

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF PAGES 1 246	
2. CONTRACT NUMBER DE-NA0003525		3. SOLICITATION NUMBER DE-SOL-0008470	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED 06/23/2016	6. REQUISITION/PURCHASE NUMBER
7. ISSUED BY NNSA M&O Contracting Operations Div NA-APM-13 Forrestal Building 1000 Independence Avenue, S.W. Washington DC 20585	CODE 05114	8. ADDRESS OFFER TO (if other than Item 7)			

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

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
<input type="checkbox"/>	A	SOLICITATION/CONTRACT FORM		<input checked="" type="checkbox"/>	I	CONTRACT CLAUSES	51-149
<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICES/COSTS	11-17	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
<input checked="" type="checkbox"/>	C	DESCRIPTION/SPECS./WORK STATEMENT	18	<input checked="" type="checkbox"/>	J	LIST OF ATTACHMENTS	150
<input checked="" type="checkbox"/>	D	PACKAGING AND MARKING	19	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
<input checked="" type="checkbox"/>	E	INSPECTION AND ACCEPTANCE	20-21	<input type="checkbox"/>	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
<input checked="" type="checkbox"/>	F	DELIVERIES OR PERFORMANCE	22-25	<input type="checkbox"/>	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
<input checked="" type="checkbox"/>	G	CONTRACT ADMINISTRATION DATA	26-29	<input type="checkbox"/>	M	EVALUATION FACTORS FOR AWARD	
<input checked="" type="checkbox"/>	H	SPECIAL CONTRACT REQUIREMENTS	30-50				

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 NATIONAL TECHNOLOGY & ENGINEERING SOLUTIONS OF Attn: JOHN MURRAY 23500 W 105TH ST MD300 OLATHE KS 66061	CODE 080292070	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) Mr. Victor Miller- NTESS General Counsel & Secretary 23500 W. 105 th Street (M/D 300) Olathe, KS 66061
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15B. TELEPHONE NUMBER AREA CODE NUMBER EXT.	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE <i>Victor Miller</i>	18. OFFER DATE 11/3/17
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AWARD (To be completed by government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT \$12,686,652,914.00	21. ACCOUNTING AND APPROPRIATION See schedule
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) () <input type="checkbox"/> 41 U.S.C. 253 (c) ()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)
24. ADMINISTERED BY (if other than Item 7) See Schedule G	CODE 05005	25. PAYMENT WILL BE MADE BY See Schedule G

26. NAME OF CONTRACTING OFFICER (Type or print) Sandra C. Caesar	27. UNITED STATES OF AMERICA <i>Sandra Caesar</i> Signature on File (Signature of Contracting Officer)	28. AWARD DATE 12/16/2016
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NAME OF OFFEROR OR CONTRACTOR
 NATIONAL TECHNOLOGY & ENGINEERING SOLUTIONS OF SANDIA, LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	Tax ID Number: 81-2889192 DUNS Number: 080292070 Contract Award DE-NA0003525 to National Technology & Engineering Solutions of Sandia, LLC (NTESS) for the Management and Operation of the Department of Energy, National Nuclear Security Administration's Sandia National Laboratories.				
	Delivery Location Code: 05005 NNSA/Sandia Site Office U.S. Department of Energy NNSA/Sandia Site Office P.O. Box 5400 Sandia Site Office (MS 0184) Albuquerque NM 87185-5400 Payment: OR for NNSA U.S. Department of Energy Oak Ridge Financial Service Center P.O. Box 5807 Oak Ridge TN 37831 FOB: Destination Period of Performance: 01/18/2017 to 04/30/2022				
00001	CLIN 0001A Management and Operation of the Sandia National Laboratories--Transition Term Line item value is:: \$5,000,000.00 Delivery: 04/30/2017				5,000,000.00
00002	CLIN 0001B Management and Operation of the Sandia National Laboratories Site Base Term--NNSA Estimated Cost, Fixed Fee, and Award Fee--CLIN 0001B is a hybrid CLIN, comprised of a fixed fee and an award fee component. Estimated Cost CLIN 0001B: \$7,600,088,876 Fixed Fee CLIN 0001B: \$75,997,000 Award Fee Pool CLIN 0001B: \$30,408,000				7,706,493,876.00
	CLIN 0001B Management and Operation of the Sandia National Laboratories Site Base Term--NNSA Estimated Cost, Fixed Fee, and Award Fee--CLIN 0001B is a hybrid CLIN, comprised of a fixed fee and an award fee component. Estimated Cost CLIN 0001B: \$7,600,088,876 Fixed Fee CLIN 0001B: \$75,997,000 Award Fee Pool CLIN 0001B: \$30,408,000 Continued ...				

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NAME OF OFFEROR OR CONTRACTOR
NATIONAL TECHNOLOGY & ENGINEERING SOLUTIONS OF SANDIA, LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	Line item value is:: \$7,706,493,876.00 Delivery: 04/30/2022				
00003	CLIN 0001C Option Term 1 Management and Operation of the Sandia National Laboratories Site Base Term--NNSA Estimated Cost, Fixed Fee, and Award Fee--CLIN 0001C is a hybrid CLIN, comprised of a fixed fee and an award fee component. Estimated Cost CLIN 0001C: \$1,621,794,075 Fixed Fee CLIN 0001C: \$16,217,000 Award Fee Pool CLIN 0001C: \$6,488,000 Amount: \$1,644,499,075.00 (Option Line Item) Line item value is:: \$1,644,499,075.00 Delivery: 04/30/2023				1,644,499,075.00
00004	CLIN 0001D Option Term 2 Management and Operation of the Sandia National Laboratories Site Base Term--NNSA Estimated Cost, Fixed Fee, and Award Fee--CLIN 0001D is a hybrid CLIN, comprised of a fixed fee and an award fee component. Estimated Cost CLIN 0001D: \$1,657,473,545 Fixed Fee CLIN 0001D: \$16,574,000 Award Fee Pool CLIN 0001D: \$6,631,000 Amount: \$1,680,678,545.00 (Option Line Item) Line item value is:: \$1,680,678,545.00 Delivery: 04/30/2024				1,680,678,545.00
00005	CLIN 0001E Option Term 3 Management and Operation of the Sandia National Laboratories Site Base Term--NNSA Estimated Cost, Fixed Fee, and Award Fee--CLIN 0001D is a hybrid CLIN, comprised of a fixed fee and an award fee component. Estimated Cost CLIN 0001E: \$1,693,937,963 Fixed Fee CLIN 0001E: \$16,939,000 Award Fee Pool CLIN 0001E: \$6,776,000 Amount: \$1,717,652,963.00 (Option Line Item) Line item value is:: \$1,717,652,963.00 Delivery: 04/30/2025				1,717,652,963.00
00006	CLIN 0001F Option Term 4 Management and Operation of the Sandia National Laboratories Site Base Term--NNSA Estimated Cost, Fixed Fee, and Award Fee--CLIN 0001D is a hybrid CLIN, comprised of a Continued ...				1,755,444,598.00

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NAME OF OFFEROR OR CONTRACTOR
NATIONAL TECHNOLOGY & ENGINEERING SOLUTIONS OF SANDIA, LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	fixed fee and an award fee component. Estimated Cost CLIN 0001F: \$1,731,204,598 Fixed Fee CLIN 0001F: \$17,312,000 Award Fee Pool CLIN 0001F: \$6,928,000 Amount: \$1,755,444,598.00 (Option Line Item) Line item value is: \$1,755,444,598.00				
00007	Delivery: 04/30/2026 CLIN 0001G Option Term 5 Management and Operation of the Sandia National Laboratories Site Base Term--NNSA Estimated Cost, Fixed Fee, and Award Fee--CLIN 0001D is a hybrid CLIN, comprised of a fixed fee and an award fee component. : Estimated Cost CLIN 0001G: \$1,769,291,099 Fixed Fee CLIN 0001G: \$17,692,000 Award Fee Pool CLIN 0001G: \$7,078,000 Amount: \$1,794,061,099.00 (Option Line Item) Line item value is: \$1,794,061,099.00				1,794,061,099.00
00008	Delivery: 04/30/2027 CLIN 0002A Strategic Partnership Projects Base Term Line item value is: \$4,975,159,038.00				4,975,159,038.00
00009	Delivery: 04/30/2022 CLIN 0002B Strategic Partnership Projects Option Term 1 Amount: \$1,023,485,204.00 (Option Line Item) Line item value is: \$1,023,485,204.00				1,023,485,204.00
00010	Delivery: 04/30/2023 CLIN 0002C Strategic Partnership Projects Option Term 2 Amount: \$1,033,719,491.00 (Option Line Item) Line item value is: \$1,033,719,491.00				1,033,719,491.00
00011	Delivery: 04/30/2024 CLIN 0002D Strategic Partnership Projects Option Term 3 Amount: \$1,044,056,696.00 (Option Line Item) Line item value is: \$1,044,056,696.00				1,044,056,696.00
	Delivery: 04/30/2025 Continued ...				

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NATIONAL TECHNOLOGY & ENGINEERING SOLUTIONS OF SANDIA, LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
00012	CLIN 0002E Strategic Partnership Projects Option Term 4 Amount: \$1,054,497,828.00 (Option Line Item) Line item value is: \$1,054,497,828.00 Delivery: 04/30/2026				1,054,497,828.00
00013	CLIN 0002F Strategic Partnership Projects Option Term 5 Amount: \$1,065,042,887.00 (Option Line Item) Line item value is: \$1,065,042,887.00 Delivery: 04/30/2027				1,065,042,887.00
00014	CLIN 0003 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 (defined in Clause H-20 of this contract) as the Parties may agree. Each mutually-agreed-upon Capital Construction Project shall be identified hereunder as a Sub-CLIN to CLIN 0003 via bilateral contract modification. 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 0003. Obligated Amount: \$0.00				0.00

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SECTION B: SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SERVICES BEING ACQUIRED

CLIN 0001 MANAGEMENT AND OPERATION OF THE SANDIA NATIONAL LABORATORIES

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 Sandia National Laboratories (SNL) in Albuquerque, New Mexico (NM) 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 0001A TRANSITION TERM

The Transition Term will be four months, on a cost reimbursement (no fee) basis, with an estimated cost of \$ TBD.

CLIN 0001B BASE TERM

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

CLIN 0001C OPTION TERM 1

Option Term 1 is one year of performance on a cost-plus-fixed-fee and award fee basis.

CLIN 0001D OPTION TERM 2

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

CLIN 0001E OPTION TERM 3

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

CLIN 0001F OPTION TERM 4

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

CLIN 0001G OPTION TERM 5

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

CLIN 0002 STRATEGIC PARTNERSHIP PROJECTS

The Contractor shall, in accordance with Section J, Appendix A, Chapter II Work Scope Structure, paragraph 1.8 Strategic Partnership Projects (SPP) (formerly known as Work for Others (WFO) Program), 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 0002A BASE TERM

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

CLIN 0002B OPTION TERM 1

Option Term 1 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0002C OPTION TERM 2

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

CLIN 0002D OPTION TERM 3

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

CLIN 0002E OPTION TERM 4

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

CLIN 0002F OPTION TERM 5

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

CLIN 0003 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 (defined in Clause H-20 of this contract) as the Parties may agree. Each mutually-agreed-upon Capital Construction Project shall be identified hereunder as a Sub-CLIN to CLIN 0003 via bilateral contract modification. 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 0003.

B-2 CONTRACT TYPE AND VALUE

- (a) This is a performance-based, Management and Operating (M&O) Contract with cost-plus-fixed-fee and cost-plus-award fee provisions.
- (b) The estimated cost, fixed fee (FF), award fee (AF), and Total fee earned for CLIN 0001 (DOE/NNSA work) is set forth in Table 1 below:

Table 1 -- CLIN 0001 -- Management and Operation of SNL

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)
Transition Term	\$ TBD	\$0	\$0	\$0	\$0
Base Term (Year 1)	\$TBD	\$14,545,000	\$5,820,000	\$20,365,000	\$ TBD
Base Term (Year 2)	\$TBD	\$14,865,000	\$5,950,000	\$20,815,000	\$ TBD
Base Term (Year 3)	\$TBD	\$15,192,000	\$6,078,000	\$21,270,000	\$ TBD
Base Term (Year 4)	\$TBD	\$15,527,000	\$6,213,000	\$21,740,000	\$ TBD
Base Term (Year 5)	\$TBD	\$15,868,000	\$6,347,000	\$22,215,000	\$ TBD
Option Term 1 (if exercised)	\$TBD	\$16,217,000	\$6,488,000	\$22,705,000	\$ TBD
Option Term 2 (if exercised)	\$TBD	\$16,574,000	\$6,631,000	\$23,205,000	\$ TBD
Option Term 3 (if exercised)	\$TBD	\$16,939,000	\$6,776,000	\$23,715,000	\$ TBD
Option Term 4 (if exercised)	\$TBD	\$17,312,000	\$6,928,000	\$24,240,000	\$ TBD
Option Term 5 (if exercised)	\$TBD	\$17,692,000	\$7,078,000	\$24,770,000	\$ TBD

[Table 1 DOE/NNSA Estimated Cost to be completed by the Contracting Officer annually 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.

- (c) The estimated cost and fixed fee for CLIN 0002 (Strategic Partnership Projects -- Section J, Appendix A, Chapter II Work Scope Structure, paragraph 1.8) are set forth in Table 2 below. The estimated cost and the fixed fee for the Strategic Partnership Projects during the Base Term of the Contract and for each Option

Term 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 0.9% of the estimated cost of all projects anticipated for the applicable fiscal year.

Table 2 CLIN 0002 -- Strategic Partnership Projects

Contract Period	Estimated Cost	Fixed Fee	Estimated Cost + Fixed Fee
Base Term Year 1	\$TBD	\$TBD	\$TBD
Base Term Year 2	\$TBD	\$TBD	\$TBD
Base Term Year 3	\$TBD	\$TBD	\$TBD
Base Term Year 4	\$TBD	\$TBD	\$TBD
Base Term Year 5	\$TBD	\$TBD	\$TBD
Option Term 1 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 2 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 3 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 4 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 5 (if exercised)	\$TBD	\$TBD	\$TBD

[Table 2 Estimated Cost to be completed by the Contracting Officer annually based on the estimated level of SPP projects for the year. The Fixed Fee amount to be completed by the Contracting Officer at the effective date of the Contract utilizing the fees determined at Contract award]

- (d) The total estimated cost for the Transition Term (CLIN 0001A), the estimated cost and fixed fee for Base Term (CLINs 0001B and 0002A), including DOE/NNSA and Strategic Partnership Projects is **\$TBD**.
- (e) The FF and AF for CLIN 0001, and the FF rate for CLIN 0002 will not be negotiated on an annual basis and are established at Contract award.

