring plan that

is approved by DOE/NNSA (see Section J, Appendix A, *Statement of Work*, Chapter III, *Human Resources*, Section 6.2, *Reductions in Contractor Employment.*

Benefits under the DWMBP are available to displaced workers who are not eligible for health insurance coverage under another plan, e.g., another employer's health plan, the Contractor's retiree medical plan, a spouse's medical plan, or Medicare. Generally, DWMBP benefits are as follows (note: NNSA may approve Contractor workforce restructuring plans that include less years of coverage):

a) For the first 12-month period after the termination date, the Contractor shall continue to pay the employer portion of the medical premium and the separated employee will pay a premium equal to the monthly premium paid by active employees for the type and level of coverage the separated Employee has at the termination Date.

b) Beginning in the second year after the termination date, the separated employee will be responsible for one-half of the full Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) rate for this coverage and the Contractor shall pay the remainder.

c) Beginning in the third and final year of the DWMBP, the separated employee will be responsible for paying the full COBRA rate for this coverage. At the end of the third year the employee's coverage eligibility ends.

6.0 Retirement Plans

The Contractor shall administer the following plans:

Defined Benefit Plans
Triad Defined Benefit Pension Plan (TCP1)

Nonqualified Benefit Plans
Triad Restoration Plan
Triad 401(a)(17) Restoration Plan

Defined Contribution Plans
Triad 401(k) Savings Plan (TCP1)
Triad 401(k) Retirement Plan (TCP2)

General Provisions

To the extent legally permissible, qualified plan expenses should be paid from plan assets. If the Contractor seeks to pay separately, through a fringe benefit pool or otherwise, plan expenses that may legally be paid from plan assets, the Contractor must seek advance Contracting Officer approval. Reasonable expenses associated with administration and management of the plan that legally may not be paid from

plan assets, are reimbursable. In addition, only compensation reimbursed by DOE/NNSA under the Contract is authorized to be considered as pensionable earnings for purposes of the plans.

(a) Qualified Defined Contribution Plans

Funds contributed on behalf of participating employees whose employment was terminated, but whose benefit never vested pursuant to the provisions of the plans, shall be used to offset the Contractor's contributions obligated to be made on behalf of other participants in the plans. In the event the Contract is terminated, funds not committed to participants pursuant to provisions of the defined contribution plans in effect for Contractor employees at Los Alamos National Laboratory shall be returned to the Contract.

(b) Non-Qualified Plans

The Contractor will be reimbursed for costs for the Non-Qualified Plans only in accordance with the following:

(1) Eligible compensation for purposes of the Triad Restoration Plan and the Triad 401(a)(17) Restoration Plan shall be limited only to the compensation reimbursed under the Contract.

(2) Any necessary changes to the Triad Restoration Plan and the Triad 401(a)(17) Restoration Plan that need to be made to effect the participation and compensation limitations set forth in Section 6.0(b)(1) of this Appendix, shall be made no later than 120 days after the effectuation of the modification incorporating the Personnel Appendix.

(3) The Triad Restoration Plan and the Triad 401(a)(17) Restoration Plan are funded on a pay-as-you-go basis. Amendments to the Triad Restoration Plan and the Triad 401(a)(17) Restoration Plan require approval of the Contracting Officer.

(4) No later than 60 days before the end of the fiscal year, the Contractor shall report the following data to the Contracting Officer: number of individuals receiving Non-Qualified Plan benefits, benefits amounts paid to individuals in the previous calendar year, supporting data to determine the benefit paid, and any other data as requested by the Contracting Officer.

7.0 Paid Leaves of Absence

Paid Leaves of Absence. Six months after the effectuation of the Contract modification incorporating this Personnel Appendix, the Contractor will submit for approval to the Contracting Officer a proposal that assesses and proposes to modify, where appropriate, the

components of the Paid Leaves of Absence section set forth below (excluding Holidays, Vacation, and Sick Leave.

The Contractor is authorized to provide the following types of paid leave to full and part-time, non-bargaining unit employees. Casual Employees are not eligible for paid leave. Paid leave for bargaining unit employees is allowable if provided for in their respective collective bargaining agreements.

Paid leaves for non-bargaining unit employees are allowable as follows:

- *Holidays*. The Contractor may grant to employees up to ten paid, eight-hour holidays per calendar year.

- *Vacation*. The Contractor may grant full-time and part-time employees vacation according to the following chart, pro-rated for part-time employees:

Vacation

Start Date and Years of Service	Annual Accrual Rate	Maximum Allowable Accrual
20 or more years	192 hours	384 hours
15 or more years, but less than 20 years	168 hours	336 hours
10 or more years, but less than 15 years	144 hours	288 hours
Less than 10 years	120 hours	240 hours

The Contractor may approve additional vacation grants or accrual rates in individual cases. The Laboratory Director shall approve any such additional vacation grants or accrual rates for individual employees and such approval shall be documented.

- *Sick Leave*. The Contractor may grant full-time and part-time employees sick leave according to the following chart, pro-rated for part-time employees:

Sick Leave Accrual

Start Date	Annual Accrual Rate
Before December 1, 1992	144 hours
Any Start Date On or After December 1, 1992	96 hours

The Contractor shall not pay out unused sick leave to employees upon termination.

- *Job-Incurred Illness or Injury Leave*. The Contractor is authorized to provide full-time and part-time employees Job-Incurred Illness or Injury Leave that provides some portion of pay for up to 26 weeks' pay. The Contractor is authorized to provide this type of leave to part-time employees on a pro-rated basis. The Contractor is authorized to provide employees 100% of their normal salary during the seven-calendar day waiting period before workers' compensation payments begin. The Contractor may provide employees pay up to 80% of normal salary for the remaining 25 weeks associated with the Job-Incurred Illness or Injury Leave. The Contractor is required to ensure that payments provided to employees on a Job-Incurred Illness or Injury Leave are coordinated with any workers compensation payments provided to the employee so that the combined workers compensation payment plus the Contractor-provided supplemental Job-Incurred Illness or Injury Leave pay does not exceed 80% of the employee's regular weekly salary or average weekly wages. It is the policy of the Contractor that employees may not use vacation or sick leave while on Job-Incurred Illness or Injury Leave.

- *Blood Donation*. The Contractor is authorized to provide an employee up to four hours of paid time off to participate in a Contractor-approved blood drive.

- *Fitness for Duty*. The Contractor is authorized to place an employee in paid leave status if the Contractor's Division of Occupational Health instructs the employee to remain off work pending the completion of a medical evaluation as to whether the person is fit for duty.

- *Emergency Activities*. The Contractor is authorized to grant employees paid leave for voluntary, uncompensated participation in emergency operations such as search and rescue, law enforcement support or firefighting. The emergency operations must be approved by a United States Government Agency, the Governor of New Mexico, the Los Alamos Country Emergency Preparedness Director, an authorized fire department official, or an authorized law enforcement agency.

- *Civil Emergency Preparedness Training*. The Contractor is authorized to grant employees who are members of a Los Alamos County Emergency Preparedness organization up to 40 hours per year paid leave to participate in that organization's training programs and exercises.

- *Voting Time*. The Contractor is authorized to provide paid leave for voting to the extent required by state law.

- *Authorized Leave with Pay*. The Contractor may grant Exempt Employees up to three work days paid leave per calendar month when the Contractor has required the employee to work significantly more hours than would be expected on a normal work schedule. The Contractor's time off grant should be roughly commensurate to the amount of additional time worked, beyond the Exempt Employee's normal schedule (e.g., if the employee worked 16 additional hours in a pay period, the Contractor would grant the employees two full days of paid leave). Additional Authorized Leave with Pay in excess of three days per month may be granted at the discretion of the Laboratory Director.

- *Jury Duty*. The Contractor may grant paid leave to employees for the purpose of jury duty.

- *Entrepreneurial Leave*. The Contractor may grant an unpaid leave of up to one year to employees to pursue entrepreneurial activities using LANL technology or intellectual property, while continuing to pay the employer premiums for medical, dental and vision insurance on the same basis as if the employee was in pay status.

- *Military Leave*. The Contractor is authorized to grant military leave with pay to an employee for up to thirty calendar days in a calendar year.

- *Military Supplemental.* The Contractor is authorized to grant supplemental payments equal to the difference between an employee's base pay and the employee's military pay and associated allowances, and continuing employer-paid contributions to health plan coverage when the employee has received orders to report for active duty in support of a named military campaign or national emergency.

- *Tribal Government Service Leave*. The Contractor is authorized to grant paid leave to an employee to serve as the tribal governor, tribal lieutenant governor, or tribal secretary of a federally-recognized Indian Tribe in accordance with the following chart:

Length of Laboratory Service	Percent of Full-Time Salary
Up to two years	50 percent
Two years or more but less than six years	55 percent
Six years or more	60 percent

- *Security Leave*. The Contractor may grant paid leave to an employee whose security access authorization has been suspended by the Federal Government pending a decision by an Administrative Law Judge as to whether the access authorization should be revoked, provided that the Contracting Officer has agreed that uncleared work is not otherwise available.

- *Maternity Leave*. The Contractor may grant up to six consecutive weeks of paid leave to an employee for the delivery of a child and the recovery from childbirth, provided the employee has been an employee of the Contractor for at least thirty days prior to the birth.

- *Parental Leave*. The Contractor may grant up to three consecutive weeks of paid leave to an employee for purposes of bonding with the child newly born to the employee, or the newborn child of the employee's spouse or domestic partner, or a child newly placed for adoption with the employee, provided the employee has been an employee of the Contractor for at least thirty days prior to the birth or adoption placement.

- *Professional Research or Teaching Leave*. The Contractor may grant paid leave according to the following chart for purposes of teaching or conducting research at universities and research institutions. To the extent the employee receives partial payment from the university or research institution, the Contractor may provide payment to the employee as well, as long as the employee's total salary does not exceed the listed percentages.

Years of Service or Years Since Last PR or T Leave	PR or T Leave Up to Six months and Up to % Salary Below	PR or T Leave 6-12 Months and Up to % Salary Below
4 years	.89 salary	.44 salary

4 1/2 years	Regular salary	.50 salary
5 years	Regular salary	.56 salary
5 ½ years	Regular salary	.61 salary
6 years	Regular salary	.67 salary
7 years	Regular salary	.78 salary
8 years	Regular salary	.89 salary
9 years	Regular salary	Regular salary

Neither vacation nor sick leave will accrue to an employee while on Professional Research or Teaching Leave.

- *Advanced Study Leave*. The Contractor is authorized to grant an employee up to twelve months paid leave for full-time graduate-level study at an accredited college or university within the United States when attainment of the advanced degree will enhance LANL programmatic objectives. The Contractor is authorized to provide an employee full salary and benefits, except that the employee will not accrue sick leave or vacation. The Contractor is authorized to provide the employee reimbursement for tuition, books and related fees during the leave. The Contractor will require the employee to sign an agreement to reimburse all costs associated with the period of paid leave, including salary and benefits, if the employee does not remain employed by the Contractor for two years following completion of the leave.

- *Investigatory Leave*. The Contractor is authorized to place an employee on investigatory leave with pay if the Contractor deems it appropriate to do so during a disciplinary investigation.

8.0 Training and Education

a) General

(1) The training and education shall be directly related to the employee's current position or to another position to which the employee may reasonably be moved.

(2) The Contractor shall establish written procedures outlining a system of approval for all requests for training and education. The system provides an approval structure for in-house and outside training programs and educational assistance. The Contractor University Entities, (the Regents of the University of California and the Texas A&M University System), and local colleges and universities, as appropriate, should be utilized as primary sources for training and education to the extent that the training or educational programming provided by the Contractor University Entities provides the best overall value to the NNSA.

b) Training

(1) Internal Training Programs. Internal training programs may include but are not limited to orientation, job training, supervisory training, and executive development. Such training programs may be conducted during employee's workday or after hours to the extent no overtime is associated with the training, as overtime payments for training hours are unallowable under FAR 31.205-44(a). Reasonable costs of in-house training including necessary equipment, materials, and instructor personnel are allowable.

(2) External Training Programs. The Contractor may select employees to participate in job-related training courses, technical meetings, professional society meetings, seminars, conferences, and other specialized training courses away from the site(s) facilities. Allowable costs for such training courses may include employee's regular pay, travel and meals and incidental expenses (M&IE), and the cost of tuition, fees, and course materials. Conference management shall be managed in accordance with the DOE/NNSA conference management requirements.

c) Education

(1) Academic cooperation program. The Laboratory Director may approve the assignment of certain selected individuals at the graduate or undergraduate level, who are currently enrolled in recognized colleges or universities, to projects proposed by the college or university and approved by the Contractor. Such assignments are to be made primarily to further the individual's training, experience, and education. The training the individual receives will be credited by the academic institution; these individuals shall not be paid by the Contractor. The Contractor is authorized to provide travel expenses and M&IE to individuals approved by the Laboratory Director under this program.

(2) Special employment programs. The Laboratory Director may authorize the administration of special employment programs for students at the postgraduate, graduate, undergraduate, and pre-college levels to the extent that these programs are consistent with FAR 31.205.44. Internship or membership fees associated with nationally recognized special employment programs that are paid to other institutions in support of these programs are allowable. The Laboratory Director may also authorize the administration of special employment programs for school teachers to advance science curriculum development in Northern New Mexico public schools. Costs associated with salaries, transportation, and relocations shall be in accordance with the Contract and shall be reported annually to the Contracting Officer. A description of the Contractor's special employment programs shall be provided to the Contracting Officer annually.

(3) Fellowship programs. The Contractor may incur costs associated with participation in programs (e.g., consortium arrangements such as the National Physical Sciences Consortium for Graduate Degrees for Minorities and Women and the National Consortium for Graduate Degrees for Minorities in Engineering, DOE/NNSA/Contractor academy/leadership programs, Laboratory science education initiatives) to provide graduate fellowships to students in science and engineering. Costs associated with employment of students shall include salaries, transportation, and relocation. A description of these programs shall be provided annually to the Contracting Officer.

The Contractor is authorized to operate a fellowship program to strengthen employment pipelines through consortium fellowships. Participants will be hired as either a Scientist 1 or a Research and Development Engineer 1. Participants are paid a full salary while working at the Los Alamos National Laboratory and a portion of their salary (50%) while away at school, if enrolled in full-time graduate level education. The program is limited to no more than twelve participants per year. A fellowship may not last more than two years. The Contractor will require fellowship participants to enter into an agreement indicating they will reimburse all costs, including salary and benefits, if the fellow does not remain employed by the Contractor for two months for every one month that the fellowship participant was attending graduate school, upon the fellow's return to LANL after completion of the graduate work.

d) Honoraria

The Contractor is authorized to provide either a stipend or an honorarium and costs of travel and M&IE for a person chosen to give a lecture or to discuss topics of interest with Contractor employees.

(1) When payment of travel, M&IE, and honorarium is authorized, an honorarium in excess of $1,500 shall require the Laboratory Director's

approval.

(2) When payment of a stipend, in lieu of travel, M&IE, and honorarium, is authorized, a stipend in excess of $2,000 shall require the Laboratory Director's approval.

The Contractor will provide a report with the names and associated stipend costs or honorarium plus travel costs for the previous calendar year to the Contracting Officer by April 1.

e) Service academy research program.

The Contractor may participate in a cooperative summer program with military academies by assigning members of the faculty (officers) and cadets/midshipmen to work in various LANL programs. During these periods of assignment the individuals shall continue to receive their military salary. The Contractor may reimburse the individuals for work-related travel costs and M&IE, during the period of assignment at LANL.