B-3 CONTRACT FEE STRUCTURES

CLIN 0001:

(a) Fixed Fee (FF)

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

All proposed team members must share 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: (1) small business (es); (2) Protégé firms as part of an approved Mentor-Protégé relationship under the Section I Clause entitled, Mentor-Protégé Program; (3) a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) competitively awarded subcontracts for commercial items as defined in FAR Subpart 2.1.

(b) Award Fee (AF)

The available AF for each performance period of the Base Term and each Option Term, if exercised by DOE/NNSA, are shown in the tables in paragraph B-2 (b), *Contract Type and Value*. The Contractor shall be eligible to earn AF fee of up to the amount specified for each performance period of the Base Term (CLIN 0001B), based on its performance under the criteria established in paragraph B-7 Leadership Performance Evaluation. The AF decision is a unilateral decision of the Fee Determining Official (FDO) based on the Contractor’s performance rating under this Contract, and the terms and conditions of the Contract. The AF earned is payable in accordance with the contract clause DEAR 970.5232-2, *Payments and Advances* (DEC 2000) ALTERNATE II (DEC 2000) ALTERNATE III (DEC 2000) (NNSA CLASS DEVIATION OCT 2011).

CLIN 0002:

(c) Strategic Partnership Projects – Fixed Fee (FF)

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

(d) Payment of Fixed Fee

(1) The FF for the Base Term 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) The Contractor is not authorized to draw down the AF prior to final fee determination and authorization by the Contracting Officer.

(e) Unearned Fee

NNSA HQ will determine how unearned fee is reinvested in the Nuclear Security Enterprise (NSE). Unearned AF in a performance period will not be available for application to any future performance periods.

(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 0003), unless, at a minimum, it results in an increase or decrease of more than ten percent (10%) to the estimated costs stated in Tables 1 and 2 of this Clause, B-2, or as stated elsewhere in this Contract for CLIN 0003. However, this alone shall not be determinative of whether or not the change is a material change or otherwise warrants an equitable adjustment, and the Contracting Officer shall also consider other factors, including but not limited to, the degree of the change in the level and type of effort or work, and the degree of the change in the level of risk assumed by the contractor

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 to maintain satisfactory standards of employee competency, conduct and integrity under the Contract's Section I clause entitled "DEAR 970.5203-3, *Contractor's Organization* (DEC 2000)", beginning on the effective date of the Contract through the first two years of the Base Term of the contract, or for a replacement Key Person within two years of being placed in the position, the Contractor shall forfeit two years of the DOE/NNSA reimbursable annual salary, bonuses and relocation costs as well as associated burdens, for that position for each occurrence.

B-5 OBLIGATION OF FUNDS

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 \$4,762,596.63.

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 LEADERSHIP PERFORMANCE EVALUATION

The Contractor's Leadership performance will be measured against how the Contractor has strategically partnered with DOE/NNSA and demonstrated leadership success in achieving positive results. This may be evidenced by:

- (a) Achieving site mission deliverables while supporting and enabling the overall DOE/NNSA mission,
- (b) Improving safety culture,
- (c) Maintaining critical skills and infrastructure,
- (d) Advancing Science, Technology & Engineering (ST&E), including Laboratory Directed Research and Development (LDRD) and Tech Transfer,
- (e) Operating the Laboratories effectively, efficiently, safely, and securely to meet current mission requirements and to accomplish additional Strategic Investments that enhance or develop new capabilities, address long-standing challenges, or respond to new or emerging threats,
- (f) Resolving issues and ensuring continuous improvement internally and across the DOE/NNSA while meeting Contract requirements, and
- (g) Demonstrating parent company involvement/commitment to the overall improvement of the Laboratories and the DOE.

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 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.

E-3 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 or disrupt 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.

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 F 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 Term, 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 Term and Option Term(s), if exercised, shall not exceed 10 years and four months. The period of performance of this Contract consists of:

- (1) Transition Term: A period of four months beginning on the effective date of the Contract. During the Transition Term, 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 Sandia National Laboratories shall commence with the Base Term.
- (2) Base Term: A period of five years beginning after completion of the four month Transition Term.
- (3) Option Term(s): A period from one to five years beginning after completion of the Base Term, if the DOE/NNSA chooses to exercise one or more of the following options:
 - Option Term 1: If exercised, one year from the end of the Base Term.
 - Option Term 2: If exercised, one year from the end of Option Term 1.
 - Option Term 3: If exercised, one year from the end of Option Term 2.
 - Option Term 4: If exercised, one year from the end of Option Term 3.
 - Option Term 5: If exercised, one year from the end of Option Term 4.

F-4 PRINCIPAL PLACES OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations within the United States and outside of the continental U.S. The principal place of performance will

be at Albuquerque, New Mexico and Livermore, California. Work is also conducted at satellite facilities listed in the Statement of Work.

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*. 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, including a Transition Cost Estimate, 10 days after Contract award. The Transition Term 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) Transition Cost Estimate

- (1) The Transition Cost Estimate shall include the costs associated with the Transition Plan and the costs necessary for the Contractor to meet the transition requirements during the Transition Term. A detailed schedule for accomplishment of these tasks during the Transition Term shall also be provided to support the requested cost estimate.
- (2) The Contractor shall provide a cost summary for the Transition Plan that clearly identifies, by cost element, the portion of the cost proposal that pertains to each participant (if a teaming arrangement is proposed), including subcontractors. In addition, each participant and each subcontractor must provide separate exhibits, summary schedules, and supporting cost information in the same format and level of detail as required below. A transition fee is not allowable.
 - (i) Labor: Identify proposed transition labor hours and unburdened labor rates by labor category and or/specific individual, including

Key Personnel. Explain the basis for the proposed labor hour and labor rate estimates.

- (ii) Indirect Costs: Identify the cost elements included in each indirect rate cost pool and allocation base. Explain the basis of estimate for each indirect cost rate proposed and the methods used to derive the proposed rates.

(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 effective date 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.

SECTION G: CONTRACT ADMINISTRATION DATA

G-1 GOVERNMENT CONTACTS

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

U.S. Department of Energy, National Nuclear Security Administration
Sandia Field Office
P.O. Box 5400, Mail Stop 0184
Albuquerque, NM 87185-5400

- (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 SFO 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
Sandia Field Office
P.O. Box 5400, Mail Stop 0184
Albuquerque, NM 87185-5400

(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 DE-NA0003525, (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 the authority and is responsible for managing, administering, and negotiating changes to the terms and conditions of this Contract as well as executing contract modifications on behalf of the Contractor.

Name: Victor Miller
Position: General Counsel
Company: Honeywell International Inc.
Address: 101 Constitution Avenue, N.W.,
Suite 500W
Washington, D.C. 20001
Phone: (202) 662-2640
E-mail: Victor.Miller@Honeywell.com

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 National Technology & Engineering Solutions of Sandia, LLC (NTESS). This entity is a wholly-owned subsidiary of Honeywell International, Inc.

- (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

Notwithstanding G-4, 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: Carey Smith
Position: President, Honeywell Defense & Space and Chair, National Technology & Engineering Solutions of Sandia, LLC, Board of Managers
Company: Honeywell International, Inc.
Address: 1944 E Sky Harbor Circle N
Phoenix, AZ 85034
Phone: (602) 365-4874
E-mail: Carey.Smith@Honeywell.com

G-7 INVOICING FOR TRANSITION COSTS

- (a) The Contractor shall submit vouchers electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS) for reimbursement for work performed under CLIN 0001A, Contract Transition Term. 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 invoice for work performed in accordance with FAR 52.216-7 and as directed by the Contracting Officer following the procedures at paragraph (a) of this clause. All works completed during transition shall be billed 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-AC04-94AL85000 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, and the Kirtland Air Force Base Support Agreement;
- (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

(a) 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.

(b) Implementation of FAR 52.219-10: Determinations made under paragraph (b) of clause entitled "Incentive Subcontracting Program" are unilateral decisions made solely at the discretion of the Government. During performance of this contract the Contracting Officer makes the determination of the appropriate percentage and category for incentives. The Contracting Officer can limit the percentage to a specific year(s).

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

The Representations, Certifications, and Other Statements of Offeror completed by the Contractor and dated July 13, 2016, are hereby incorporated in this Contract by reference.

H-4 ORGANIZATIONAL CONFLICT OF INTEREST (OCI) – SPECIAL PROVISION

The Contractor and the Contractor's parent(s) and affiliate(s), if any, shall comply with the provisions of the approved SNL OCI Management 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:

<u>DOE System No.</u>	<u>Title</u>
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 SANDIA NATIONAL LABORATORIES MANAGEMENT SYSTEM (SEP 2015)

- (a) The Contractor shall maintain registration of its management system to a national or international consensus standard such as ISO 9001. The management system description shall be approved and monitored by the Contractor’s Board of Directors. This management system will provide transparency to enable the Government to monitor the Contractor’s performance. The Contractor shall notify the Contracting Officer of significant changes to the management system. An effectively working management system will provide the government the opportunity to reduce transactional performance monitoring.

- (b) The Contractor’s management system shall have the following key attributes:
 - (1) Description of the management system to include vision, mission, management structure, key activities, management entity accountabilities and commitment to operational and business excellence.
 - (2) Electronic access to the management system information by government personnel with performance monitoring responsibilities.

- (c) The Contractor’s management system shall include the application of quality principles and defect prevention methods to plan the work, execute the work according to the plan, check the work against requirements, policies, and objectives, and report the results. The results shall be acted upon to continually improve the performance and quality of the work. The Contractor’s management system shall have the following minimum attributes:
 - (1) A risk management process.
 - (2) Performance monitoring including metrics and associated performance targets.
 - (3) Rigorous, risk-based, credible assessments (including self-assessments and internal independent assessments). The Contractor is encouraged to seek external audits, peer reviews, assessments and risk and vulnerability studies from nationally recognized experts to assess and improve its work processes.
 - (4) Identification and correction of negative performance/compliance trends before they become significant issues.
 - (5) Maintain ISO 14004 for Environmental Management System (EMS) registration and pursue other registrations/certification as appropriate.

- (6) Incident/event reporting including accident investigations.
 - (7) Issues management (including graded analysis of causes, identification of corrective actions, corrective action tracking, monitoring and closure, validation of effectiveness, and trend analysis).
 - (8) Feedback (customer and worker), lessons learned, and improvement activities. The Contractor will maintain an operating experience/lessons learned program that develops and evaluates site-specific lessons learned across all aspects of operations with a focus on preventing recurrence of problems.
- (d) The Contractor will benchmark, share and incorporate good work practices locally and among DOE sites through the DOE Lessons Learned Database. The Contractor will also provide feedback through the Sandia Field Office to the issuing authority for DOE Corporate Operating Experience Documents (i.e., Special Operations Reports (SORs), Safety Alerts (SAs), and Safety Bulletins (SBs)) when specific implementation of lessons learned or corrective actions with a formal response are required.
 - (e) If the Contracting Officer determines that the Contractor is not fully complying with applicable laws or regulations, or that performance has degraded and that the Contractor is not taking appropriate and timely corrective action, the Contracting Officer may take any action deemed necessary and reasonable under the Contract to include increasing performance monitoring of the Contractor.
 - (f) NNSA will revise its performance monitoring in accordance with the Contract Clause entitled "NNSA Oversight" when the Contractor has demonstrated to the Contracting Officer's satisfaction that the management system or components of the system are operating effectively.
 - (g) The Contractor shall develop a Contractor Assurance System that is agreed to and monitored by the Field Office and contractor personnel. The Contractor's Assurance System, at a minimum, shall have the following key attributes:
 - (1) A comprehensive description of the Contractor Assurance System with risks, key activities and accountabilities clearly identified.
 - (2) A Process for notifying the Contracting Officer of significant assurance system changes.
 - (3) Rigorous, risk based credible self-assessments, feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve its work process and to carry out independent risk and vulnerability studies. The Contractor is encouraged to seek third party certification (such as VPP and ISO 9001 or ISO 14001), audits, peer reviews and independent assessments with external certification or validation.

- (4) Identification and correction of negative performance/compliance trends before they become significant issues.
- (5) A method for validating assurance processes.
- (6) Integration of the assurance system with Contractor management systems including Integrated Safety Management.
- (7) A process for defining performance metrics and performance targets to assess performance, including benchmarking of key functional areas with other NNSA/DOE contractors and industry and research institutions to enhance processes and to assure development of performance metrics and performance targets that will result in achievement of best in class/industry performance where efficient and cost effective.
- (8) Continuous feedback and performance improvement.
- (9) A process capable of identifying, prioritizing, and addressing issues that will affect mission performance.
- (10) A process for timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

H-9 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.

H-10 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 contractor 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-11 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-12 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-13 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-14 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-15 MANAGEMENT TEAM COSTS

Amounts of compensation reimbursed during the first two years of contract performance shall not exceed the proposed management team costs for any position, as reflected in Section L Attachment G "Management Team Cost Sheet" of the Contractor's proposal in response to solicitation no. DE-SOL-0008470. For the remaining years of the Contract, the Key Personnel compensation will be reimbursed in accordance with the Statement of Work, Chapter III, paragraph 4.

H-16 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-17 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 Contractor shall not perform any function determined to be inherently Governmental. These functions include, but are not limited to:

- (i) Award, modification, change, or termination of a Government contract.
 - (ii) Receipt, processing or adjudication of any claims, invoices, or demands for payment of any form.
- (3) The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer 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 Sandia National Laboratories,*” substantially as written here, in all such contracts as follows:

OTHER GOVERNMENT CONTRACTORS PERFORMING WORK AT THE SNL

In addition to this Contract, (Insert Contract Number), the Government may undertake or award other contracts for additional work or services at any SNL sites. 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-18 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) Electronic signatures are not accepted; all FOCI documentation/forms requiring signatures, dates, and company seal (if applicable), must be printed, completed, and uploaded under the Miscellaneous Tab within the e-FOCI system. NOTE: Hard copies of electronic FOCI submission package are no longer required, as indicated in the e-FOCI system. Specific problems maneuvering through the fields within the e-FOCI system can be clarified by contacting the e-FOCI help desk at (630) 252-6566 or fociserver@anl.gov.

H-19 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-20 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 \$10M 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.
- (d) Construction projects which are not Capital Projects, as defined herein, are within the scope of CLIN 0001 and shall be performed or managed by the Contractor as directed by the Government. Such construction projects may be assigned by Work Authorizations 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 Sandia National Laboratories sites. The Contractor agrees to provide site access to such other contractors and to cooperate with, accommodate, and to provide such logistical support to such other contractors 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 0001.