9.0 Travel, Relocation, and Meals and incidental expenses (M&IE)

The Contractor may reimburse transportation, lodging, and M&IE for employees who are required to travel in conjunction with the performance of work under this Contract. The Contractor also may reimburse transportation, lodging and M&IE for individuals who are not employees, but who are covered by an agreement (i.e., guest scientist) with the Contractor, to support work under the Contract and who are required to travel in conjunction with the performance of work under this Contract. Costs of the foregoing shall be allowable only to the extent they are incurred in accordance with the FAR, DEAR, and FTR and do not exceed the maximum per diem rates in effect at the time of travel set forth in the FTR, prescribed by the General Services Administration. To the extent that transportation, lodging and M&IE are addressed anywhere in this Personnel Appendix, all costs must be incurred in accordance with the FAR, DEAR, and FTR and such costs shall not exceed the maximum per diem rates in effect at the time of travel set forth in the FTR, prescribed by the General Services Administration.

a) The Contractor may deviate from this Appendix in specific instances where it is approved by the Contracting Officer to be economically advantageous to DOE/NNSA and to the extent such deviations conform to regulations and law. The Contractor will maintain records for audit review.

b) The Contractor may provide relocation expenses for Exempt Employees and Non-Exempt employees with critical skills. Relocation expenses shall be incurred in accordance with the provisions, limitations and exclusions of the FAR and the FTR.

c) The Contractor may provide reduced travel allowances for limited term hire employees supporting capital projects at the site. These allowances are limited to a one-year period and shall be made in accordance with the Contractor's approved policies that are in effect on the date that the Personnel Appendix is effectuated by modification to the Contract. Any deviations to the one-year limit or to the Contractor policies require Contracting Officer approval 30 days prior to the start date of the assignment.

10.0 Recruiting

a) The Contractor may pay for the individual interviewee's, and spouse's or domestic partner's, transportation expenses and meals and incidental expenses in accordance with the DEAR, FAR and the FTR.

b) The costs of recruitment of personnel including nominal costs for promotional items for recruitment purposes, employment advertising, services of staffing sourcing vendors, services of employment agencies at rates not in excess of standard commercial rates, participation in corporate recruiting activities, campus recruiting, and career fairs are allowable.

c) If the Contractor requests that applicants who live more than 50 miles from LANL report to LANL for a pre-employment interview, the Contractor may pay for the applicant's transportation expenses, lodging, and MI&E, in accordance with the DEAR, FAR and FTR.

11.0 Special Employee Activities

a) Service and retirement awards.

The Contractor may recognize employees' years of service and employees' retirement through award programs.

Up to 0.02% of the total salary base associated with full-time and part-time Exempt, Non-Exempt, and craft employees may be spent annually on service and retirement award programs.

b) Performance award programs.

(1) The Contractor may recognize employees or groups of employees who have distinguished themselves by their significant contributions and outstanding performance in the course of their work. The Contractor may provide awards to employees or groups of employees in the form of cash. Additionally, noteworthy achievements and special efforts may be recognized by the presentation of plaques, certificates, and memorabilia.

Up to 0.15% of the total salary base for full-time and part-time Exempt, Non-Exempt, and craft employees may be spent annually to fund performance award programs.

c) Employee Referral Program.

The Contractor is authorized to implement an Employee Referral Bonus Program. Contracting Officer approval is required for initial program implementation and all changes to policy impacting referral bonus maximums. The Contractor will provide the Contracting Officer an annual report addressing cost and program effectiveness.

d) Other Programs.

(1) Employee morale activities. Consistent with FAR 31.205-13, the Contractor may provide an employee morale program not to exceed $16 per employee (full-time or part-time), per fiscal year.

(2) Wellness program. Costs of a wellness program to promote employee health and fitness are allowable. The wellness program shall be limited to activities related to stress management, smoking cessation, exercise, nutrition, and weight loss.

12.0 Community Involvement and Outreach Program

The Contractor may authorize employees to participate in educational and community outreach consistent in accordance with the Community Involvement and Outreach Plan approved by the Contracting Officer. The salaries, wages, and fringe benefits of employees while engaged in such approved activities will be treated as allowable costs.

Educational and community outreach does not include activities conducted by elected or appointed officials during an employee's regularly scheduled work day. Compensation associated with educational and community outreach outside of the employee's normal work schedule shall not be reimbursed under the Contract. The Contractor shall submit a report annually, no later than November 1, to the Contracting Officer on the types of educational and community outreach and number of hours utilized in the fiscal year that ended the previous September 30. Some examples of permissible educational and community outreach include, but are not limited to:

a) Promotion of Science, Technology, Engineering, and Mathematics in the educational setting (elementary school through higher education institutions)

b) Science Bowl and Science Fairs

c) Blood bank drives

d) Charity drives

e) Employee giving campaigns

13.0 Other Provisions

a) Personnel Borrowed

It is recognized that the technical and staffing needs of the Contractor will vary during performance of this Contract. The Contractor may develop a procedure subject to Contracting Officer approval to obtain direct support from employees of the Regents of University of California, Battelle Memorial Institute, Texas A&M University Systems (Contractor Parent Companies) to meet technical and staffing requirements on an as-needed basis. Services performed by Contractor Parent Company Personnel will be paid by the Contractor to the Contractor Parent Company at cost, without fee or profit. Any Contractor-developed procedure must require the Contractor Parent Company's direct costs and allocable indirect costs to be consistent with FAR 31.201-2 and will be subject to Contracting Officer advance approval. An annual report setting forth the assignments of Contractor Parent Company personnel shall be provided to the Contracting Officer.

b) Contractor Personnel Loaned

The Contractor may loan, at no cost to the Government, personnel working under this Contract to other operations of Contractor Parent Companies on a non-interference basis as reasonably determined by the Contractor. Loans of personnel longer than 30 days require Contracting Officer approval. The receiving Contractor Parent Companies will reimburse the Contractor for full allocable direct and indirect costs.

14.0 Partnerships with Contractor University Entities

The Contractor may establish reasonable partnerships with the Contractor University Entities in support of the Contract work. The purpose of these efforts will be to leverage scientific knowledge of the Contractor University Entities through such partnerships to develop solutions to scientific issues that benefit Contract work.

a) Temporary Assignments of Contractor Employees to Other Institutions for Teaching and Research/Technical Exchange.

Contractor employees who are scientists and engineers may teach one course in the subjects of science, engineering or math every two years at any University of California or Texas A&M Campus or participate in a Research/Technical Exchange provided such

activity supports the activities set out in the Statement of Work of the Contract. To the extent the employee receives partial payment from the university or research institution for such Assignment, the Contractor must reduce the employee's total salary to offset such payment. Such staff assignments shall be subject to review and approval by the cognizant Deputy Laboratory Director.

The Contractor will notify the Contracting Officer on an annual basis of personnel serving in Contractor University Partnerships.

PART III - SECTION J

APPENDIX D

KEY PERSONNEL

Name	Position
Thomas E. Mason, Ph.D.	Laboratory Director
Robert B. Webster, Ph.D.	Deputy Director Weapons
John L. Sarrao, Ph.D.	Deputy Director Science, Technology & Engineering (ST&E)
Kelly J. Beierschmitt, Ph.D.	Deputy Director Operations
Michael P. Bernardin, Ph.D.	Associate Laboratory Director, Weapons Design
James C. Owen	Associate Laboratory Director, Weapons Engineering
David E. Eyler	Associate Laboratory Director, Weapons Production
Frank E. Gibbs, Ph.D.	Director, Actinide Operations
Nancy Jo Nicholas	Associate Laboratory Director, Global Security
Michael W. Hazen	Associate Laboratory Director, Environment, Safety, Health, Quality, Safeguards and Security
Kathye A. Segala	Associate Laboratory Director, Capital Projects
LeAnne Stribley	Associate Laboratory Director, Business Management
Bret Simpkins	Associate Laboratory Director, Facilities and Operations

PART III - SECTION J

APPENDIX E

SMALL BUSINESS SUBCONTRACTING PLAN AND SMALL BUSINESS PARTICIPATION

PART III - SECTION J

APPENDIX F

DIVERSITY PLAN GUIDANCE

In accordance with Section I clause DEAR 970.5226-1, *Diversity Plan*, this Appendix provides guidance to assist the Contractor in understanding the information being sought by the Department of Energy, National Nuclear Security Administration (DOE/NNSA) for each of the diversity elements within the clause. The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this Contract and shall submit an update to its Plan annually.

Where the following elements are already addressed by the Contractor as an Appendix to the Contract or in a current Contractor policy or procedure, the Contractor need only cross-reference the applicable Contract appendix or provide a copy of the policy or procedure to the Contracting Officer. The Contractor must address the linkage between the following elements and the contractor's organizational business and management strategies for diversity, including the contractor's vision and definition of diversity in their Diversity Plan:

(a) Contractor's WorkForce

This Contract includes clauses on Equal Employment Opportunity (EEO) and Affirmative Action (AA). The Plan or policy shall address how the Contractor has or plans to establish and maintain result-oriented AA and EEO programs in accordance with the requirements of these clauses, and how the Contractor's organization includes, or plans to include, elements/dimensions of diversity that might enhance such programs.

(b) Educational Outreach

The Plan or policy shall address the Contractor's strategies to foster relationships with Minority Educational Institutions and other institutions of higher learning (e.g., Historically Black Colleges and Universities, Hispanic serving institutions, and Native American institutions) to increase their participation in federally sponsored programs through subcontracting opportunities, research and development partnerships, and mentor-protégé relationships. The contractor's plan may also discuss cooperative programs which encourage under represented students to pursue science, engineering, and technology careers.

(c) Community Involvement and Outreach

The Plan or policy shall address the Contractor's community relations activities in support of diverse elements of the local community, for example: Support for science, mathematics, and engineering education; support for community service organizations; assistance to governmental and community service organizations for equal opportunity activities; community assistance in connection with work force reduction plans; Strategic partnerships with professional and scientific organizations to enhance recruitment into all levels of the organization; and Use of direct sponsorship or making individual employees available to

work with a specific community activity. Also, the contractor's plan may discuss cooperative programs which encourage under represented students to pursue science, engineering, and technology careers.

(d) Subcontracting

The Plan shall address outreach activities and achievements for enhancing subcontracting opportunities for small businesses, small disadvantaged businesses (e.g., small businesses owned and controlled by socially and economically disadvantaged individuals, Native American Tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations), small business firms located in historically underutilized business zones, woman-owned small businesses, and veteran-owned (including service-disabled veteran-owned) small businesses. The Plan may also discuss actual or planned participation in the Department's Mentor-Protégé Program. Refer to Section I clause FAR 52.219-9, *Small Business Subcontracting Plan, Alternate II* and other small business related clauses for additional guidance and requirements.

(e) Economic Development including Technology Transfer

The Plan shall address the Contractor's outreach efforts that relate to small business concerns for the purpose of assisting the economic development of, or transferring technology to such a business.

(f) Prevention of Profiling Based On Race Or National Origin

The Plan shall address the Contractor's approach to preventing prohibited profiling practices, including strategies for early detection of potential profiling in the Contractor's business activities (e.g., personnel actions, security clearances).

PART III - SECTION J

APPENDIX G

SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT FOR USE WITH THE PAYMENTS CLEARED FINANCING ARRANGEMENT

Note: (1) The Contractor shall enter into a new banking agreement(s) during the Transition Period of the Contract, utilizing the format contained in this Appendix and include other applicable Contract terms and conditions.

(2) Items in brackets [ ] below are provided for clarification and will be removed from the document prior to execution.

Agreement entered into this,_____day of_____,_____, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE" or"Government"), and_____, a corporation/legal entity existing under the laws of the State of_____(hereinafter referred to as the Contractor), and_____, a financial institution corporation existing under the laws of the State of_____, located at _____ _____ (herein after referred to as the Financial Institution).

RECITALS

(a) On the effective date of_____,_____, DOE and the Contractor entered into Agreement(s) No._____, or Supplemental Agreement(s) thereto, providing for the transfer of funds on a payments-cleared basis.

(b) DOE requires that amounts transferred to the Contractor thereunder be deposited in a special demand deposit account at a financial institution covered by Treasury-approved Government deposit insurance organizations that are identified in ITFM 6-9000.

These special demand deposits must be kept separate from the Contractor's general or other funds, and the parties are agreeable to so depositing said amounts with the Financial Institution.

(c) The special demand deposit account shall be designated " [name of Contractor], [account title] account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

1. The Government shall have a title to the credit balance in said account to secure the repayment of all funds transferred to the Contractor, and said title shall be superior to any lien, title or claim of the Financial Institution or others with respect to such accounts.

2. The Financial Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the transfer of funds into and withdrawal of funds from the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from said account. After receipt by the Financial Institution of directions from DOE, the Financial Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Financial Institution from the Government upon DOE stationery and purporting to be signed by, or signed at the written direction of, the Government may insofar as the rights, duties, and liabilities of the Financial Institution are concerned, be considered as having been properly issued and filed with the Financial Institution by DOE.

3. DOE, or its authorized representatives, shall have access to the financial records maintained by the Financial Institution with respect to such special demand deposit account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Financial Institution for a period of 6 years after the final payment under the Agreement.

4. In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account, the Financial Institution shall promptly notify DOE at:

   U.S. Department of Energy, National Nuclear Security Administration
   Los Alamos Field Office
   Contracting Officer
   3747 West Jemez Road
   Los Alamos, New Mexico 87544

5. DOE shall authorize funds that shall remain available to the extent that obligations have been incurred in good faith by the Contractor under the Agreement referenced in Recital (a) between DOE and the Contractor to the Financial Institution for the benefit of the special demand deposit account. The Financial Institution agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily balance in the special demand deposit account in a net positive and as close to zero as administratively possible.

The Financial Institution agrees to service the account in this manner based on the requirements and specifications contained in DOE or Contractor Solicitation No.____, dated_____, including the latest revision. The Financial Institution agrees that per-item costs, detailed in the form "Schedule of Financial Institution Processing Charges," contained in the Financial Institution's aforesaid bid will remain constant during the term of this Agreement. The Financial Institution shall calculate the monthly fees based on services rendered and invoice the Contractor. The Contractor shall issue a check or automated clearing house authorization transfer to the Financial Institution in payment thereof.

6. The Financial Institution shall post collateral, acceptable under 31 CFR 202 with the Federal Reserve Bank in an amount equal to the net balances in all of the accounts included in this Agreement (including the noninterest-bearing time deposit account), less the Treasury-approved deposit insurance.

7. This Agreement, with all its provisions and covenants, shall be in effect for a term of __ years, beginning on the____day of_,_____, and ending on the day of___,_____.

8. DOE, the Contractor, or the Financial Institution may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.

9. DOE or the Contractor may terminate this Agreement at any time upon 30 day's written notice to the Financial Institution if DOE or the Contractor, or both parties, find that the Financial Institution has failed to substantially perform its obligations under this Agreement or that the Financial Institution is performing its obligations in a manner that precludes administering the program, in an effective and efficient manner or that precludes the effective utilization of the Government's cash resources.

10. Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement, referenced in Recital (a), between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Financial Institution shall be terminated automatically upon the delivery of written notice to the Financial Institution.

11. In the event of termination, the Financial Institution agrees to retain the Contractor's special demand deposit account for an additional 90-day period to clear outstanding payment items.

This Agreement shall continue in effect for the 90-day additional period, with exception of the following:

1. Term Agreement (Covenant 7)

2. Termination of Agreement (Covenants 8 and 9)

All terms and conditions of the aforesaid bid submitted by the Financial Institution that are not inconsistent with this 90-day additional term shall remain in effect for this period.

The Financial Institution has submitted the forms entitled “Technical Representations and Certifications” and “Schedule of Financial Institution Processing Charges.” These forms have been accepted by the Contractor and the Government and are incorporated herein with the document entitled “Financial Institution’s Information on Payments Cleared Financing Arrangement,” as an integral part of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement, which consists of ____ pages, including the signature pages, to be executed as of the dayand year first above written.

THE UNITED STATES OFAMERICA

_____
Date Signed

By _____
(Typed Name of Contracting Officer)

_____
(Signature of Contracting Officer)

WITNESS

_____
(Typed Name of Witness)

_____
(Typed Name of Contractor)

_____
(Signature of Witness)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

By_
(Name of Contractor's Representative)

_____
(Signature of Contractor's Representative)

_____
(Title)

_____
(Address)

_____
(Date of Signed)

WITNESS

_____
(Name of Witness)

By _____
(Name of Financial Institution)

_____
(Name of Financial Institution Representative)

_____
(Signature of Witness)

_____
(Signature of Financial Institution Representative)

_____
(Title)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

_____
(Title)

_____
(Address)

_____
(Date Signed)

NOTE

The Contractor, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I,_____, certify that I am the_____of the corporation named as Contractor herein; that_____, who signed this Agreement on behalf of the Contractor, was then_____of said corporation; and that said Agreement was duly signed for an in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____

(Corporate Seal) (Signature)

NOTE

Financial Institution, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I,_____, certify that I am the_____of the corporation named as Financial Institution herein; that_____, who signed this Agreement on behalf of the Financial Institution, was then_____of said corporation; and that said Agreement was duly signed for an in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____

(Corporate Seal) (Signature)

PART III - SECTION J

APPENDIX H

AGREEMENT ON THE ESTABLISHMENT OF THE ITER INTERNATIONAL FUSION ENERGY ORGANIZATION FOR THE JOINT IMPLEMENTATION OF THE ITER PROJECT

The Agreement on the establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project is located at the following URL: http://www.iaea.org/Publications/Documents/Infcircs/2007/infcirc702.pdf.