H-21 CONTRACTOR - MULTIYEAR STRATEGY FOR PERFORMANCE IMPROVEMENT

The Contractor shall develop a multi-year Sandia National Laboratories' Vision detailing its planned efforts and expected accomplishments by year to continuously improve its management and operation of Sandia National Laboratories. The multi-year strategy shall also describe planned efforts (1) of the contributions of the corporate parent to improve site management and performance; (2) describe the contractor's approach to participation within, and coordination with, the NNSA Nuclear Security Enterprise (NSE); (3) describe how the contractor will enhance Contractor communications, cooperation and integration with the NSE with emphasis on NNSA laboratories,

production facilities, and Strategic Partnership Projects; and, (4) describe how the contractor will contribute to overall improvements in the NSE performance. The Contractor shall submit its initial multi-year strategy at the end of the first year of performance. Subsequent annual updates shall be submitted to the Contracting Officer no later than June 15th of each year. Performance measures for these planned efforts and expected accomplishments may be considered for inclusion in the Contract.

H-22 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-23 INDIRECT COST MANAGEMENT

(1) The Government has a fiduciary responsibility to ensure that taxpayer funds are spent appropriately. This clause provides for transparency with respect to indirect costs. Allowable cost shall be determined in accordance with FAR 52.216-7 “Allowable Cost and Payment” and as required herein.

(2) Indirect Rate Submissions:

(a) The Contractor shall provide Indirect Rate Submissions to the Contracting Officer (CO) by August 1st of each year in order to establish billing rates in accordance with FAR 42.704 for the upcoming GFY.

(b) Where there are advanced agreements on certain elements of indirect costs, the Contractor shall submit planned changes to the CO 30 days in advance of implementing the change.

(c) The Contractor shall submit final annual indirect rate submission in accordance with FAR 52.216-7 “Allowable Cost and Payment JUN 2013” as modified by DEAR 952.216-7.

(3) Indirect Rate Submission

(a) The Contractor shall provide a summary of how the indirect rates were derived including pool, base, and calculated indirect rate by major functions, activities, and elements of cost as identified in accounting records unless otherwise specified by the CO.

(b) The submission shall provide the information required by FAR 52.216-7 (d) (iii) and (iv).

(4) The Contractor shall brief NNSA stakeholders as determined by the CO concerning the composition of the indirect pools to ensure alignment with agency goals, priorities, and budgets. Additionally, the Contractor shall discuss the impact any resulting rate change will have on NNSA programs and projects.

(5) The NNSA and Contractor shall document any advanced agreements on items of particular interest within the indirect cost pools.

(6) The Contractor shall submit a summary level report covering all indirect cost pools by March 31st each year to the CO that provides an analysis of incurred cost to date, projected indirect costs to agreed-upon pools/bases for the current GFY, and a brief discussion of variances.

H-24 CONTRACTOR COMMUNITY COMMITMENTS

The Contract's Section J Appendix F – Diversity Plan section entitled “Community Involvement and Outreach” sets forth the Contractor's Community Commitment Plan 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 and California. The Contractor is encouraged to consider specific performance goals around maximizing subcontracting to businesses within New Mexico and Strategic Partnerships with New Mexico's system of higher education. All costs (direct or indirect) to be incurred by the Contractor in creating and executing the “Contractor Diversity Plan” are expressly unallowable and non-reimbursable under this Contract.

H-25 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 Laboratories and future needs based on the strategic plan for the Laboratories. 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 Contractor 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 Laboratories’ missions; 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-26 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 Contractor 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-27 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-28 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-29 PERFORMANCE BASED MANAGEMENT SYSTEM

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

H-30 BUSINESS ENTITY – FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER (FFRDC)

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

H-31 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 its 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 compliance 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-32 PERFORMANCE OF WORK AT FACILITIES AND SITES OTHER THAN SANDIA NATIONAL LABORATORIES

In performance of the Contract's work at facilities and sites other than SNL, the Contractor shall comply with applicable requirements set forth in this Contract's Appendix B entitled "List of Applicable Directives and NNSA policy letters," 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-33 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 Appendix A 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-34 INTELLECTUAL AND SCIENTIFIC FREEDOM

- (a) The Parties recognize the importance of fostering an atmosphere at the Laboratories 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 Laboratories 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 Laboratories and the national interest, it is agreed by the Parties that the scientific and engineering personnel at the Laboratories 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-35 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.

SECTION I - CONTRACT CLAUSES**A. FAR CLAUSES INCORPORATED BY REFERENCE**

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

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	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) <i>(b)(3) Required poster is: 'DOE Hotline Poster</i> http://energy.gov/ig/downloads/office-inspector-general-hotline-poster <i>'</i>	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
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	May 2011
52.204-7	System for Award Management	Jul 2013
52.204-9	Personal Identity Verification of Contractor Personnel	Jan 2011
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	Oct 2015
52.204-12	Data Universal Numbering System Number Maintenance	Dec 2012
52.204-13	System for Award Management Maintenance	Jul 2013
52.204-18	Commercial and Government Entity Code Maintenance	Jul 2013

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
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
52.211-15	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 2015
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
52.219-8	Utilization of Small Business Concerns	Oct 2014
52.219-9	Small Business Subcontracting Plan, Alt II Oct 2001	Oct 2015
52.219-16	Liquidated Damages – Subcontracting Plan	Jan 1999
52.222-1	Notice to the Government of Labor Disputes	Feb 1997
52.222-2	Payment for Overtime Premiums (a) "0"	Jul 1999
52.222-3	Convict Labor	Jun 2003

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	May 2014
52.222-21	Prohibition on Segregated Facilities	Apr 2015
52.222-26	Equal Opportunity	Apr 2015
52.222-29	Notification of Visa Denial	Apr 2015
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
52.223-2	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 2011
52.223-10	Waste Reduction Program	May 2011
52.223-12	Refrigeration Equipment and Air Conditioners	May 1995
52.223-13	Acquisition of EPEAT® -Registered Imaging Equipment Alt I Jun 2014 <i>(b) was EPEAT® silver-registered or gold-registered</i>	Jun 2014
52.223-15	Energy Efficiency in Energy-Consuming Products	Dec 2007
52.223-16	Acquisition of EPEAT® -Registered Personal Computer Products Alt I (Jun 2014) <i>(b) were EPEAT® silver-registered or gold-registered</i>	Oct 2015
52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts	May 2008
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 <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.224-1	Privacy Act Notification	Apr 1984
52.224-2	Privacy Act	Apr 1984
52.225-1	Buy American—Supplies (d) “use” is replaced with the word “deliver”	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)	Jun 1987
52.230-2	Cost Accounting Standards	Oct 2015
52.230-6	Administration of Cost Accounting Standards	Jun 2010
52.232-17	Interest	May 2014
52.232-18	Availability of Funds	Apr 1984
52.232-24	Prohibition on Assignment of Claims	Apr 1984
52.232-39	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
52.237-2	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

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.242-13	Bankruptcy	Jul 1995
52.244-5	Competition in Subcontracting	Dec 1996
52.244-6	Subcontracts for Commercial Items	Feb 2016
52.247-1	Commercial Bill of Lading Notations <i>(a) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'.</i> <i>(b) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'. Contract No. is "TBD".</i> <i>Contact is 'the Contracting Officer'.</i>	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
52.249-14	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 <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
952.203-70	Whistleblower Protection for Contractor Employees	Dec 2000
952.204-70	Classification/Declassification	Sep 1997
952.204-71	Sensitive Foreign Nations Controls	Mar 2011
952.204-75	Public Affairs	Dec 2000
952.204-77	Computer Security	Aug 2006
952.208-7	Tagging of Leased Vehicles	Apr 1984

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
952.209-72	Organizational Conflicts of Interest, Alternate I <i>(b) (1) (i) Period is 'five (5) years'.</i>	Aug 2009
952.211-71	Priorities and Allocations (ATOMIC ENERGY)	Apr 2008
952.215-70	Key Personnel <i>(a) Cross-reference is 'Section J, Appendix D.'</i>	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
952.242-70	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
970.5204-1	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 2015
970.5222-1	Collective Bargaining Agreements-Management and Operating Contracts	Dec 2000
970.5222-2	Overtime Management	Dec 2000
970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution	Dec 2000
970.5223-4	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

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
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
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 52.208-8 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-3 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-4 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days of contract expiration; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 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-5 FAR 52.219-10 INCENTIVE SUBCONTRACTING PROGRAM (OCT 2014)

- (a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.
- (b) If the Contractor exceeds its subcontracting goals for those socio-economic identified by the Contracting Officer that may include: small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantage business, and women-owned small business concerns in performing this contract, it will receive a percentage (Contracting Officer to insert the appropriate number between) and up-to-7%) of the dollars in excess of the selected goal(s) in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated amount in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations made under this paragraph are unilateral decisions made solely at the discretion of the Government.
- (c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in 15.404-1 of the Federal Acquisition Regulation.
- (d) The Contracting Office will provide the Contractor with written guidance identifying and establishing the socio-economic program(s) and goal(s) annually per DEAR Subpart 970.1907-4. The Contracting Office will include, as a minimum, the following information:

(1) the socio-economic programs(s) to be incentivized, (2) goal percentages, (3) a maximum dollar threshold that can be earned for each incentivized socio-economic program and, (4) a maximum dollar threshold that can be earned overall.

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 <i>To be determined*</i>	Identification No.

* This information will be provided upon award of the contract

(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 (MAY 2001)

(a) *Definition.* “*Ozone-depleting substance,*” as used in this clause, 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 which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) 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).

(End of Clause)

I-10 FAR 52.223-14 ACQUISITION OF EPEAT® -REGISTERED TELEVISIONS (JUN 2014)

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

“Television or TV” means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with computer capability (e.g., computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a federally controlled facility, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see www.epa.gov/PEAT.

(End of Clause)

I-11 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 (* _____) 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 (* _____) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (* _____), 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 (* _____) 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.

[* Insert appropriate agency name in blanks.]

(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):

<p><i>Federal Acquisiti on Regulati on</i></p>	<p>http://farsite.hill.af.mil/vffara.htm or https://www.acquisition.gov/far/index.html</p>
<p><i>Federal Acquisiti on Forms</i></p>	<p>http://www.gsa.gov/portal/forms/type/TOP</p>

<p><u>Department of Energy Acquisition Regulation</u></p>	<p>http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation</p> <p>http://farsite.hill.af.mil/vfdoea.htm</p> <p>http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=ccc3d607ed1811c91460147ec7521076&mc=true&r=PART&n=pt48.5.952</p> <p><i>or</i></p> <p>http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=ccc3d607ed1811c91460147ec7521076&mc=true&r=PART&n=pt48.5.970</p>
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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 "special 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 the 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 SF 328 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 part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

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

(End of clause)

[74 FR 23124, May 18, 2009, as amended at 74 FR 36368, 36370, July 22, 2009; 76 FR 7694, Feb. 11, 2011; 81 FR 45978, July 15, 2016]

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 the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to—
 1. Negligence;
 2. Contributory negligence;
 3. Assumption of risk; or
 4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or governmental immunity; and

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

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

 - (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above—
- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

- (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.
- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in

subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

Effective date

() See Note II below for instructions related to this section on Effective Date.

Relationship to general indemnity

() See Note III below for instructions related to this section on Relationship to General Indemnity.

NOTE I: Paragraph (i) of the clause will be replaced with "Reserved" in contracts specifically exempted from civil penalties by section 234 of the Act. That subsection provides that the following DOE contractors are not subject to the assessment of civil penalties:

- (1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;
- (2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;
- (3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;
- (4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;
- (5) Princeton University (and any subcontractor or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;
- (6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and
- (7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

NOTE II: Contracts with an effective date after the date of (June 12, 1996), do not require the effective date provision in this clause. Delete the title. Use the EFFECTIVE DATE title and the following language, for those contracts: "() This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after ..."

- (1) Those that contained an indemnity pursuant to Public Law 85-840 prior to August 20, 1988, include the effective date provision above, inserting the effective date of the

contract modification that replaced the Public Law 85-804 indemnity with an interim Price-Anderson based indemnity. Pursuant to the Price-Anderson Amendments Act, this substitution must have taken place by February 20, 1989.

- (2) Those that contained, and continue to contain, either of the previous Nuclear Hazards Indemnity clauses, include the effective date provision above, inserting "August 20, 1988."
- (3) Those with an effective date between August 20, 1988, and the date of the Final Rule, that (a) had "interim coverage" or (b) did not have "interim coverage" but have now been determined to be covered under the PAAA, include the effective date provision above, inserting the contract effective date.

NOTE III: The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 950.7101. Caution: Be aware that for contracts that will have this provision added which do not contain an effective date provision, this paragraph shall be marked (1). In the event an Effective Date provision has been included, it shall be marked (m).

"() To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply."

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 made applicable to the contract by *the* List. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
- (d) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(End of Clause)

I-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 OCT 2011) (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 [insert the name of the Contractor] under Contract No. [insert the contract number] 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 (insert name of Contractor) under Contract No. *(insert contract number)* with the Department of Energy/*National Nuclear Security Administration*. For (period approved by *NNSA* Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE/*NNSA*. Neither the United States nor the United States Department of Energy/*National Nuclear Security Administration*, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of Notice)

- (vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE/*NNSA* has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e)(3)(iii) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE/*NNSA* determines that the Contractor has not

made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE/NNSA shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE/NNSA to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 --"Appeals."

- (vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE or NNSA Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.
 - (viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.
- (4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the DOE/NNSA to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] 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 Facility User, 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. (*insert contract number*) with the United States Department of Energy/*National Nuclear Security Administration* which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(i) Rights in Restricted Computer Software.

- (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice --Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy/*National Nuclear Security Administration* Contract No. (*insert contract number*). 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. *(insert contract number)* with (name of Contractor).

(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 II (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)**

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 Facilities; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Facilities 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) Facilities' 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 Facilities' employees or through the use of Facilities' research resources.
- (7) Facilities' 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 Facilities' employees or through the use of Facilities' research resources.
- (8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Facilities' Biological Materials or Facilities' 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 *Facilities* 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 Facilities* 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 *Facilities* 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 *Facilities* 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 *Facilities'* intellectual property where the *Contractor* obtains rights during the course of the Contractor's operation of the *Facilities* 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 *Facilities*, consistent with the research and development mission and objectives of the *Facilities* 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 *Facilities*' 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 *Facilities* 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 *Facilities*, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.
 - (3) The Contractor shall *notify* the Contracting Officer of any changes to its policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer. *Such changes shall be subject to the approval of the Contracting Officer.*
- (i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the *Facilities* 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 *Facilities*, 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 Facilities 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. Facilities 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 Facilities 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 Facilities 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 *Facilities* 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 *Facilities* 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 *Facilities*, and technology licensing.

- (2) The Ombudsman shall be a senior official of the Contractor's *Facilities* staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the *Facilities*, 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 *Facilities* 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 DEAR 970.5227-2 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (AUG 2002) ALTERNATE I (NNSA CLASS DEVIATION OCT 2011)

(a) Definitions.