PART III - SECTION J

APPENDIX I

PERFORMANCE GUARANTEE AGREEMENT(S)

TRIAD
National Security, LLC

TRIAD NATIONAL SECURITY, LLC
Battelle Memorial Institute
The Texas A&M University System
University of California

Contract No. DE-89233218NCA000001

A3550 – PERFORMANCE GUARANTEE AGREEMENT

Submitted by:

Dana C. Christensen — 31 August 2018

Dana C. Christensen — **Date**
Triad Transition Manager

The Regents of the
University of California

PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract No. 89233218CNA000001 for the management and operation of Los Alamos National Laboratory (the "Contract") dated June 8, 2018 by and between the Government and Triad National Security, LLC (Contractor), the undersigned, The Regents of the University of California (Guarantor), a corporation incorporated in the State of California with its principal place of business at 1111 Franklin Street, Oakland, CA, 94607 hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before

enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on August ____, 2018.

The Regents of the University of California

By: _____
Janet Napolitano
President of the University of California

Attestation:

I, Anne Shaw, Secretary and Chief of Staff to The Regents of the University of California, hereby attest that Janet Napolitano is the President of the University of California.

Signed: Anne Shaw Date: August 31, 2018

Anne Shaw
Secretary and Chief of Staff to The Regents of the University of California

Corporate Seal:

Battelle Memorial Institute

SECTION J

APPENDIX I

PERFORMANCE GUARANTEE AGREEMENT(S)

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract 89233218CNA000001 for the management and operation of Los Alamos National Laboratory (the "Contract") dated June 8, 2018, by and between the Government and Triad National Security, LLC (Contractor), the undersigned, Battelle Memorial Institute (Guarantor), a corporation incorporated in the State of Ohio with its principal place of business at 505 King Avenue, Columbus, Ohio 43201 hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

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reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

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No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on 8-13-18.

BATTELLE MEMORIAL INSTITUTE

By: Ronald D Townsend

Ronald D. Townsend
Executive Vice President
Executing Performance Guarantee Agreement on behalf of Guarantor and having authority to affix corporate seal

BATTELLE MEMORIAL INSTITUTE CORPORATE SEAL 1925 OHIO

I, Russell P. Austin, General Counsel and Secretary, hereby attest that Ronald D. Townsend, who signed this certificate on behalf of Battelle Memorial Institute, was then Executive Vice President of said Corporation.

Russell P. Austin

The Texas A&M University System

SECTION J

APPENDIX I

PERFORMANCE GUARANTEE AGREEMENT(S)

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract 89233218CNA000001 for the management and operation of Los Alamos National Laboratory (the "Contract") dated June 8, 2018, by and between the Government and Triad National Security, LLC (Contractor), the undersigned, The Texas A&M University System (Guarantor), a state institution of higher education with its principal place of business at 301 Tarrow Street, College Station, Texas 77840 hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

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Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy,

reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on August 30, 2018.

THE TEXAS A&M UNIVERSITY SYSTEM

By: M. K. Banks

Dr. M. Katherine Banks
Vice Chancellor and Dean of Engineering
Executing Performance Guarantee Agreement on behalf of Guarantor and having authority to affix corporate seal

I, Steven R. Garrett, Managing Counsel, Office of General Counsel, hereby attest that Dr. M. Katherine Banks, who signed this certificate on behalf of The Texas A&M University System, was then Vice Chancellor of The Texas A&M University System.

Steven R. Garrett

PART III - SECTION J

APPENDIX J

TRANSITION PLAN

If you require this information, please contact the Prime Contract Management Office.

PART III - SECTION J

APPENDIX K

PROGRAM MANAGEMENT AND COST REPORTS

The Contractor shall submit monthly cost, schedule, and technical performance plans and reports as required by the Contracting Officer. The reports shall be consistent with and reconcilable to data captured in the Enterprise Portfolio Analysis Tool (EPAT) and Planning, Programming, Budgeting, and Evaluation (PPBE) tool. The Contractor shall have systems in place to expand the information provided to a designated level consistent with the NNSA Defense Programs' approved Work Breakdown Structure (WBS).

(a) Monthly Submissions for Reporting

(1) Directed Cost Reporting at a minimum shall include:

(i) Specified cost elements including labor, material, other procurements, and travel;
(ii) Indirect/overhead costs to include overhead and fringe rates;
(iii) Schedule status information at the specified activity level; and
(iv) Performance measurement information when relevant.

(2) Weapon Program Management Reporting

The Contractor shall provide the following nuclear weapon programmatic information in support of program management and reporting requirements:

(i) Program scope, milestones, changes to program baseline, accomplishments/benefits, and issues, risks, and opportunities;
(ii) Year-to-date actual costs;
(iii) Year-to-date commitments/encumbrances;
(iv) Year-to-date total costs;
(v) Budget Authority (BA) for the associated Budget and Reporting (B&R) Classification Codes by fiscal year of appropriation;
(vi) Estimate at completion for the current fiscal year;
(vii) Projected carry-over BA by fiscal year; and
(viii) Earned value metrics for the current fiscal year.

The nuclear weapon programmatic information and status will be provided in a report that contains quadrant reporting (see Figure 1), performance reporting (see Figure 2), and earned value reporting (see Figure 3), as shown below.

(b) Annual Submissions for Reporting

(1) Implementation Plans
(2) Spend Plans
(3) Schedule Plans
(4) Specifications of Scope of Work Activity

While identified as annual submissions, to remain relevant, the Contractor shall update these plans based on changes to budget, work scope and schedule.

(c) Ad-hoc Submissions for Reporting

(1) Program Evaluation
(2) Cost Estimating
(3) Budget Validation
(4) Root Cause Analysis
(5) Earned Value Management Reporting

The Contractor shall support these ad-hoc submissions by providing NNSA access to the appropriate systems and to Contractor personnel to analyze and evaluate plans, programs, and budgets. The Contractor shall ensure the costs of programs are presented accurately and completely. The Contractor shall support NNSA's evaluation of alternative technical strategies to ensure programs and projects can be efficiently implemented.

The Contractor shall provide the Contracting Officer, or designated authorized representative(s), access to information and documents comprising the Contractor's reporting system.

(d) Subcontractor Reporting

The Contractor shall include these reporting requirements in all cost-reimbursement subcontracts when:

(1) The value of the subcontract is greater than $2 million, unless specifically waived by the Contracting Officer; or

(2) The Contracting Officer determines prior to award that the subcontract effort is, or involves, a critical task related to the Contract.