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

- (4) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (*7 U.S.C. 2321*, et seq.).
 - (5) Made, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.
 - (6) Patent Counsel means *the National Nuclear Security Administration (NNSA) Patent Counsel* assisting the contracting activity.
 - (7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
 - (8) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, *7 U.S.C. 2401(d)*) shall also occur during the period of contract performance.
 - (9) Weapons-Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.
- (b) Allocation of Principal Rights.
- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b) (2) of this clause or a determination of greater rights pursuant to subparagraph (b) (7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.
 - (2) Advance class waiver of Government rights to the Contractor. DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, *including weapons-related subject inventions*, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. *The Contractor does not have a right to retain title to any weapons-related subject inventions prior to being granted title by NNSA under the Class Waiver. In its elections of weapons-related subject inventions, the NNSA alone will make the determination that the subject invention is in fact a weapons-related subject invention, and that rights to the Contractor may be granted, based on specific procedural requirements that the Contractor must meet, as enumerated in the Class Waiver.* Unless otherwise provided by the terms of the

advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to *35 U.S.C. 203* and the provisions of this clause, including the Government license provided for in subparagraph (b) (3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

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

(D) *Solid State Energy Conversion Alliance (SECA) if the Contractor is a participant in the “Core Technology Program”;* and

(E) *Solid State Lighting Program (SSLP) if the Contractor is a participant in the “Core Technology Program.”*

(iii) DOE/NNSA reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE/NNSA exceptional circumstance subject inventions.

(6) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements *identified at*<http://www.state.gov/s/l/treaty/index.htm>*Treaty Affairs*

DOE/NNSA reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE/NNSA pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE/NNSA may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b) (3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE/NNSA, and DOE/NNSA may grant or refuse to grant such a request by the Contractor employee-inventor.

- (9) Government assignment of rights in Government employees' subject inventions. If a DOE *or* NNSA employee is a joint inventor of a subject invention to which the Contractor has rights, DOE *or* NNSA, *as applicable*, may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE *or* NNSA employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b) (3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE *or* NNSA employee.
 - (10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.
- (c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor.
- (1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the contracting officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE/NNSA shall be in the form of a written report and shall include:
 - (i) the contract number under which the subject invention was made;
 - (ii) the inventor(s) of the subject invention;
 - (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
 - (iv) the date and identification of any publication, on sale or public use of the invention;
 - (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
 - (vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty

or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

- (vii) all sources of funding by Budget and Resources (B&R) code; and
- (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

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

- (2) Publication after disclosure. After disclosure of the subject invention to the DOE/NNSA, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.
- (3) Election by the Contractor under an advance class waiver. If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE/NNSA within two (2) years of the date of the disclosure of the subject invention to DOE/NNSA, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under *35 U.S.C. 102(b)*, the period for election may be shortened by DOE/NNSA to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.
- (4) Filing of patent applications by the Contractor under an advance class waiver. If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under *35 U.S.C. 102(b)*, whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is

granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

- (5) Submission of patent information and documents. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:
 - (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
 - (ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
 - (iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.
 - (6) Contractor's request for an extension of time. Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c) (1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE/NNSA.
 - (7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR Part 40.
- (d) Conditions When the Government May Obtain Title notwithstanding an Advance Class Waiver.
- (1) Return of title to a subject invention. If the Contractor requests that DOE/NNSA acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b) (2) or subparagraph (b) (7) of this clause, DOE/NNSA may acquire such title or rights from the Contractor, or DOE/NNSA may decide against acquiring such title or rights from the Contractor, at DOE/NNSA's sole discretion.
 - (2) Failure to disclose or elect to retain title. Title vests in DOE/NNSA and DOE/NNSA may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.
 - (3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any

country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE/NNSA 's written request for title, the Contractor continues to retain title in that country.

- (4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA.
- (5) Termination of advance class waiver. DOE/NNSA may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE/NNSA, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(e) Minimum Rights of the Contractor.

- (1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c) (1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE/NNSA may grant or refuse to grant such a request by the Contractor. If DOE/NNSA grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
- (2) Transfer of a Contractor license. DOE/NNSA shall approve any transfer of the Contractor's license in a subject invention, and DOE/NNSA may determine that the Contractor's license is non-transferable, on a case-by-case basis.
- (3) Revocation or modification of a Contractor license. DOE/NNSA may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE/NNSA licensing regulations. DOE/NNSA may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE/NNSA may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.
- (4) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE/NNSA shall furnish the Contractor a written notice of

its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE/NNSA for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE/NNSA licensing regulations.

(f) Contractor Action to Protect the Government's Interest.

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

- (5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy/*National Nuclear Security Administration*. The Government has certain rights in the invention."
 - (6) Avoidance of Royalty Charges. If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.
 - (7) DOE/NNSA approval of assignment of rights. Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE/NNSA.
 - (8) Small business firm licensees. The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.
 - (9) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.
- (g) Subcontracts.
- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
 - (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to

exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.

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

- (i) Preference for United States Industry. Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE *or* NNSA may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) March-In Rights. With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE *or* NNSA may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE/NNSA has the right to grant such a license itself if DOE/NNSA determines that-
 - (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - (2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.
- (l) Reports.
 - (1) Interim reports. Upon DOE's *or* NNSA's request, the Contractor shall submit to DOE *or* NNSA, no more frequently than annually, a list of subject inventions disclosed to DOE/NNSA during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall

state whether the Contractor's invention disclosures were submitted to DOE/NNSA in accordance with the requirements of subparagraphs (f) (3) and (f) (4) of this clause.

- (2) Final reports. Upon DOE's *or* NNSA's request, the Contractor shall submit to DOE *or* NNSA, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

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

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

(n) Atomic Energy.

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

(o) Classified Inventions.

- (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
- (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention

that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) Examination of Records Relating to Inventions.

- (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
- (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE/NNSA, and the Contracting Officer believes the unreported invention may be a subject invention, DOE *or* NNSA may require the Contractor to submit to DOE *or* NNSA a disclosure of the invention for a determination of ownership rights.
- (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.
- (4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE *or* NNSA, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE/NNSA in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) Educational Awards Subject to 35 U.S.C. 212. The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b) (6) of this clause

or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

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

I-25 DEAR 970.5231-4 PRE EXISTING CONDITIONS (DEC 2000) ALTERNATE I (DEC 2000) ALTERNATE II (DEC 2000)

(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 [Insert date contract began]. 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 [Insert date contract began], 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 I (DEC 2000). As prescribed in 970.3170 (a), in contracts with incumbent management and operating contractors, substitute the following for paragraph (a) of the basic clause:

(a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before [Insert date this clause was included in contract], in conjunction with the management and operation of [Insert name of facility], shall be deemed incurred under Contract No. [Insert number of prior contract].

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) (CLASS DEVIATIONS: AUG 2011, JUN 2013, MAR 2015) (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 \$150,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than \$35,000, but not greater than \$150,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum 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 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.

Alternate I (DEC 2000). As prescribed in 970.4501-1(b), when the award is to a nonprofit contractor, replace paragraph (j) of the basic clause with the following paragraph (j):

(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 all or substantially all of—

(1) The Contractor's business; or

(2) The Contractor's operations at any one facility or separate location at which this contract is being performed; or

(3) The Contractor's Government property system and/or a Major System Project as defined in DOE Order 413.3B or successor version (Version in effect on effective date of contract).

SECTION J – List of Attachments

- Attachment A – Statement of Work (SOW)
- Attachment B – List of Applicable Directives and NNSA Policy Letters
- Attachment C – Personnel Appendix
- Attachment D - Key Personnel
- Attachment E - Small Business Subcontracting Plan
- Attachment F - Diversity Plan
- Attachment G – Special Financial Agreement
- Attachment H – ITER Agreement
- Attachment I – Performance Guarantee
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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 along with 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 the 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 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. Sandia National Laboratories (SNL) (herein referred to as "SNL", "the Laboratory" or "the Laboratories") is operated under an M&O contract, as defined in Federal Acquisition Regulation (FAR) 17.6. SNL 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 managed by Defense Programs 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 Laboratories that is performed for other sponsors within the DOE, NNSA, Department of Defense (DoD), Department of Homeland Security, and other government agencies, and private industry.

3.0 REQUIREMENTS

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.

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 Laboratories. 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 SNL to accomplish the missions assigned by the NNSA to the Laboratories; to achieve Presidential and Congressional directives; to fully support the Nuclear Posture Review; to enhance and promote 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 the lead system integrator for the nuclear weapons program; and to provide cross-site coordination with NNSA's other NSE elements for program and project management.

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 certified Earned Value Management System compliant with ANSI/EIA-748B for program activities and projects to track performance and increase cost effectiveness of work activities; All *Weapon Activities* funded programs and projects will follow the NNSA Defense Programs Work Breakdown Structure (WBS);
- (iii) Integrated, resource-loaded plans and schedules utilizing software that is compatible with NNSA and other NNSA Contractors to achieve program objectives, incorporating input from NNSA, DOE and stakeholders;
- (iv) Technical depth to manage activities and projects throughout the life cycle of a program;
- (v) Appropriate technologies to reduce costs and improve performance;
- (vi) A system of management and business internal controls to assure the safeguarding of government funds and assets; Reporting of monthly costs for *Weapon Activities* funded programs and projects in accordance with the NNSA Defense Programs Work Breakdown Structure (WBS); and
- (vii) Management and maintenance 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 statement of work (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 primary sites where work is performed. The Government may relocate or reassign to other locations.

4.1 Sandia National Laboratories New Mexico (SNL/NM)

Located in Albuquerque, 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 Sandia National Laboratories California (SNL/CA)

Located in Livermore, California, this site is a multi-program engineering and science laboratory supporting the nuclear weapons stockpile program, energy and environmental research, homeland security, micro-and nano-technologies, and basic science and engineering research.

4.3 Weapons Evaluation Test Laboratory (WETL)

Located at the Pantex Plant (Pantex) in Amarillo, Texas, this site is a low hazard, non-nuclear facility owned by the DOE/NNSA, and operated under this Contract. SNL funds costs related to equipment, operations, and maintenance of office space. This site is responsible for the testing of weapon systems for the Stockpile Evaluation Program.

4.4 Tonopah Test Range (TTR)

Located in the desert of Nevada, this site conducts operations in support of the DOE/NNSA's Weapon Ordnance and Stockpile Evaluation Program. Activities involve

research and development (R&D), testing of weapon components, and delivery systems. Many of these activities require a remote testing range with a long flight corridor for air drops and rocket launches. Other activities include explosive tests and gun firings.

4.5 Kauai Test Facility (KTF)

Located in Kauai, Hawaii at the north end of the United States Navy's Pacific Missile Range Facility (PMRF), this site is a rocket preparation, launching, and tracking facility for DOE/NNSA, and also provides support to other U.S. military agencies. KTF exists as a facility within the boundaries of the PMRF.

4.6 Tri Laboratory Office at Pantex

Located at Pantex in Amarillo, Texas, this site provides technical support for the design agency laboratories and Pantex. SNL funds costs related to equipment, operations, and maintenance of office space. The office is comprised of engineers from all three NNSA laboratories.

4.7 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 work scope areas 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 Laboratories.

1.1 Nuclear Weapons

The Contractor shall support the NNSA to ensure long-term safety, reliability, and security of the nation's nuclear weapons stockpile. This includes support for the current stockpile and support for transformation activities leading to a future stockpile and infrastructure. The Contractor shall meet the near-term scientific and technical demands of stockpile stewardship and maintenance while strengthening the long-term technical capability-based deterrent posture. The Contractor shall also support in the development of an overall strategic plan and execute the plan as it pertains to the SNL.

1.1.1 Stockpile Management & Stewardship

The Contractor shall support the science-based Stockpile Stewardship Program that underpins the technical basis for designing and certifying the safety, security, and reliability of all nuclear weapons in the U.S. stockpile. The Contractor shall conduct stockpile stewardship and maintenance activities for the Laboratories' assigned systems to include the following:

1.1.1.1 Certification of Stockpile

- (i) Provide the NNSA laboratories Directors' annual assessment of the stockpile; and
- (ii) Perform experiments, testing, analysis, and calculations in support of the annual assessment.

1.1.1.2 Stimulation 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) Conduct stockpile assessment of nuclear weapons components and the analysis of surveillance findings through the use computational resources; and
- (iv) Perform core stockpile computing and participation in the Advanced Simulation and Computing (ASC) initiative to enable model and simulation based life cycle engineering.

1.1.1.3 Surveillance and Surety

- (i) Conduct core stockpile surveillance on NNSA hardware to evaluate safety, security, and reliability 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 and 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) Conduct a surety program to assess the safety, security, and control of nuclear warheads over the entire weapon's life cycle;
- (vii) Develop capabilities to diagnose and predict age-related phenomena in the stockpile;
- (viii) Document stockpile surveillance results and analyses on hardware designed by NNSA for inclusion in the overall weapon system assessments;
- (ix) Prepare weapon reliability reports for nuclear weapons in the stockpile;
- (x) Participate in the review and approval of disassembly and inspection processes and services for components and systems;
- (xi) Provide formal requirements and approval for disassembly, inspection, and testing processes; and
- (xii) Support for Nuclear Explosive Safety evaluations for the approval of nuclear explosive operations.

1.1.1.4 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) Participate in the Engineering, Inertial Confinement Fusion (ICF) Ignition and High Yield, ASC, and Readiness Campaigns, which are designed to re-establish, maintain, and enhance scientific,

- engineering, manufacturing and other capabilities needed for the production and assessment of weapon systems and components for current and future programs;
- (iii) 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;
 - (iv) Develop pulsed power and inertial fusion ignition for stockpile application and other science and technology applications;
 - (v) Maintain nuclear underground test readiness according to defined national timelines;
 - (vi) Maintain a program to conduct laboratory and full-scale testing of nuclear weapons components and systems through the use of experiments and flight tests;
 - (vii) Maintain a capability to fabricate and test prototype components for design maturation of future designs and evaluation of current weapon systems; and
 - (viii) Maintain capabilities for qualifying systems and components to support assigned activities for current and future programs.

1.1.1.5 Production Support

The Contractor shall provide design requirements and technical support to the NNSA production plants and subcontractors for assigned nuclear and non-nuclear components and systems in order to support rate production, DoD deliverables, correct production issues, and to provide 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) Develop and document acceptance equipment and test systems for product acceptance of components and systems;
- (v) Provide expertise in specialized technologies to include components manufacturing and systems assembly, systems integration, transportation systems, information management, and development of specialized facility criteria;
- (vi) Provide technical support to develop and implement processes, procedures, tooling, and test systems to perform production;
- (vii) 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;
- (viii) Provide technical requirements and expertise in support of safe storage and transportation of nuclear weapon components, systems, and special materials;

- (ix) Provide weapon response for the hazard analysis and evaluation of changes in support of the operations at Pantex;
- (x) Participate in the development of the Documented Safety Analysis to support safe operations at Pantex;
- (xi) Support for Nuclear Explosive Safety evaluations for the approval of nuclear explosive operations; and
- (xii) Support NNSA initiatives for development and deployment of advanced design and manufacturing processes for weapon components.