Figure 1. Quadrant Reporting example

Review Date: 10/09/08
Data Through: 9/30/08
Program Manager: Your Name Here
Customer: Customer's Name Here

	Scope	Cost	Schedule	Technical	Overall	
YTD	G	G	G	G	G	▶
EOY	G	G	G	G		

Program Scope
- **Free-form**
- **Include Major Products/Deliverables**

Program Milestones:
- **Enter all relevant milestones, not just Level 2 and 3, include milestones spread over FY if possible**
- **Modify table below – put in ascending order (closest first)**
- **Past milestones move to accomplishments**
- **Copy to separate page for reading purposes if necessary**

Milestone	Status	Baseline Date	Actual Date
Sample	-	8/06	11/06
	Y		
	R		
	G		
	G		

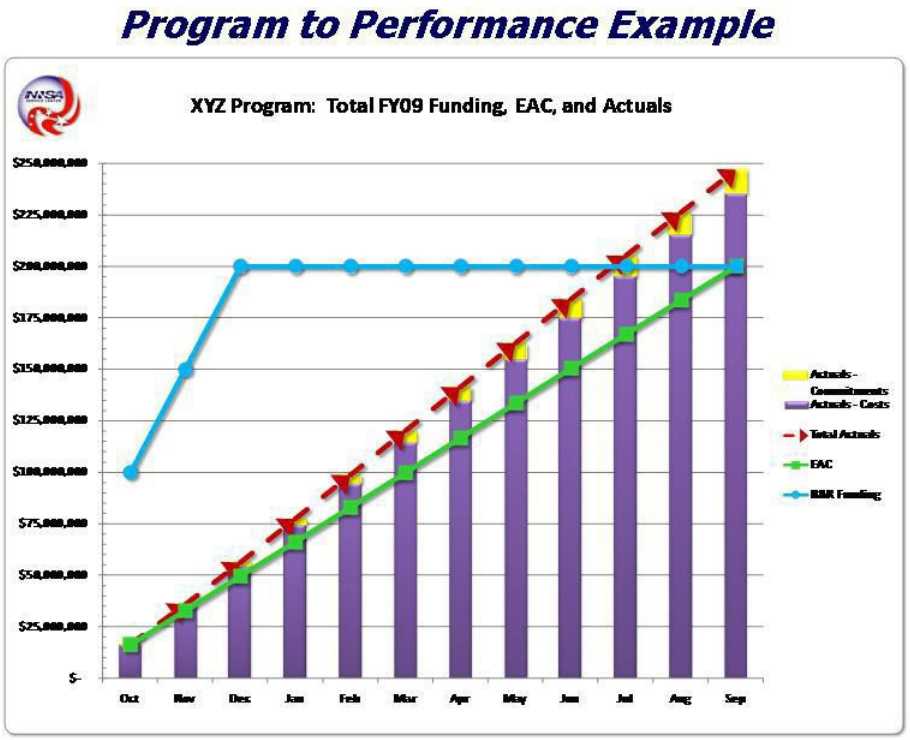
Changes to Program Baseline
- **Free-form**
- **Include both pending and approved BCR's/content but label as such**
- **Include potential scope changes, but label as such**

Accomplishments/Benefits:
- **Free-form**
- **List significant accomplishments since last review**
- **At start of new FY, summarize major accomplishments for past FY**

Issues(I), Risks(R), and Opportunities(O):
- **I - Issues related to above scope, cost, schedule, tech status**
- **R - Free-form**
- **O - Include risks and talk to ongoing mitigation activities during presentation**

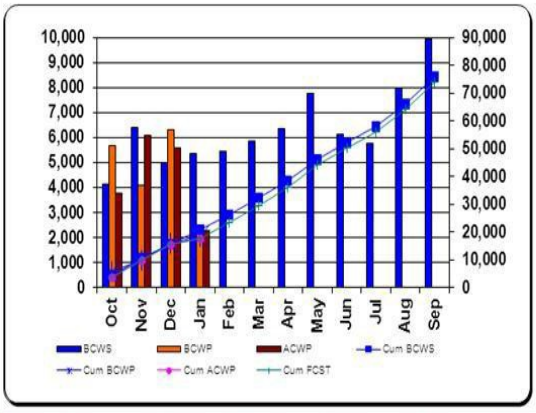
Note: FY is Fiscal Year

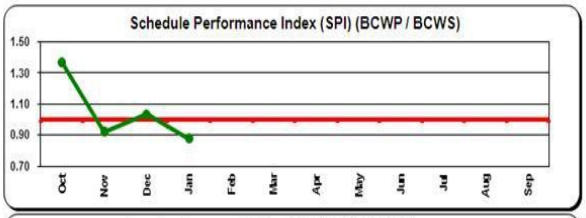
Figure 2. Performance Reporting

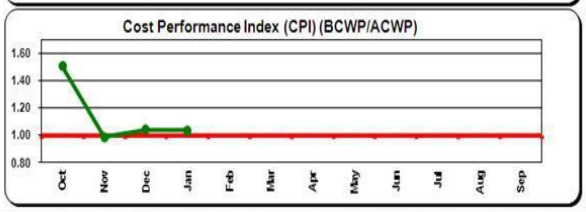


Note: The tabular data for actual commitments/encumbrances, projected actual costs, total actual costs, estimate at completion, and B&R funding will also be provided as part of this chart. This data shall be cumulative by month.

Figure 3. Earned Value Metrics Reporting







	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
CURRENT PERIOD												
BCWS	4,164	6,423	4,983	5,356	5,459	5,874	6,345	7,784	6,119	5,763	8,020	9,969
BCWP	5,687	4,079	6,330	2,305								
ACWP	3,775	6,108	5,603	2,273								
EAC	3,775	6,108	5,603	2,273	5,734	6,228	6,421	7,959	6,171	5,756	8,061	10,086
CUMULATIVE TO DATE												
BCWS	4,164	10,587	15,570	20,926	26,385	32,259	38,604	46,388	52,507	58,271	66,291	76,260
BCWP	5,687	9,766	16,096	18,402								
ACWP	3,775	9,884	15,486	17,759								
EAC	3,775	9,884	15,486	17,759	23,493	29,721	36,142	44,101	50,272	56,028	64,089	74,175
SV	1,523	(821)	526	(2,524)								
SPI	1.37	0.92	1.03	0.88								
CV	1,912	(118)	610	642								
CPI	1.51	0.99	1.04	1.04								

PART III - SECTION J

APPENDIX L

CONTRACTOR COMMUNITY COMMITMENT PLAN

Plan: A14840 - Community Commitment Plan

TRIAD
National Security, LLC

TRIAD NATIONAL SECURITY, LLC
Battelle Memorial Institute
The Texas A&M University System
University of California

Contract No. DE-89233218NCA000001

A14840 – COMMUNITY COMMITMENT PLAN

Submitted by:

Dana C. Christensen 12 October 2018

Dana C. Christensen **Date**
Triad Transition Manager

Triad Community Commitment Plan

In response to Clause H-23, Section B of the Request for Proposal No. DE-SOL-0011206, Triad National Security LLC proposes the following Community Commitment Plan (CCP) for the community surrounding Los Alamos National Laboratory.

The Triad National Security LLC. partners believe strongly in contributing to the communities in which we serve. Stemming from their initial charter as Land-Grant institutions, both the University of California and The Texas A&M University System are deeply committed to public service. Likewise, Battelle has a strong history of engagement and philanthropy in the communities in which its employees live and work. Further, Triad is well aware of the educational and economic challenges facing many of the communities surrounding Los Alamos National Laboratory. While previous contractors have certainly shared our commitment to these communities, it's clear that systemic problems persist.

The Board of Triad National Security LLC is committed to partnering with the community and NNSA across the spectrum of issues that enhance the region. The Triad CCP will focus primarily on the following areas of engagement with the community: education, economic diversity, and philanthropy. The Board will evaluate and assess the CCP at least annually to ensure that our partner investments have the highest impact possible for Northern New Mexico.

EDUCATION

Education will be a foundational component of our CCP. We believe the best use of our educational engagement will take three forms; Coordination and Convening, Education Preparation and Retention, and support of the Los Alamos Employees Scholarship Fund.

Coordination and Convening – from the community listening tour, Triad learned that the Los Alamos National Laboratory Foundation (lanlfoundation.org), an independent nonprofit foundation dedicated to supporting public K-12 education in the seven-county region of Northern New Mexico, has been deeply engaged in STEM activities since 1997. Triad will collaborate with the Foundation to continue and amplify those efforts already underway with the local K-12 school systems.

Education Preparation and Retention – Triad also learned from the listening tour that preparation and retention of qualified K-12 teachers and school administrators is challenging in some of the school districts surrounding Los Alamos. We propose working with local stakeholders to identify hard-to-staff educator roles (e.g., math and science), and target those roles for incentives such as assistance towards preparation/training programs or retention bonus programs for educators who pursue these roles.

Los Alamos Employees Scholarship Fund – Los Alamos employees have a long history of supporting this Fund – administered by the Los Alamos National Laboratory Foundation – to provide college scholarships for eligible students in the seven county region of Northern New Mexico. (For 2018 this fund supported 142 students with $712k in scholarships.) Triad will continue to support this fund and work with the Foundation to focus on needs-based scholarships, as well as support a new, separate scholarship fund for Pueblo students.

ECONOMIC DIVERSITY

The community surrounding Los Alamos remains keenly focused on diversifying the local economy. While jobs at Los Alamos National Laboratory are highly desirable and the Lab will continue to invest in workforce training related to opportunities at Los Alamos, Triad recognizes that investments and technical assistance to facilitate job growth beyond Los Alamos is important to building and sustaining a vibrant local economy.

Regional Development Corporation – Triad will continue to engage and collaborate with the Regional Development Corporation (rdcnm.org), a private, non-profit 501(c)3 based in Espanola that is dedicated to job creation and small business growth throughout the seven county region of Northern New Mexico and among the nine Pueblo councils. Triad intends to invest in the small business assistance programs administered by RDC and to establish a set of criteria to evaluate the success of this partnership with RDC on an annual basis.

Workforce training –Triad will work with the Northern New Mexico higher education community to identify non-lab related workforce training needs and support efforts to build curriculum and provide expertise to sustain such programs.

Small business assistance – Another strong theme from the listening tour was the need for specialized assistance and support for local entrepreneurs in non-related lab fields. Triad will work with the community to develop programs and bootcamps to address this need throughout the region and among the Pueblo Councils.

PHILANTHROPHY

Los Alamos employees have a long history of giving and volunteering in the community. Triad and its parent entities believe strongly in engaging with the communities in which we live and serve, and will continue to emphasize and support this tradition at Los Alamos.

Employee giving campaign – Triad proposes an annual match to employees giving to qualified charities in the seven county service area of Northern New Mexico (possibly add Eddy County in SE New Mexico where Los Alamos employees work at the WIPP site) to address the educational, social and behavioral needs of the community.

Sponsorships – Triad will continue a reasonable allocation of funds to "sponsorships" of local, non-profit events such as clothing drives, school back-pack campaigns, chamber breakfasts, YMCA events, Big Brothers/Sisters, etc.

PART III - SECTION J

APPENDIX M

REGIONAL PURCHASING PROGRAM

(a) General.

(1) Los Alamos National Laboratory is the major economic presence in Northern New Mexico (NNM). With particular regard to the Laboratory, it is recognized that the Laboratory and its procurement practices have a major impact on the economy of NNM. Through its procurement policies, the Laboratory has the opportunity to strengthen NNM small business enterprise, stimulate greater regional employment and infrastructure, and increase the business tax base in NNM.

(2) As a condition of this Contract, the Contractor must continue to contribute to the economic development of NNM while continuing to meet NNSA program requirements. The Contractor is encouraged to conduct a Regional Purchasing Program that stimulates regional economic development initiatives in NNM and has a positive impact on the economic development of the region.

(b) Program conditions. Within 6 months of the effective date of the Contract, the Contractor will develop a Regional Purchasing Program, for Contracting Officer approval, that gives NNM small businesses (which includes Taos, Santa Fe, Rio Arriba, Sandoval, Mora, San Miguel, and Los Alamos Counties, and the eight regional Pueblos of Nambe, Picuris, Pojoaque, San Ildefonso, San Juan, Santa Clara, Taos, and Tesuque) maximum procurement opportunities whenever possible. The following principles and practices are designed to enhance economic development in the local region and shall apply to the Laboratory's Program and shall be applied by the Contractor.

(1) Regional purchasing. Regional purchasing pricing preference. This preference policy element must, at a minimum, (i) be flowed down to major subcontractors (subcontracts with a value equal to or greater than $5 Million), and (ii) reflect a 10% increase adjustment factor to be applied to those qualified suppliers whose businesses do not meet the definition of a NNM small business concern. Businesses that are not licensed and physically located in Northern New Mexico, and whose labor force proposed to perform the majority of such work (51% of more in terms of direct productive labor hours) do not reside in Northern New Mexico is not considered a NNM small business concern.

(2) New services. Newly required services will be acquired from subcontractors, unless such services are required to be performed by Laboratory employees as provided for in the Contractor's Make or Buy Plan or in accordance with Section 41 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2061).

(3) Business alliances. The Contractor will conduct long-term business alliances with regional vendors for goods and services. These alliances may include training and mentoring programs to enable regional vendors to compete effectively for

Laboratory subcontracts and purchase orders or assistance with the development of business systems (accounting, budget, payroll, etc.) to enable regional vendors to meet the audit and reporting requirements of the Laboratory and NNSA. These alliances may also serve to encourage the formation of regional trade associations which will better enable regional businesses to satisfy the Laboratory's needs.

(4) Assistance. The Contractor will make prospective regional vendors aware of any assistance that may be available from the NNM Regional Development Corporation (RDC), the Los Alamos Commerce and Development Corporation or other entities with regard to particular purchasing actions. The Contractor will cooperate with the RDC and other entities in the development of contracting assistance programs to maximize their effectiveness.

(5) Regional procurement advisory council. The Contractor will consult with the NNM Procurement Advisory Council in connection with major decisions regarding the implementation of this Program and with regard to changes to this Program.

(6) Long-term subcontracts. When appropriate, the Contractor will award subcontracts for multiple-year terms to (i) create more stable business relationships with regional suppliers and (ii) make capital more available to commercial sources.

(7) Subcontractor transitions. In any change of on-site subcontractors the Contractor will require the transitioning subcontractors to maximize stability of the workforce and assure continuity in operations.

(8) Financial incentives. The Contractor may encourage its major support subcontractors, through performance goals tied to financial incentives, to further subcontract in a manner that to the maximum extent practicable promotes regional economic diversification.

(9) Importing new businesses. The Contractor will adopt procurement practices intended to attract new businesses to NNM where regional capabilities do not exist. Subcontractors from outside the region may be required to establish a regional base and employ locally as part of the subcontract. Further, consistent with other purchasing principles and practices described in this Contract, the Contractor may require its subcontractors to subcontract functions to create new capabilities for regional businesses. The Contractor must avoid creating situations where importing businesses will unfairly compete with existing regional vendors for commercial sales.

(10) Subcontracting for research at New Mexico colleges and universities. The Contractor will develop a process for acquiring research efforts in support of Laboratory programs from New Mexico colleges and universities.

(e) Measuring Program success. The Contractor will submit a report every fiscal year detailing efforts made to maximize procurement opportunities for NNM small businesses. The report will be submitted to the Contracting Officer. Program success will ultimately be measured by regional economic indicators.

PART III - SECTION J

APPENDIX N

TECHNOLOGY COMMERCIALIZATION

(a) Purpose. The Technology Commercialization (TC) Program described in this Appendix supports, in part, other contract conditions as they relate to:

(1) The transfer of new and emerging technologies between the Laboratory and private industry to enhance the Laboratory's ability to meet mission requirements and improve the economic environment in which the Laboratory operates and further the industrial competitiveness of the United States; and

(2) The development of improved mechanisms for the utilization of Laboratory technologies to stimulate new business startups, attract entrepreneurs, create alternative job opportunities, and attract businesses and capital to the region while also continuing to serve the nation as a whole.

(b) TC Program Description.

(1) Commercialization of Laboratory technology is to be promoted nationally and within northern New Mexico through the following mechanisms:

(i) Research, technology development, and technical assistance efforts by the Laboratory for entities other than the federal government;

(ii) Efforts that support the deployment of technology consistent with the objectives of this Appendix and complementary to the missions of the Laboratory;

(iii) Access to Laboratory facilities, equipment, and intellectual property through Designated User Facilities, Technology Deployment Centers, and licenses or other NNSA-authorized agreements;

(iv) Support new and small business enterprises within northern New Mexico utilizing Laboratory technology, including those enterprises formed by current Laboratory employees, in accordance with, and consistent with conflict of interest requirements as described in this Appendix; and

(v) Provide special assistance to those persons interested in commercializing Laboratory technologies with the greatest market-place potential. This special assistance will include such activities as market analyses of the technologies and services of Laboratory-supported business consultants.