1.1.1.6 Deployment

- (i) Provide technical specifications, engineering drawings, and engineering releases in support of corrective activities for the NNSA and DoD depots;
- (ii) Provide technical specifications, engineering drawings and releases that direct system design and qualification, weapon component manufacturing, assembly, maintenance, dismantlement, and surveillance;
- (iii) Perform life cycle management responsibilities in design, engineering development, system qualification, and component acceptance to support weapon alterations, modifications, refurbishments, and replacements for current and future systems; and
- (iv) Contribute to the development of training requirements for deployment.

1.1.1.7 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;
- (iii) Provide technical support to develop and implement processes, procedures, tooling, and test systems to perform dismantlement;
- (iv) Participate in review and approval of production and inspection processes for dismantlement at NNSA plants; and
- (v) Provide the requirements for formal approval of the disassembly or dismantlement processes.

1.1.1.8 Other Support

- (i) Provide technical support, and military liaison and training programs for the DoD in support of nuclear weapons in the stockpile;
- (ii) Maintain and operate the Primary Standards Laboratory, which develops and maintains primary standards traceable to national standards, calibrates and certifies reference standards, and provides technical support including auditing those programs in support of the NNSA mission;

- (iii) Serve as the lead to develop and maintain the set of Technical Business Practices, which establishes guidelines and requirements for weapons activities in the NSE;
- (iv) Serve as lead to develop and maintain the following information technology systems that support nuclear weapons: Record of Assembly, Integrated Project Scheduling System, Weapon Information System, Program Control Documents, and Master Nuclear Scheduling;
- (v) Eliminate residue, minimize waste, and manage environmental and mixed-waste programs; and
- (vi) Archive previously recorded nuclear weapons data for assessment of stockpile weapons systems, and improve models and codes.

1.1.2 Office of Research and Development

The Contractor shall develop R&D program plans in conjunction with, and approved by, NNSA for nuclear weapons R&D activities and perform nuclear weapons R&D in accordance with the program plans. The Contractor shall explore and document nuclear weapons technology and systems concepts, and perform and document feasibility studies and engineering development of nuclear weapons to meet NNSA and DoD mission requirements. The Contractor shall perform and document R&D to support the NNSA technology base, and conduct engineering that will assure nuclear competency, and effectively support the varied demands of nuclear weapon activities and enhance the ability to anticipate significant scientific or technological advances that impact national security. The Contractor shall provide R&D and engineering support related to international mutual defense agreements and in accordance with International Traffic in Arms Regulations (ITAR). The Contractor shall maintain state-of-the-art technologies and capabilities to support high-performance computing, modeling, and simulation; communications; experimentation; prototyping; testing and analysis; and information management.

1.1.2.1 Vendor Procurement and Manufacturing

The Contractor shall maintain facilities at the Laboratories to maintain assigned small-scale redundant production capabilities for critical NNSA hardware as risk mitigation for failure at other NNSA sites. The Contractor shall perform small quantity production for assigned components and related items used in the Nuclear Weapons Program, including associated product and process engineering for the production.

The Contractor shall manufacture nuclear weapon components and products as assigned (i.e., neutron generators and application specific integrated circuits [ASICs]), consistent with the production commitments of the Life Extension Programs. For the assigned nuclear weapon and weapon related products and services, the Contractor shall maintain a program for the management of subcontractors from which these products and services are purchased. This program shall:

- (i) Provide a formal process to assess vendors/suppliers' abilities to supply products to all requirements, including technical and quality;
- (ii) Provide formal inspections prior to start of production and periodic reviews at supplier locations during production based on risk and performance;
- (iii) Provide a formal system that verifies the delivered products and services meet or exceed customer expectations;
- (iv) Monitor suppliers to identify when significant changes in the supplier technical, manufacturing, management, and financial position occur in order to determine continued viability or contract termination; and
- (v) Maintain a corrective action system for subcontractors to identify root cause and verify effectiveness of corrective actions.

1.1.2.2 Pulsed Power

The Contractor shall conduct a Pulsed Power Program to support high energy density physics. This national effort depends on cooperation and collaboration with multiple NNSA Contractors and includes major experimental activities at the Z-Machine and other NNSA sites.

1.1.2.3 Transportation

The Contractor shall provide engineering, production support, and operational engineering support for the major elements of the NNSA Transportation Safeguards System (TSS). The Contractor shall perform prototype fabrication, testing, validation, and implementation of all upgrades associated with the TSS subsystems; tie down definitions and certification, mechanical maintenance support for NNSA transportation safeguards vehicles; and strategic planning support to NNSA for the entire TSS.

1.1.2.4 Tonopah Test Range

The Contractor shall maintain and operate the TTR to provide the capability to test and evaluate existing stockpile weapons and advanced concepts in a safe, secure, and reliable environment.

1.1.2.5 Supporting Technologies

The Contractor shall conduct R&D to include solid state physics, materials and processes, applied mechanics, computer science, microelectronics, applied mathematics, aerodynamics and flight mechanics, navigation, guidance and control, penetration technology, environmentally conscious manufacturing, and advanced manufacturing technologies and operations including robotics in support of the NNSA mission.

1.1.2.6 Long-Range Planning and Systems Integration

The Contractor shall perform independent research, trade-off studies, cost analyses, systems analyses, and other work as requested by NNSA, to include, but not limited to, defense systems integration functions to support NNSA in long-range planning and systems integration activities for the NNSA mission.

1.1.2.7 Systems Integration

The Contractor shall serve as lead for technical services for systems planning, support, scheduling, and integration for all current and future nuclear weapon systems and other stockpile activities. As tasked through Work Authorizations, the Contractor shall provide direct programmatic and technical services for:

- (i) Program planning, research, directed analysis, program documentation, integrated scheduling, resource planning, cost analysis, tracking and generation of reports with primary focus on the Life Extension Programs;
- (ii) Stockpile analyses and support for weapons programs with upcoming Phase 6.x refurbishments, supporting program planning documentation, requirements development and management, and generation of final reports and briefings; and
- (iii) Other program management tasks related to systems planning, support, scheduling, and integration for nuclear weapons systems.

1.2 Defense Nuclear Nonproliferation

The Contractor shall develop and apply the scientific and technical expertise, and perform appropriate related contracting, financial management, analytical tasks and, when needed, participate in field teams and installations required to eliminate proliferation-sensitive materials and limit or prevent the spread of materials, technology, and expertise related to nuclear and radiological weapons and programs around the world.

1.2.1 Material Management and Minimization

The Contractor shall develop and apply the scientific and technical expertise, and perform appropriate related contracting, financial management, and analytical tasks required to minimize and, when possible, eliminate excess weapons-usable nuclear material, ensure sound management principles for domestic nuclear materials, and support peaceful uses of nuclear energy by making nuclear materials available for these purposes.

1.2.2 Global Material Security

The Contractor shall develop and apply the scientific and technical expertise and perform appropriate related contracting, financial management, and analytical tasks for advancing the global materials security mission and work with partners

worldwide to build sustainable capacity to secure nuclear and radiological materials, and to interdict and investigate the trafficking of those materials.

1.2.3 Nonproliferation and Arms Control

The Contractor shall develop and apply the scientific and technical expertise, and perform appropriate related contracting, financial management, and analytical tasks required to strengthen the nonproliferation and arms control regimes by applying expertise to develop and implement programs and strategies to: strengthen international nuclear safeguards; control the spread of nuclear material, equipment, technology, and expertise; verify nuclear reductions and compliance with nonproliferation and arms control treaties and agreements; and develop programs and strategies to address nonproliferation and arms control challenges and opportunities.

1.2.4 Defense Nuclear Nonproliferation Research and Development

The Contractor shall develop and apply the scientific and technical expertise, and perform appropriate related contracting, financial management, and analytical tasks required to develop effective technologies to detect nuclear weapons proliferation and nuclear detonations and support the monitoring and verification of foreign commitments to treaties and other international agreements and regimes

1.2.5 Nonproliferation, National Security and Verification Technology

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.

1.2.6 National Atmospheric Release Advisory Center (NARAC)

The Contractor shall support operational and research activities for the NARAC. NARAC is the national capability for emergency response assistance following the release of radioactive or toxic materials into the atmosphere resulting from accidents at nuclear reactors or in nuclear weapons handling and transport, and industrial or transportation releases in the U.S.

1.3 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.

1.4 Energy Technology

1.4.1 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.

1.4.2 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 NNSA's mission.

1.4.3 Combustion Research

The Contractor shall conduct R&D to include combustion diagnostics, combustion chemistry, reacting flows, combustion modeling and high-temperature materials in support of NNSA's mission.

1.4.4 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.

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 NNSA's mission.

1.6 Computing, Modeling and Simulation

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.

1.7 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.

1.8 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 in accordance with other applicable laws, regulations, and policies.

1.9 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.

1.10 Industrial Partnerships and Technology Transfer Programs

The Contractor shall submit industrial partnerships and technology transfer programs/agreements to the CO for approval. The Contractor shall make available to private industry the unique capabilities of the Laboratories in order to enhance the industrial competitiveness and national security.

1.11 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

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.

2.2 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.

2.3 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*.

2.4 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 through mobility and cloud computing, 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.

In the area of cybersecurity, the Contractor shall ensure data confidentiality, integrity, and availability; and implement 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 involve 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.

2.5 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.

2.6 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 Laboratories; 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.

2.7 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.

2.8 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 Laboratories.

- 2.8.1** 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 shall provide the regulatory agency with an acceptable form of financial responsibility.
- 2.8.2** The Contractor shall notify the Contracting Officer promptly when it receives service from the regulators of NOV/NOAVs, fines, and penalties. Nothing stated above shall affect the Contractor's right to challenge or contest the applicability or validity of such NOV/NOAVs, fines, and penalties.
- 2.8.3** 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.
- 2.8.4** 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.

2.9 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.

2.10 Laboratories Facilities

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 Laboratories 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.

2.11 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, construction, and/or construction management 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.

2.12 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, safeguard and security training, and contract compliance training.

2.13 Purchasing Management

The Contractor shall have an NNSA-approved purchasing system to provide required purchasing support and subcontract administration.

2.14 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 Contractor's 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.

2.15 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 Nuclear Emergency Search Team.

2.16 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.

2.17 User Facilities

The Contractor shall manage all Laboratories 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 Laboratories' 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.

2.18 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 Laboratories 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 of nuclear facilities.

3.0 LABORATORIES 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 Sandia Field Office on issues and decisions, and demonstrating better partnering, particularly regarding stakeholder discussions and messaging.

3.2 Enterprise Success

The Contractor shall actively identify 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.

3.3 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 Laboratories performance, assisting the Laboratories 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 support successful contract performance and shall identify opportunities for the parent organization(s) to engage with Laboratory management to address Laboratories 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 the Laboratories' 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. Where the Contractor proposes to release sensitive or controversial information, or information which DOE/NNSA may otherwise have an interest in reviewing (such as information which may affect the reputation of the agency or the Federal Government), the Contractor shall provide a copy of the proposed release to the Contracting Officer for review and approval prior to release. The Contractor will provide a Public Affairs Program Plan for approval by the Contracting Officer.

3.7 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.

3.8 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 SFO 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.

3.9 Legal Affairs

The Contractor shall maintain a legal program to support Contract activities related to the Laboratories' 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 Laboratories' legal risk. The Contractor's legal program shall also be compliant with 10 C.F.R. 719.

3.10 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.

CHAPTER III. Human Resources

1.0 DEFINITIONS

Incumbent Employees: Sandia Corporation employees in good standing under Contract DE-AC04-94AL85000 as of the effective date of the successor 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 Term of the Contract.

2.0 POLICIES

Contractor policies regarding: paid and unpaid leave; incentive compensation (variable pay); compensation; benefits; workers compensation and self-insurance; special employee activities such as personnel loans and community involvement and outreach; employee programs (i.e., awards and recreation); travel; educational assistance; and employee training, shall be submitted to the Contracting Officer for approval no later than 60 days after the effective date of the Contract.

All of the Contractor's personnel policies must be in compliance with the terms and conditions of this contract including but not limited to Federal Acquisition Regulation (FAR) Part 31, Contract Cost Principles and Procedures. If there is a conflict between the Contractor's existing policies and the terms of this Contract, the Contract will govern.

The Contractor shall obtain Contracting Officer prior approval of changes to its existing policies in those areas identified within the scope of this Appendix and other related provisions of the Contract when such changes are expected to increase costs to the Government.

3.0 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.

3.1 Workforce Planning General

The Contractor shall annually analyze workforce requirements consistent with current and future mission requirements. The Contractor shall describe in a written document how it will ensure it employs a sufficient, but not excessive, number of employees who possess the appropriate skills to perform the current mission work and the anticipated identified mission work. The assessment shall provide present employment levels in each occupational category. The description of how the Contractor will ensure it employs a sufficient, but not

excessive number of employees to perform the work in future years shall include a discussion of the following topics: future hiring needs in critical skill areas, recruitment and retention of individuals possessing critical skills, and the impact of anticipated retirements/attrition. The document will also describe the amount and type of work the Contractor anticipates performing during the following calendar year pursuant to Strategic Partnership Projects [Formerly Known as Work for Others (Non-Department of Energy Funded Work)]. This analysis shall be provided to the Contracting Officer no later than November 30th each year.

3.2 Reductions in Contractor Employment – Workforce Restructuring

3.2.1 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. Prior approval of a VSP by the Contracting Officer is required for any such costs to be considered to be allowable.

3.2.2 Involuntary Reductions in Contractor Employment

3.2.2.1 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.

3.2.2.2 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.

3.2.2.3 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.

3.2.2.4 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.

3.2.2.5 The Contractor may submit a multi-year workforce restructuring plan for consideration and approval.

3.2.3 Any payment of separation benefits beyond those already approved under the Contract must be approved by the Contracting Officer.

4.0 WORKFORCE TRANSITION

The following are requirements the Contractor shall carry out during the Transition Term, prior to the beginning of the Base Term. After the effective date of the Contract, the Contractor may propose alternate due dates for the deliverables described in **4.1 Staffing Plan**, **4.2 Pay & Benefits**, and **4.3 Incumbent Employees Right of First Refusal**, and **4.4 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.

4.1 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.

4.2 Pay & Benefits

Consistent with the requirements identified in 5.0 COMPENSATION and 6.0 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.

4.2.1 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 will describe benefits provided to employees including existing plans to which the Contractor becomes a sponsor at the beginning of the Base Term (with proposed changes to existing plans) as well as newly proposed plans.

4.2.2 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 6.1.6 below. Contracting Officer’s approval of the Contractor’s benefits program will be contingent on the net benefit value not exceeding the comparator group by more than five percent. Or, the Contractor may propose an alternative strategy to realign employee benefits within the 105 threshold within a specified period of time. Such proposal must be approved by the Contracting Officer.

4.2.3 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 5.0 COMPENSATION below.

4.3 Incumbent Employees Right of First Refusal

The Contractor shall use the Transition Term 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.

4.4 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 CO approval of Personnel Appendix proposals before implementation.

5.0 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.

5.1 Total Compensation System

Consistent with the requirement in 5.2, 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 (Total Compensation System). 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.

5.2 Cash Compensation

The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

- 5.2.1** An Annual Compensation Increase Plan (CIP). The contractor shall submit the CIP to the Contracting Officer on 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 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 proposed CIP on the site budget; and
 - (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 CIP submission 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 within the two weeks following the Contractors submission (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 proposed CIP percent increase 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 above market.
 - (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).

- 5.2.2** 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., General Manager 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 not exceed the benchmark referenced in FAR 31.2056(p)(3) and will serve as the maximum allowable salary reimbursement 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.
- 5.2.3** If the Contractor proposes to establish an Incentive Compensation Plan (variable pay plan/pay-at-risk), documentation shall be provided to the Contracting Officer, for approval, no later than 60 days prior to proposed implementation. Such proposal must contain:
- (i) The design of the Incentive Compensation Plan, the funding methodology, and linkage to Contract performance measures;
 - (ii) Requirement for approval of Incentive Compensation Plan design changes by the Contracting Officer prior to implementation;
 - (iii) Requirement for an annual approval, prior to the performance period, of the total dollar amount of the pool, the eligible positions, and linkage to Contract performance goals;
 - (iv) Requirement for policy that provides a specific pass-over rate, i.e., percent of participants who will not receive an incentive;
 - (v) The dollar amount authorized to fund the variable pay program shall not exceed 2.5% of exempt base pay as of December 31st of the previous year.
 - (vi) Requirement for an annual summary report on distributions made under an Incentive Compensation Plan; and
 - (vii) For any Executive Incentive Plans, a requirement for pay at risk.
- 5.2.4** Non-base payments determined concurrently with salary increases and certain non-base awards may be granted throughout the year. These awards are funded from the total non-base budget. The Contractor shall develop a plan for non-base bonuses and submit to the Contracting Officer for approval.
- 5.2.5** Assignments of individuals outside of their normal duty station for which the NNSA/DOE will reimburse all or some of their compensation or other

expenses shall be approved by the Contracting Officer prior to beginning the assignment. Requests shall be submitted 30 days prior to the desired start date. The Contractor shall submit a report of all such assignments, to include the total cost of each assignment, reason for assignment, location, duration, and cost-share arrangement to the Contracting Officer by January 30 of each year unless otherwise specified.

- 5.2.6** The Contractor shall submit a severance plan within 60 days of the effective date of the base term, 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, resigns or retires from employment, except that 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 a parent or affiliated company; and/or
- (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.

5.3 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 90 days after CIP plan year expenditures;
- (ii) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(4)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the System for Award Management (SAM) per FAR 52.204-10, and

- (iii) Other compensation reports and/or information as requested by the Contracting Officer.

6.0 BENEFITS

6.1 Assumption of Existing Pension and Benefit Plans and Establishment of New Pension and/or Benefit Plans

The Contractor will be required to become a sponsor of the existing pension plans and other Post Retirement Benefit Plans (PRB), as applicable, with responsibility for management and administration of the plans, including maintaining the qualified status of those plans. Incumbent Employees shall remain in their existing pension plans (or comparable successor plans 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 date of the Base Term.

- 6.1.1** To the extent the Contractor seeks to establish new benefit plans or change benefits under existing benefit plans at the time of Contract transition, the Contractor shall provide justification to the Contracting Officer for all new benefit plans and for all changes to existing benefit plans, plan design, or funding methodology. 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. The Contractor shall provide 60 day advance notification to the CO of changes to benefit plans that do not increase cost or long-term liability
- 6.1.2** After transition, revisions to existing plans or establishing new plans that will increase costs or long-term liability to the DOE/NNSA require CO approval prior to implementation. For changes to existing benefit plans or establishment of new plans that will not raise costs or long-term liability, 60 day advance notification to the CO is required.
- 6.1.3** Cost reimbursement for pension and other benefit programs sponsored by the Contractor for non-bargaining and bargaining unit employees will be based on conformance with the “Employee Benefits Value Study” and an “Employee Benefits Cost Survey Comparison” requirements as described in 6.1.6.1 and 6.1.6.2 below.
- 6.1.4** 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.

6.1.5 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, M&O Contractor Service Credit Recognition.

6.1.6 Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall participate in and/or submit the studies required in paragraphs 6.1.6.1 through 6.1.6.3 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.

6.1.6.1 The Consolidated Employee Benefits Value Study for non-bargaining unit employees, must be completed every two years or as directed by the Contracting Officer. 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 will use the comparator companies previously used in the last Consolidated Benefit Value Study. If any of the comparator companies no longer participate, the Contractor will 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; 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.

A Ben Val for bargaining unit employees shall be completed six months prior to the end of the collective bargaining agreement. 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; 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.

- 6.1.6.2** 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.
- 6.1.6.3** An Employee Benefits Cost Study Comparison (Cost Study) for non-bargaining and bargaining unit employees, must be completed annually. 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.
- 6.1.6.4** When the average of the Cost Study total benefit per capita cost for the non-bargaining employees exceeds the comparator group's per capita cost 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 align plan costs within the five percent. If the Contractor analysis not acceptable to the Contracting Officer, a "Corrective Action Plan" is required.
- 6.1.6.5** Within two years of Contracting Officer approval of the Contractor's Corrective Action Plan for non-bargaining employees, the Contractor shall attempt to align employee benefit programs with the benefit value and per capita cost range that was approved by the Contracting Officer as part of the Corrective Action Plan.

6.2 Reports and Information: Benefits

6.2.1 The Contractor shall provide to the Contracting Officer:

- (i) 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.

6.3 Workers' Compensation

6.3.1 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).

6.3.2 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.

6.4 Pension Plans

The Contractor will be required to become a sponsor of the existing pension plans and other Post Retirement Benefit Plans (PRB), as applicable, with responsibility for management and administration of the plans, including maintaining the qualified status of those plans. The Contractor shall carry over the length of service credit and leave balances for Incumbent Employees accrued as of the date of the Base Term.

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 Term, 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.

6.4.1 Any pension plan maintained by the Contractor, for which NNSA reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for service not performed under this Contract. Each Contractor pension plan 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.

6.4.2 The Contractor will be reimbursed for 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 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.

6.4.3 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. 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.

6.4.3.1 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.

6.4.3.2 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.

6.4.4 When operations at a designated NNSA facility are terminated and no further work is to occur under the Contract, the following apply:

6.4.4.1 No further benefits for service shall accrue;

6.4.4.2 The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the NNSA Contract;

6.4.4.3 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;

6.4.4.4 Assets shall be determined using the "accrual-basis market value" on the date of termination of operations.

6.4.4.5 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 spinoff or terminating plan shall be placed in a high-yield, fixed-income 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."

6.4.5 Terminating Plans

6.4.5.1 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.

6.4.5.2 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.

6.4.5.3 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.

6.4.5.4 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.

6.4.5.5 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."

6.4.5.6 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.

6.4.5.7 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.

6.4.6 Post Contract Responsibilities for Pension and Other Benefit Plans

6.4.6.1 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 spinoff plan shall be placed in a high yield, fixed income 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."

6.4.6.2 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 6.4.6.2 (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.

6.4.7 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 nine 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, no later than that submitted to the IRS.
- (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.

6.5 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

7.0 LABOR RELATIONS

The Contractor shall comply with the National Labor Relations Act, Department of Energy Acquisition Regulation (DEAR) 970.2201, and all applicable federal and state labor laws.

- 7.1** 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 and 2) the dollar amounts associated the proposed changes. 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. The Contractor will provide regional wage survey information, Benefits Value study information, Cost Study information and any other information to support the collective bargaining cost figures set forth in the

Contractor's proposal at least 6 months prior to the expiration of the collective bargaining agreement.

- 7.2** Prior to the commencement of collective bargaining, the Contracting Officer will communicate to the Contractor the total approved, aggregate cost threshold for the cost associated with the successor collective bargaining agreement. Once the aggregate threshold 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. The Contractor may not assume savings from new negotiation positions not set forth in the Contractor's initial cost proposal to the Contracting Officer that would privilege the Contractor to increase its collective bargaining cost threshold. Changes to the cost threshold based on savings proposals not set forth in the initial proposal must be approved by the Contracting Officer.
- 7.3** The Contractor shall provide an electronic copy of the bargaining agreement and the "Report of Settlement" to the Contracting Officer 30 days after formal ratification. The Contractor shall provide information requested by the Contracting 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.
- 7.4** The Contractor shall notify the Contracting Officer in a timely fashion of labor relations issues that may cause a significant impact to the workforce and/or the ability of the Contractor to perform the work under the Contract. Additionally, the Contractor shall immediately advise the Contracting Officer of the following:
- (i) Possible strike situations or other actions affecting the continuity of operations including work stoppages and picketing;
 - (ii) Formal action by the National Labor Relations Board 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;
 - (iii) Recourse to procedures under the Labor-Management Relations Act of 1947 as amended or any other state law;
 - (iv) 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
- (v) Other significant issues that may involve review by other federal or state agencies.

Part III - Section J**APPENDIX B****List of Applicable Directives and NNSA Policy Letters**

In addition to the list of applicable directives referenced 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 referenced below. The Contractor shall comply with the Operating Requirements identified in Appendix B.

Number	Date	Title
APPH Chapter X Revision 10	9/08/98	Accounting Practices & Procedures Handbook (APPH) Chapter X – Product Cost Accounting
DOE O 130.1	9/29/95	Budget Formulations
DOE M 140.1-1B	3/30/01	Interface with the Defense Nuclear Facilities Safety Board
DOE O 142.2A, Admin Chg. 1 dated 6/27/13	12/15/06	Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency
DOE M 142.2-1, Admin Chg. 1 dated 6/27/13	9/04/08	Manual for the Implementation of the Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency
DOE O 142.3A	10/14/10	Unclassified Foreign Visits and Assignments Program
DOE O 144.1 Admin Chg. 1 dated 11/6/09	3/16/09	Department of Energy American Indian Tribal Government Interactions and Policy
DOE O 150.1A	3/31/14	Continuity Programs
DOE O 151.1C	11/02/05	Comprehensive Emergency Management System
DOE O 153.1	6/27/07	Departmental Radiological Emergency Response Assets
DOE O 200.1A	12/23/08	Information Technology Management
DOE O 205.1B, Admin Chg. 3 dated 4/29/14	5/16/11	Department of Energy Cyber Security Program
DOE M 205.1-3, Admin Chg. 1 dated 12/20/12	4/17/06	Telecommunications Security Manual ¹

DOE O 206.1	1/16/09	Department of Energy Privacy Program
DOE O 206.2	2/19/13	Identity, Credential, and Access Management (ICAM)
DOE O 210.2A	4/08/11	DOE Corporate Operating Experience Program
DOE O 221.1A	4/19/08	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE O 221.2A	2/25/08	Cooperation With the Office of Inspector General
DOE O 225.1B	3/04/11	Accident Investigations
DOE O 226.1B	4/25/11	Implementation of Department of Energy Oversight Policy
DOE O 227.1A	12/21/15	Independent Oversight Program
DOE O 231.1B, Admin Chg. 1 dated 11/28/12	6/27/11	Environment, Safety and Health Reporting
DOE O 232.2 Admin Chg. 1 dated 3/12/14	8/30/11	Occurrence Reporting and Processing of Operations Information
DOE O 241.1B Chg. 1 (Admin Chg) dated 4/26/16	12/13/10	Scientific and Technical Information Management
DOE O 243.1B, Admin Chg. 1 dated 7/8/13	3/11/13	Records Management Program
DOE O 252.1A, Admin Chg. 1 dated 3/12/13	2/23/11	Technical Standards Program
DOE O 313.1	11/19/09	Management and Funding of the Department's Overseas Presence
DOE O 410.2, Admin Chg. 1 dated 4/10/14	8/17/09	Management of Nuclear Materials
DOE O 412.1A, Admin Chg. 1 dated 5/21/14	4/21/05	Work Authorization System
DOE O 413.1B	10/28/08	Internal Control Program
DOE O 413.2C	10/22/15	Laboratory Directed Research and Development
DOE O 413.3B, Chg. 2 dated 5/12/16	11/29/10	Program and Project Management for the Acquisition of Capital Assets ²
DOE O 414.1D, Admin Chg.1 dated 5/8/13	4/25/11	Quality Assurance
DOE O 415.1, Admin Chg. 1 dated 1/16/13	12/3/12	Information Technology Project Management
NA SD 415.1	9/3/14	Project Oversight for Information Technology
DOE O 420.1C, Change 1 dated 2/27/15	12/4/12	Facility Safety

² The annual Value Engineering accomplishment progress report required by paragraph c.9 of the CRD shall be submitted to OECM through the SFO

DOE O 420.2C	7/21/11	Safety of Accelerator Facilities
DOE O 422.1, Admin Chg. 2 dated 12/3/14	6/29/10	Conduct of Operations
DOE O 425.1D, Admin Chg. 1, dated 4/2/13	4/16/10	Verification of Readiness to Start up or Restart Nuclear Facilities
DOE O 426.2 Admin Chg. 1, dated 7/29/13	4/21/10	Personnel Selection, Training, Qualification, and Certification Requirements for DOE Nuclear Facilities
DOE O 430.1B Admin Chg. 2, dated 4/25/11	9/24/03	Real Property and Asset Management
DOE O 433.1B, Admin Chg. 1 dated 3/12/13	4/21/10	Maintenance Management Program for DOE Nuclear Facilities
DOE N 435.1	8/9/11	Contact-Handled and Remote-Handled Transuranic Waste Packaging
DOE O 435.1, Chg. 1 dated 8/28/01	7/9/99	Radioactive Waste Management
DOE O 436.1	5/2/11	Departmental Sustainability
DOE O 440.2C, Chg. 1 dated 6/22/11	6/15/11	Aviation Management and Safety
DOE M 441.1-1 Admin Chg. 1 dated 2/24/16	3/7/08	Nuclear Material Packaging Manual ³
DOE O 442.2	7/29/11	Differing Professional Opinions for Technical Issues Involving Environment, Safety, and Health
DOE N 443.1	1/21/16	Protection of Human Research Subjects in Classified Research
DOE O 443.1B	3/17/11	Protection of Human Research Subjects
DOE O 452.1E	1/26/15	Nuclear Explosive and Weapon Surety Program
DOE O 452.2E	1/26/15	Nuclear Explosive Safety
NA SD 452.2	11/17/14	Nuclear Explosive Safety Evaluation Process
DOE O 452.3	6/8/05	Management of the Department of Energy Nuclear Weapons Complex
NNSA SD M 452.3-1	12/10/09	Defense Programs Business Requirements and Processes Manual
DOE O 452.4C	8/28/15	Security and Use Control of Nuclear Explosives and Nuclear Weapons

³ New material acquired from various programs and projects that are subject to DOE M 441.1-1 must have an approved container for storage, or must have a plan (approved by SFO) in place to develop a container to comply with the packaging and storage requirements, when it comes on site.