(2) The activities listed above will be performed and may require oversight by NNSA, DOE or other Federal Government directed funded work of the Laboratory. All activities must be within the general scope of work of the Contract's Statement of Work, and in accordance with the terms of the Contract.

(c) TC Program administration. The Contractor will maintain a Technology Commercialization Office (TCO) at the Laboratory to support and promote industrial partnering activities.

(1) TC Program Manager. The Laboratory Director is responsible for appointing a Technology Commercialization Program Manager who will be responsible for day to day operations and the conduct of the TC Program in accordance with this Appendix and assuring that the TCO has access to resources that include qualified, experienced professionals in the fields of contract administration, marketing, R&D program management, and technology and intellectual property licensing.

(2) Technology Commercialization Advisory Board. The Laboratory Director is responsible for appointing a Technology Commercialization Advisory Board, and its chair, representing both national and regional interests, and which will draw upon experts from the fields of finance, manufacturing, business, academia and government. The Technology Commercialization Advisory Board will advise the Program Manager in setting objectives, goals, and priorities for the TCO. The Technology Commercialization Advisory Board will be invited to participate in program reviews of the TCO.

(3) Technology Development Investment.

(i) NNSA has agreed to allocate as an item of Laboratory overhead $1,000,000 annually, which in addition to any funds from external sponsors, will fund TC Program activities. In the event the technology commercialization program generates revenues, those revenues may be deposited to the indirect account originally charged for the program, or otherwise handled as a miscellaneous receipts and deposited with the U.S. Treasury.

(ii) The Contractor may also use its own funds for non-federal work, either as advance funding or for continuation of work should a non-federal work for others sponsor fail to fully fund its project. However, such a circumstance is limited to the term and scope of the original work for others agreement. Such Contractor funds are in addition to, and not limited by, the annual NNSA allocation stated above.

(d) Coordination with NNM RDC. The Northern New Mexico Regional Development Corporation (RDC) was established to help minimize social and economic impacts on north central New Mexico resulting from Laboratory downsizing. TheContractor will cooperate with the RDC on strategies to reduce the dependence of the region on the Laboratory, support regional economic diversification, and build valued partnerships

with surrounding communities. The RDC will be invited to designate a representative to be a member of the Technology Commercialization Advisory Board.

(e) Third Party Agreements. The TCO may utilize external firms and consultants with recognized experience in new business formation, marketing, finance, and licensing to assist in executing the responsibilities of the TCO. To the extent permitted by law and the terms of this Contract, such firms may be retained on a profit-sharing or commission basis to provide commercial market incentives to successful commercialization of Laboratory technologies.

(f) Pricing.

(1) The Laboratory's methodology for determining cost charged for research and technical consulting efforts funded from non-federal sources located in northern New Mexico (which includes Taos, Santa Fe, Rio Arriba, Sandoval, Mora, San Miguel, and Los Alamos Counties, and eight Pueblos of Nambe, Picuris, Pojoaque, San Ildefonso, San Juan, Santa Clara, Taos, and Tesuque) will ensure that this work is not unduly burdened with overhead costs incurred for the primary benefit of Government programs. "Non-federal sources" excludes non-federal entities using federal procurement contract funds (as the term "procurement contract" is described in 31 U.S.C. § 6303), except as approved by the Contracting Officer.

(2) For private businesses located in northern New Mexico, the Laboratory will ensure that each business has: (i) a New Mexico tax number, (ii) a *bona fide* northern New Mexico place of business, and (iii) certifies that the results of the work are expected to aid in retaining or creating employment in northern New Mexico.

(3) Pricing of work with public sector entities under this section will be limited to state agencies; local government agencies and tribal governments located in northern New Mexico; and school districts located in northern New Mexico.

(4) The amount of overhead cost not related to the scope of work for these efforts will be taken into consideration in determining the appropriate overhead rates applied to such work. Such overhead rates are subject to review by NNSA.

(g) Litigation, Claims and Indemnification. The operations of the TCO will be subject to the same terms and conditions as other operations of the Contractor under this Contract.

(h) Intellectual Property. In addition to the provisions of the Contract's Section I Clauses entitled "Technology Transfer Mission" and "Patent Rights – Management and Operating Contracts", the following are supplemental provisions for the purpose of this Appendix:

(1) Retention of Title. The Contractor will assign or retain title to intellectual property generated by Laboratory employees in the course of non-federal work, in accordance with Class Waiver provisions and guidance provided by the NNSA

Patent Counsel, and based on the best interests of the technology transfer program of NNSA and the Laboratory.

(2) Equity Participation. Equity may be accepted in lieu of license royalties or fees in accordance with published Contractor policies governing such acceptance. Such policies shall be provided to the NNSA Patent Counsel before they are to be issued or modified for concurrence.

(i) Entrepreneurial Leave of Absence.

The authorization of entrepreneurial leave is subject to the Contractor's "Leave Without Pay" policies.

(j) Conflicts of Interest.

(1) The participation of Laboratory employees in the process of technology transfer and commercialization is essential to meeting the mission objectives of both the Contractor and NNSA. It is acknowledged that it is reasonable for Laboratory employees to participate in such activities in both their official capacity as Laboratory employees and in their private capacity, subject to appropriate policy limitations. These policy limitations naturally prohibit an employee from participating, actively or through substantial financial interest, in a business which utilizes a Laboratory technology or receives a Laboratory intellectual property license related to the employee's Laboratory duties.

(2) Credibility and public trust require that any conflict of interest issues that arise be managed so as to enable successful technology commercialization while also protecting legitimate interests of NNSA and the Contractor. To this end, the Contractor will implement a Laboratory-wide Conflicts of Interest Compliance Plan in accordance with Contract's Section H clause entitled "Conflicts of Interest Compliance Plan" that will require disclosure of conflicts of interest and potential conflicts of interest in all technology commercialization activities, and will implement institutional mechanisms to independently identify and mitigate or eliminate apparent, actual or potential conflicts. NNSA and the Contractor explicitly recognize that potential conflicts can arise.

(3) The Contracting Officer will work with the Contractor in such instances to assure that beneficial collaborations between the Laboratory and the private sector are accomplished so long as potential conflicts are fully disclosed and are

appropriately managed to avoid apparent conflicts, where possible, and to avoid actual conflicts of interest.

(4) Potential conflicts can usually be adequately managed through the Contractor applying a Laboratory-wide Conflicts of Interest Compliance Plan, in addition to other requirements of this Contract, in connection with:

(i) Laboratory employee ownership of equity interests in companies with which the Laboratory has a partnership agreement;

(ii) Laboratory employee ownership of interests in companies based on Laboratory technologies, where the Laboratory technologies are unrelated to the employee's job assignments or responsibilities;

(iii) Laboratory employees consulting or working for others in their private capacities, outside of their employment with the Laboratory;

(iv) Laboratory employees receiving royalties from the Contractor's licenses of Laboratory intellectual properties; and

(v) Laboratory employees retaining title to Laboratory intellectual property through waiver or election.

(k) Annual Program Review. A program review involving the Laboratory, the Technology Commercialization Advisory Board and recognized experts on economic development and technology commercialization programs will be conducted annually and will seek, among other things, to set performance targets for the technology commercialization. A copy of the Annual Program Review will be sent to the Contracting Officer. The following indicators will be included in the annual review to assess the strategic direction of the program:

(1) Number of companies established as a result of TC Program activities.

(2) Number of licenses executed with companies as a result of TC program activities.

(3) Number of start-ups by Laboratory employees on entrepreneurial leave.

(4) An impact assessment of TC Program activities, addressing the following:
(i) jobs created as a result of TC Program activities;

(ii) startup business status after one, two, and three years of business activity; and
(iii) overall economic impact of CT Program on the region.

(5) Survey of customers and stakeholders, e.g., regional community leaders, NNSA program managers, and national leaders, to determine satisfaction with the TC Program.

(6) Data on the numbers of employees taking entrepreneurial leave and the costs of such leave, including the cost of benefits provided, and an analysis of the effectiveness of such leave on promoting technology commercialization.

PART III – SECTION J

APPENDIX O

Performance Evaluation and Measurement Plan (PEMP)

The Performance Evaluation and Measurement Plan(s) can be found at the following Web Site:

https://www.energy.gov/nnsa/los-alamos-national-laboratory-contract