DOE O 452.6A	4/14/09	Nuclear Weapon Surety Interface with the Department of Defense
DOE O 452.7	5/14/10	Protection of Use Control Vulnerabilities and Designs
DOE O 452.8	7/21/11	Control of Nuclear Weapons Data
DOE O 456.1, Admin Chg. 1 dated 2/14/13	5/31/11	The Safe Handling of Unbound Engineered Nanoparticles
DOE O 457.1A	8/26/13	Nuclear Counterterrorism
DOE O 458.1, Admin Chg. 3 dated 1/15/13	2/11/11	Radiation Protection of the Public and the Environment
DOE O 460.1C	5/14/10	Packaging and Transportation Safety
DOE O 460.2A	12/22/04	Departmental Materials Transportation & Packaging Management
DOE M 460.2-1A	6/04/08	Radioactive Material Transportation Practices Manual
DOE O 461.1B	12/16/10	Packaging and Transportation for Offsite Shipment of Materials of National Security Interest
DOE O 461.2	11/1/10	Onsite Packaging and Transfer of Materials of National Security Interest
DOE O 462.1, Admin Chg. 1 dated 7/10/13	11/10/08	Import and Export of Category 1 and 2 Radioactive Sources and Aggregated Quantities
DOE O 470.3B	8/12/08	Graded Security Protection (GSP) Policy
DOE O 470.4B, Admin Chg. 1 dated 2/15/13	7/21/11	Safeguards and Security Program ⁴
DOE O 470.6	9/2/15	Technical Security Program
DOE M 470.6	10/12/10	Information Security Manual ⁵
DOE O 471.1B	3/1/10	Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.3, Admin Chg. 1 dated 1/13/11	4/9/03	Identifying and Protecting Official Use Only Information
DOE M 471.3-1, Admin Chg.1 dated 1/13/11	4/9/03	Manual for Identifying and Protecting Official Use Only Information
DOE O 471.5	3/29/11	Special Access Program

⁴ Shall provide SFO with the required documentation (DD254 or DOE F 470.1) for *new* classified Strategic Partnership Projects (SPP) activity and shall provide notification as required to update the form through the lifecycle of the activity. This does not include those SPP activities excluded by policy.

⁵ DOE O 471.6, Admin Chg. 1, dated 06/20/2011, replaced DOE M 470.4-4A, except Section D and the classified Technical Surveillance Countermeasures Annex

DOE O 471.6, Admin Chg. 2 dated 5/15/15	6/29/11	Information Security
DOE O 472.2, Chg. 1 dated 7/9/14	7/21/11	Personnel Security
DOE O 473.3A	3/23/16	Protective Program Operations
DOE O 474.2, Admin Chg. 3 dated 5/15/15	6/27/11	Nuclear Material Control and Accountability
DOE O 475.1	12/10/14	Counterintelligence Program
DOE O 475.2B	10/3/14	Identifying Classified Information
DOE O 481.1C, Admin Chg. 2,	3/9/15	Strategic Partnership Projects (Formerly known as Work for Others Non-Department of Energy funded work)
DOE O 483.1A	11/6/13	DOE Cooperative Research and Development Agreements
DOE O 484.1 Admin Chg. 2	6/30/14	Reimbursable Work for the Department of Homeland Security
DOE O 522.1	11/3/04	Pricing of Departmental Materials and Services
DOE O 534.1B	1/6/03	Accounting
DOE O 551.1D, Chg. 1 dated 8/13/15	4/2/12	Official Foreign Travel
DOE O 580.1A Admin Chg. 1 dated 10/22/12	3/30/12	Department of Energy Personal Property Management Program
DOE O 5480.30, Chg. 1 dated 3/14/01	1/19/93	Nuclear Reactor Safety Design Criteria
DOE O 5639.8A	7/23/93	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities
NAP 14.1-D	12/14/12	Baseline Cyber Security Program
NAP 14.3-B	5/2/08	Transmission of Restricted Data Over Secret Internet Protocol Router Network (SIPRNet)
NAP 23, Admin Chg. 1 dated 2/9/15	12/13/12	Atomic Energy Act Control of Import and Export Activities
NAP 24	6/20/13	Weapon Quality Policy
NAP 70.2	7/2/10	Physical Protection
QP 100-1	3/1/13	Quality Requirements to UK and US Procurement Contracts and Loan Authorizations for Research, Design, and Development

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 deemed eligible for reimbursement when incurred in keeping with FAR 31.201-2. The terms and conditions of this Contract, FAR Part 31, DEAR 931, and DEAR 970.30 may not cover every element of “personnel costs” but, failure to include any item of cost does not imply that it is allowable. The Contractor shall seek Contracting Officer approval prior to incurring costs not specifically identified as allowable in the Contract. The Contractor shall identify and treat all unallowable costs and directly associated unallowable costs in accordance with the criteria set forth in FAR 52.230-2, *Cost Accounting Standards*, including but not limited to placing unallowable costs in appropriate allocation bases.

Approval of personnel policies under contract DE-AC04-94AL85000 does not transfer to this Contract. Policies applicable under the Contract must be brought into compliance with the SOW and this Personnel Appendix. All of the Contractor’s personnel policies shall comply with the terms and conditions of this Contract including but not limited to FAR Part 31, Contract Cost Principles and Procedures. 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 or reasonable that would otherwise be unallowable or 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 Resource 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. The Contractor will follow the principles below in meeting the requirements of DEAR 970.5203-1, *Management Controls*.

Human Resource Programs:

- (1) Are market based as evidenced by comparisons with applicable industry comparators;

- (2) Fulfill the requirements of the DOE/NNSA mission, meet strategic direction of DOE/NNSA, and are in the best interests of the Government;
- (3) Are adopted to support the business needs of the Contractor and/or local conditions above;
- (4) 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;
- (5) Are documented in Contractor policies and/or in Summary Plan Descriptions and are available to DOE/NNSA;
- (6) Are in compliance with rules and regulations incorporated into this Contract and applicable laws; and
- (7) 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.

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 of action or any other 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.

- (i) Exempt Employee: 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.
- (ii) Variable Pay: A lump-sum, non-base cash payment separate from base salary.

3.0 Compensation

(i) General

Section 3.0, Compensation, does not apply to bargaining unit employees. Section 4.0 sets forth allowable costs associated with bargaining unit employees.

(ii) Overtime

(1) *Annual Budget for Overtime*: The Contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this Contract. The Contractor shall submit to the Contracting Officer overtime utilization reports no later than 15 days after the end of the fiscal year for the fiscal year that just ended. If the report indicates that overtime comprised 4% or more of the overall payroll, the Contracting Officer may request that the Contractor submit a plan to lower the overall overtime usage rate.

(2) *Extended Workweek and Flextime*: When deemed essential to the performance of work under this Contract, the Contractor may establish an extended workweek for Exempt Employees. Exempt Employees assigned to an extended workweek may be paid straight time for any hours worked in excess of 40 hours in a week. If the Contractor intends to place any employees on an Extended Workweek schedule, it must submit to the Contracting Officer a plan explaining the mission need to do so and such plan shall require the advance approval of the Contracting Officer. To the extent that the Contractor seeks to establish a Flextime Work schedule for Exempt Employees, such plan must be approved in advance by the Contracting Officer

(iii) Shift Differential

Shift differentials may be paid to eligible employees. Shift differential rates shall be based on surveys of shift differential practices and shall be approved by the Contracting Officer prior to implementation

(iv) Call-In Emergency

Non-exempt, non-represented employees who are called during off time to report for a work assignment outside their standard work schedule (called-in emergency) may be paid a minimum of four (4) hours pay for time worked (at straight time rate or overtime rate as the circumstance may require at the time of the called-in emergency), no matter whether the employee worked less than 4 hours.

(v) Special Allowances

Special salary allowances may be paid to employees in specific work environments, and reimbursed in accordance with the Special Allowance Plan approved in advance by the Contracting Officer

(vi) Approval of Individual Compensation Actions in Excess of Salary Range

The Contractor shall obtain Contracting Officer approval for any proposed salary amount paid an employee in excess of the Contractor-established salary range prior to payment.

(vii) Severance Pay

Severance schedule to be included here upon approval by Contracting Officer as required in Section J Appendix A, *Statement of Work*, Chapter III Section 4.0, Compensation, Section 5.2.6.

(viii) Service Credit

Service Credit for cost reimbursement for employee benefits to include post-retirement benefit (PRB) eligibility will be determined in accordance with NNSA Supplemental Directive NA SD O 350.1, *M&O Contractor Service Credit Recognition*, or its successor.

(ix) Pay in Lieu Of Notice

In the event an Exempt Employee of the Contractor resigns and the Contractor determines the services of such Employee cannot be productively utilized during the period of notice or if his/her presence at the work site during the notice period is not desired, the Contractor may pay the employee at his/her base pay for two (2) weeks in lieu of continuing the employee's employment for two weeks. However, such payment shall be approved in advance by the Contracting Officer.

4.0 Labor Relations – Collective Bargaining Agreements

Costs of wages and fringe 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 provided the Contractor adheres to requirements provided in Appendix A, *Statement of Work*, Section 7.0, *Labor Relations*.

The incumbent contractor is a party to the collective bargaining agreements with the following titles as of the date of issuance of the RFP:

- Collective Bargaining Agreement with the Metal Trades Council, AFL-CIO.
- Collective Bargaining Agreement with the Office & Professional Employees International Union Local 251 AFL-CIO.

- Collective Bargaining Agreement with the Security Police Association (SPA).

Expenses associated with employee representation activities 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 and Legally Required Payments

(i) General Provisions

- (1) Costs incurred in implementing, administering, and funding comprehensive DOE/NNSA approved group insurance plans are allowable. 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.
- (2) Annual renewal of the group insurance policies, certificates and accounts, cost-sharing arrangements, renewal of Group Services Agreements establishing new premium rates and the implementation of changes of minor significance does not require Contracting Officer approval.

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 Section 6.0 Workforce Planning, Section 6.2).

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):

1. 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.
2. 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.
3. Beginning in the third and final year of the DWMBP, the separated employee will be responsible for paying the full COBRA. 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:

Sandia Corporation Retirement Income Plan

Nonqualified Benefit Plans:

Sandia Corporation 415 Excess Benefit Plan

Sandia Corporation 401(a)(17) Restoration Plan

Defined Contribution Plans:

Sandia Corporation Savings and Security Plan

Sandia Corporation Savings and Income Plan

(i) General Provisions

Reasonable costs involved in implementing, administering, and funding DOE/NNSA approved pension plans are allowable. Reasonable 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. In addition, only compensation reimbursed by DOE/NNSA under the Contract is authorized to be considered as pensionable earnings for purposes of the qualified plans.

(ii) [Reserved]

(iii) Qualified Defined Contribution Plan

Contractor funds contributed on behalf of participating employees, who cancel their participation in the plan or whose employment is terminated, which are not vested pursuant to the provisions of the plan, shall be used to offset the Contractor's contributions obligated to be made on behalf of other participants in the plan. In the event this Contract with the Contractor is terminated, funds not committed to participants pursuant to provisions of the Plans in effect at Sandia National Laboratory shall be returned to DOE/NNSA.

(iv) Non-Qualified Plans

The Contractor will be reimbursed for costs for the Nonqualified Plans only in accordance with the following:

1. As of the first day of the Base Term of the Contract, the Sandia Corporation 401 (a) (17) Restoration Plan will accept no new entrants. The only participants in this plan will be the individuals listed in Appendix B of the Sandia Corporation 401(a)(17) plan document as of the effective date of the Contract.
2. Eligible compensation for purposes of the Sandia Corporation 415 Excess

Benefit Plan and/or Sandia Corporation 401(a)(17) Restoration Plan shall be limited only to the compensation reimbursed under the Contract.

3. Any necessary changes to the Sandia Corporation 415 Excess Benefit Plan and/or Sandia Corporation 401(a) (17) Restoration Plan that need to be made to effect the participation and compensation limitations set forth in 6.0(iv)(1-2) of this Appendix, shall be made no later than 120 days after the effective date the Contract is awarded.

The Sandia Corporation 401(a) (17) Restoration Plan and the Sandia Corporation 415 Excess Benefit Plan are funded on a pay as you go basis. The plans and amendments thereof require approval of the Contracting Officer. 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 benefits, benefits amount paid to include supporting data to determine the benefit paid; and, any other data as requested by the Contracting Officer.

7.0 Paid Time Off

The Contractor shall submit a plan for Paid time off programs. Paid time off programs are considered to be one of the benefit plans that must be submitted pursuant to as required in Section J Appendix A, *Statement of Work*, Chapter III Section 4.2.1.

(i) Military Leave of Absence

The Contractor shall submit a plan for a Military Leave of Absence for training that is consistent with the provisions established in 5 U.S.C. 6323. The Contractor shall submit a plan for active duty military leave that, at minimum, complies with all applicable provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA). Such plan shall be subject to Contracting Officer approval if it provides more benefits than are required by law.

(ii) Security Leave (Suspension of Access Authorization)

1. If the access authorization of a contractor employee is suspended by direction of the Manager (as that term is defined in 10 C.F.R. 710.5), the Contractor shall transfer the employee to work not requiring access authorization if such work is available, without reducing the employee's base compensation. If the Contractor determines that no work is available in an un-cleared area to which the employee may be transferred, the Contractor may prepare a written report, for the review and concurrence of the Contracting Officer that sets forth the reasons for the determination
2. Subject to the Contracting Officer's concurrence that no such work is available, the Contractor may place the employee on leave with pay at his/her base compensation. If an employee who is continuing to receive compensation, files a timely request for hearing pursuant to 10 CFR Part 710, such base compensation shall be continued until the

Contractor receives notification in writing of the Administrative Judge's initial decision.

- a. If the decision of the Administrative Judge is for revocation of access authorization, the Contractor may compensate the employee as set forth herein.
 - 1) In the event the employee was transferred to another position where such access authorization is not required, compensation may, thereafter, be the base compensation applicable to the new position, and such compensation shall continue until final disposition of the case under DOE procedures as set forth in 10 CFR Part 710.
 - 2) In the event a job transfer was not arranged (i.e., the employee was placed on a leave with pay), the employee shall be placed on leave without pay effective the date the Contractor received written notification of the Administrative Judge's initial decision. The employee shall remain on leave without pay until final disposition of the matter.
 - 3) If at any stage of the access authorization procedure following a suspension or at the conclusion of the administrative review process provided under 10 CFR Part 710, the employee's access authorization is reinstated, the Contractor will offer the employee reinstatement in the same or a comparable position to the one held prior to suspension, if available. The employee may be reimbursed for the difference between the employee's base wage or salary and actual earnings, including earnings from other employment, during the period of suspension.

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. Such system shall provide an approval structure for in-house and outside training programs and educational assistance. Local colleges and universities will be utilized as primary sources.
- (3) Per FAR 31.205-44, overtime compensation for training and education is unallowable.

- (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. Reasonable costs of in-house training including necessary equipment, materials, and instructor personnel are allowable.
 - (2) External Training Programs - Employees may be selected by the Contractor 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 subsistence expenses in accordance with the Federal Travel Regulation, and the cost of tuition, fees, and course materials. Business travel and conference management shall be managed in accordance with the DOE/NNSA conference management requirements.
- (c) Education
 - (1) The Contractor shall submit a plan for education programs for approval by the Contracting Officer.

9.0 Travel, Relocation, and Subsistence

- (i) The Contractor may pay transportation, lodging, meals, and incidental expenses for employees required to travel in conjunction with the performance of work under this Contract. Travel costs shall be allowable to the extent they are incurred in accordance with the FAR, DEAR, and Federal Travel Regulation (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.
- (ii) The Contractor may deviate from this Appendix in specific instances where it is determined and 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.
- (iii) Relocation expenses shall be incurred in accordance with the provisions, limitations and exclusions of the FAR. Relocation provisions are applicable to Exempt Employees and are allowable and will be reimbursed in accordance with the Federal Travel Regulation.

10.0 Recruiting

- (i) The costs of recruitment of personnel including cooperative education programs, summer internship programs, 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, career fairs, and operation of recruiting stations are allowable.

- (ii) Applicants who are requested by the Contractor to report for a pre-employment interview shall be allowed transportation expenses. Reasonable actual costs of lodging not to exceed per diem and meals and incidental expenses (M&IE) shall be allowed.

11.0 Special Employee Activities

- (i) Recreation and Morale Building Benefits

A recreation and morale building program may be proposed by the Contractor for Contracting Officer approval.

- (ii) Employee Recognition Programs

An employee recognition program may be proposed by the Contractor for Contracting Officer approval.

12.0 Community Involvement and Outreach

The Contractor may authorize employees to participate in educational and community outreach in accordance with its Community 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 usage 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:

- Promotion of Science, Technology, Engineering, and Mathematics in the educational setting (elementary school through higher education institutions)
- Science Bowl and Science Fairs
- Blood bank drives
- Charity drives
- United Way campaigns

SECTION J

APPENDIX D

KEY PERSONNEL

<u>TITLE</u>	<u>NAME</u>
Laboratories Director	Dr. Stephen M. Younger
Deputy Laboratories Director	David S. Douglass
Nuclear Deterrence Associate Laboratories Director	Dr. Steven P. Girrens
Defense Nuclear Nonproliferation Associate Laboratories Director	Douglas Bruder
Advanced Science & Technology Associate Laboratories Director	Dr. Susan J. Seestrom
Sandia CA Associate Laboratories Director	D.E. (Dori) Ellis
National Security Programs Associate Laboratories Director	Michael J. Burns
Infrastructure Operations Associate Laboratories Director	H. John Clymo
Mission Assurance Associate Laboratories Director	Mark D. Sellers
Mission Services Associate Laboratories Director	Scott L. Aeilts

SECTION J

APPENDIX E

SMALL BUSINESS SUBCONTRACTING PLAN

Intentionally left blank for Internet posting purposes .

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 elements below in their Diversity Plan:

(a) Work Force

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 and to improve their employment skills and opportunities with Minority Educational Institutions and other institutions of higher learning (e.g., Historically Black Colleges and Universities, Hispanic serving institutions, and Native American institutions). 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 involvement and outreach activities in support of the local community.

(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, 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. The Plan shall also address the following:

- (1) The procedures intended to expedite timely resolution of adverse actions;
- (2) Methodologies for benchmarking, sharing best practices or lessons learned in the prevention of prohibited profiling.
- (3) Provide informational or educational programs that ensure managers and employees understand these issues;
- (4) Provide employees with avenues for raising issues or concerns about profiling;
- (5) Review administrative processes that may impact achievement of a truly diverse work force and work place; and
- (6) Hold management and leadership responsible and accountable for performance under the diversity plan.

SECTION J

APPENDIX G

**SPECIAL FINANCIAL INSTITUTION AGREEMENT FOR USE WITH THE
PAYMENTS-CLEARED FINANCING ARRANGEMENT**

Note: (1) The Contractor shall enter into a new banking agreement(s) during the Transition Term 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 _____, 201 [insert date], between the UNITED STATES OF AMERICA, represented by the U.S. Department of Energy (hereinafter referred to as "DOE"), and _____ [the Contractor], a corporation/legal entity existing under the laws of the State of _____ (hereinafter referred to as the Contractor), and _____ [the Financial Institution] a financial institution corporation existing under the laws of the State of _____, located at _____ (hereinafter referred to as the Institution).

RECITALS

1. On the effective date of _____, 201 [insert date], DOE and the Contractor entered into Contract No. [insert Contract number], or Supplemental Agreement(s) thereto, providing for transfer of funds on a payment-cleared basis.
2. DOE requires that amounts transferred to the Contractor thereunder be deposited in a special demand deposit account at a financial institution covered by U.S. Department of the Treasury-approved Government deposit insurance organizations that are identified in ITFM 6-9000 (see Fig. IX-10). 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 Institution.
3. The special financial institution account shall be designated “ _____ [name of Contractor], _____ [Contract Number], _____ [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 Institution or others with respect to such accounts.
2. The 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 Institution shall not be responsible for the application of funds withdrawn from said account. After receipt by the Institution of directions from DOE, the 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 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 Institution are concerned, be considered as having been properly issued and filed with the Institution by DOE.
3. DOE, or its authorized representatives, shall have access to the financial records maintained by the 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 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 Institution shall promptly notify DOE at:

U.S. Department of Energy, National Nuclear Security Administration
Sandia Field Office
Contracting Officer
PO Box 5800, Building 802
Albuquerque, New Mexico 87185
5. DOE shall authorize funds that shall remain available to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Institution for the benefit of the special demand deposit account. The 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.

(For compensation by direct payment of fee)

The Institution agrees to service the account in this manner based on the requirements and specifications contained in DOE or Contractor Solicitation No._____. The Institution agrees that per-item costs, detailed in the form "Schedule of Financial Institution Processing Charges," contained in the Institution's aforesaid bid will remain constant during the term of this Agreement. The Institution shall calculate the monthly fees based on services rendered and invoiced the Contractor. The Contractor shall issue a check or automated clearing house authorization transfer to the Institution in payment thereof.

Or

(For compensation by noninterest-bearing time deposit only)

The Institution agrees to service the account in this manner based on the requirements and specifications contained in DOE or Contractor Solicitation No._____, in consideration of the placement by DOE on a noninterest-bearing time deposit with the Institution in an amount agreed upon as shown on the form "Calculation of Time Account Balance Required" contained in the Institution's bid dated_____,_____. The Institution agrees that per-item costs, detailed in the form "Schedule of Financial Institution Processing Charges," contained in the Institution's aforesaid bid will remain constant during the term of this Agreement. The Contractor shall withdraw \$_____in funds from the special demand deposit account and use such funds to make a noninterest-bearing time deposit in a separate account in the Institution. This account will hereinafter be defined as the time deposit account. The funds in the time deposit account will remain on deposit and shall not be withdrawn or used for any purpose without the authorization of DOE. The amount of the deposit may be adjusted upward or downward, but only with the approval of DOE.

6. The Institution shall post collateral, acceptable under U.S. Department of the Treasury Department Circular 176, with the Federal Reserve Bank in an amount equal to the net balances in all of the accounts included in this Agreement (including the non interest-bearing time deposit account), less the U.S. Department of 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____, 201 , and ending on the__day of____, 201 . [Insert applicable dates]
8. DOE, the Contractor, or the 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 Institution if DOE or the Contractor, or both parties, find that the Institution has failed to substantially perform its obligations under this Agreement or that the 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 1, between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Institution shall be terminated automatically upon the delivery of written notice to the Institution.
11. In the event of termination, the Institution agrees to retain the Contractor's special demand deposit account for an additional 90-day period to allow for clearance of outstanding payment items. Within 7 days of the expiration of the Agreement term, an analysis of the special demand deposit account shall be made by DOE to determine whether an insufficient or excessive balance was maintained in the time deposit account to compensate the Institution for services rendered up to the expiration date.
 - (a) If the analysis indicates that the Institution has been insufficiently compensated for services rendered up to the expiration of the Agreement, the Contractor shall:
 1. Maintain on deposit, during this 90-day period, sufficient Federal funds to reimburse the Institution for prior cumulative loss of earnings, and
 2. Maintain on deposit in the time deposit account sufficient Federal funds to compensate the Institution for services rendered.
 - (b) If the analysis indicates that the Institution has been overcompensated for services rendered up to the expiration of the Agreement, DOE shall close out the time deposit account and secure from the Institution a payment in an amount equal to the cumulative excess compensation less compensation for estimated services to be rendered during the 90-day period.
 - (c) If cumulative excess compensation is not sufficient to compensate the Institution for services rendered during the 90-day period, adjustments shall be made to the time deposit account to compensate the Institution for the difference between the cost of services rendered during the 90-day period and the cumulative excess compensation.

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 Institution that are not inconsistent with this 90-day additional term shall remain in effect for this period.

The Institution has submitted the forms entitled “Technical Representations and Certifications”, “Schedule of Financial Institution Processing Charges”, and “Calculation of Time Account Balance Required.” 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 day and year first above written.

THE UNITED STATES OF AMERICA

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)

(Title)

(Address)

(Date Signed)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

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)

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>.

SECTION J

APPENDIX I

PERFORMANCE GUARANTEE AGREEMENT(S)

Honeywell International Inc.
115 Tabor Road
Morris Plains, N.J. 07950

PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the 'Government') to enter into Contract _____ for the management and operation of the Sandia National Laboratories (the 'Contract') dated June 2, 2016, by and between the Government and National Technology and Engineering Solutions of Sandia, LLC (the 'Contractor'), the undersigned, Honeywell International Inc. (the 'Guarantor'), a corporation incorporated in the State of Delaware with its principal place of business at 115 Tabor Road, Morris Plains, New Jersey 07950 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,

Honeywell International Inc.
115 Tabor Road
Morris Plains, N.J. 07950

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 June 21, 2016.

Honeywell International Inc.


John J. Tus, Vice President and Treasurer

ATTESTATION INCLUDING APPLICATION
OF SEAL BY AN OFFICIAL OF
GUARANTOR AUTHORIZED TO AFFIX
CORPORATE SEAL



SECTION J

APPENDIX J

TRANSITION PLAN

Plan: [To be inserted by the Contracting Officer.]

Requirements: In accordance with Section F, *Deliverables During Transition*, the Contractor shall submit a Transition Plan for the Contracting Officer's approval 10 days after Contract award. The Transition plan shall describe the process, details, and schedule for providing an orderly transition during the Contract's Transition Term stated in Section F, F-3 *Period of Performance*. The Transition Plan shall be in accordance with the guidance herein for all elements of Section J, Appendix A, *Statement of Work*.

The objectives of the Transition Plan are to:

- (i) Minimize the impacts on continuity of operations;
- (ii) Maintain communication with staff and affected communities;
- (iii) Identify key issues; and
- (iv) Overcome barriers to transition.

The Contractor is responsible for performing due diligence to ensure that all the transition activities are identified, negotiated, and completed during the Transition Term. The Contractor shall establish a transition management team capable of providing overall management and logistical support for all transition activities. The Contractor shall develop a resource-loaded project management schedule using software that is capable of integrating with the incumbents' and DOE/NNSA software. Milestones and measurable commitments will be included in the schedule. The Contractor shall regularly report status to DOE/NNSA at periodic meetings and through regular written reports. The Contractor may also be called upon periodically to brief the local communities.

The proposed transition activities and schedule will be finalized with the Contractor and approved by the Contracting Officer prior to commencement of the Transition Plan activities. A Transition Cost Estimate shall be provided in accordance with Section F, F-6, *Deliverables During Transition*. The Contractor shall invoice for reimbursement of Transition Plan costs in accordance with Section G, G-7, *Invoicing for Transition Costs*, paragraph (b). After completion of these activities and such other Transition Plan activities as may be planned by the Contractor and as authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for the Sandia National Laboratories. Upon receipt of written notification from the Contracting Officer that the transition activities are considered complete, the Contractor shall assume full responsibility for the Sandia National Laboratories, effective 12:01 a.m. at the start of the Base Term of the Contract.

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. Consistent with the requirements of Section J, Appendix M, 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	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

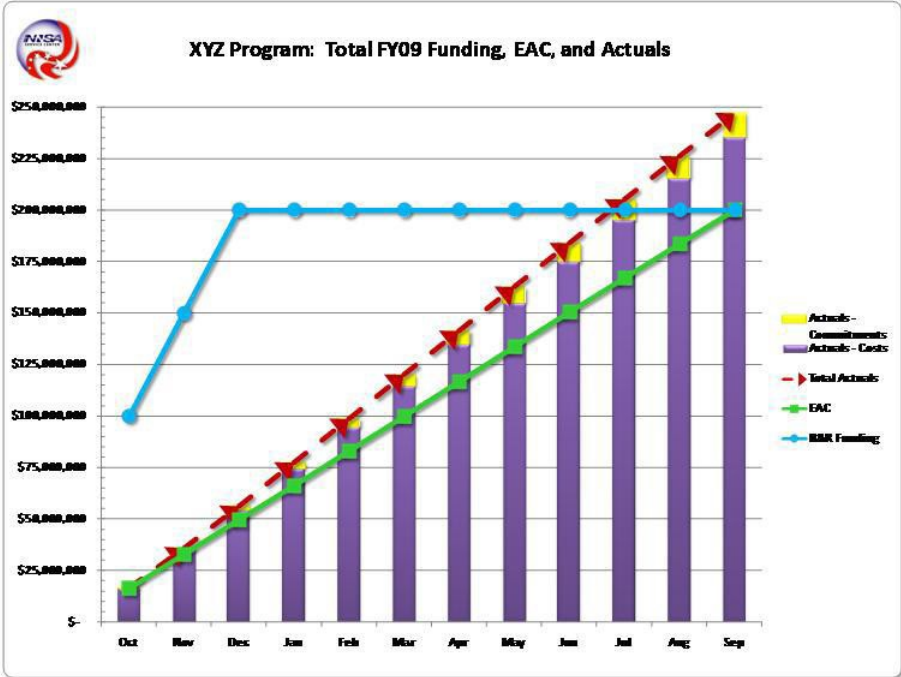
Issues(I), Risks(R), and Opportunities(O):

- 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

Program to Performance Example



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

