


SOLICITATION, OFFER AND AWARD			1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) DO E-2		RATING DO E-2	PAGE OF PAGES 1 / 333
2. CONTRACT NO. DE-NA0001942		3. SOLICITATION NO. DE-SOL-0001458		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED 12/14/2011
6. REQUISITION/PURCHASE NO. See Section B			7. ISSUED BY U.S. DEPARTMENT OF ENERGY NATIONAL NUCLEAR SECURITY ADMINISTRATION M&O CONTRACTING (NA-APM-113-1) PO BOX 5400, ALBUQUERQUE, NM 87185-5400			
8. ADDRESS OFFER TO (If other than Item 7) U.S. DEPARTMENT OF ENERGY NATIONAL NUCLEAR SECURITY ADMINISTRATION ATTN: DANIEL J. SAIZ CONTRACTING OFFICER MAIL STOP: MOSB PO BOX 5400, ALBUQUERQUE, NM 87185-5400			NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".			
SOLICITATION						
9. Sealed offers in original and (number and kind of copies are specified in Section L) copies for furnishing the supplies and/or services in the Schedule will be received at the place specified in item 8, until 1400 hour local time on March 13, 2012 .						
10. FOR INFORMATION CALL:		A. NAME Daniel J. Saiz Contracting Officer		B. TELEPHONE (Include area code) (NO COLLECT CALLS) (505) 845-5848		C. E-MAIL ADDRESS daniel.saiz@nnsa.doe.gov
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(v)	SEC.	DESCRIPTION	PAGE(S)	(v)	SEC.	DESCRIPTION
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✓	B	SUPPLIES OR SERVICES AND PRICES/COSTS	14 pgs	<i>PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACH.</i>		
✓	C	DESCRIPTION/SPECS./WORK STATEMENT	1 pg	✓	J	LIST OF ATTACHMENTS
✓	D	PACKAGING AND MARKING	1 pg	<i>PART IV - REPRESENTATIONS AND INSTRUCTIONS</i>		
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✓	F	DELIVERIES OR PERFORMANCE	8 pgs	✓	L	INSTRS, CONDS, AND NOTICES TO OFFERORS
✓	G	CONTRACT ADMINISTRATION DATA	4 pgs	✓	M	EVALUATION FACTORS FOR AWARD
✓	H	SPECIAL CONTRACT REQUIREMENTS	5 pgs			
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 270 calendar days from the date of 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 Not Applicable		10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %	
14. ACKNOWLEDGEMENTS 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	
		001	2/2/12	003	3/26/12	
		002	2/24/12	004	8/17/12	
15A NAME AND ADDRESS OF OFFEROR Consolidated Nuclear Security, LLC 5275 Westview Drive, Frederick, MD 21703-8306		CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) John Howanitz Vice President, Bechtel National, Inc.		
15B. TELEPHONE NO. (Include area code) (301) 401-1775		15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/>		17. SIGNATURE 		18. OFFER DATE March 13, 2012
AWARD (To be completed by Government)						
19. ACCEPTED AS TO ITEMS NUMBERED		20. AMOUNT SEE SECTION B		21. ACCOUNTING AND APPROPRIATION See Clause B-2		
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: Not Applicable <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 Not Applicable		ITEM
24. ADMINISTERED BY (If other than Item 7) CODE See Section G Clause entitled "Government Contacts"				25. PAYMENT WILL BE MADE BY CODE See Section I Clause entitled "Payments and Advances"		
26. NAME OF CONTRACTING OFFICER (Type or print) Leticia Y. Barela				27. UNITED STATES OF AMERICA Leticia Y. Barela (Signature of Contracting Officer)		28. AWARD DATE January 8, 2013

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.
 AUTHORIZED FOR LOCAL REPRODUCTION
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33-134

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

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SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

CLIN 0001 MANAGEMENT AND OPERATION (M&O) OF Y12/PX

CLIN 0001A CONTRACT TRANSITION: COST REIMBURSEMENT, NO FEE

Services being Acquired under this Contract Line Item Number (CLIN): The Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely transition from the existing contracts to the new contract to operate the Y-12 National Security Complex (Y-12) and the Pantex Plant (PX), (hereinafter referred to as “the Sites”).

The initial transition period of four months for the Y-12/PX Contract consolidation will be on a cost reimbursement basis and the estimated cost is \$ TBD*. There will be no fee earned or paid during transition, however, cost savings initiatives may begin in accordance with B-2(a)(3).

[*The estimated cost will be established with the Contractor after the effective date of the Contract with the commencement of the Transition Term.]

CLIN 0001B BASE TERM (YEARS 1-5)

Services being Acquired under this CLIN: The Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, material, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely complete all work in accordance with Section J, Appendix A, Statement of Work, except for the work covered by CLIN 0001H and CLIN 0002. The fee available is:

Year	Fixed Fee (FF)	Available Performance Incentive Fee (PIF)	Total Available Fee (FF + PIF)	Total Fee Earned	Estimated Cost Savings Incentive Fee (CSIF)	CSIF Earned
1	\$29,949,750	\$9,983,250	\$39,933,000		\$21,439,000	
2	NA	\$39,933,000	\$39,933,000		\$42,104,000	
3	NA	\$39,933,000	\$39,933,000		\$46,831,000	
4	NA	\$39,933,000	\$39,933,000		\$42,476,000	
5	NA	\$39,933,000	\$39,933,000		\$26,962,000	

CLIN 0001C OPTION I TERM (YEARS 6-7)

Services being Acquired under this CLIN: If this option is exercised, the Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely complete all work in accordance with Section J, Appendix A, Statement of Work, except for the work covered by CLIN 0001H and CLIN 0002. The fee available is:

Year	Fixed Fee (FF)	Available Performance Incentive Fee (PIF)	Total Available Fee (FF + PIF)	Total Fee Earned	Estimated CSIF	CSIF Earned
6	NA	\$39,933,000	\$39,933,000		\$17,864,000	
7	NA	\$39,933,000	\$39,933,000		\$14,663,000	

CLIN 0001D OPTION II TERM (YEARS 8-9)

Services being Acquired under this CLIN: If this option is exercised, the Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely complete all work in accordance with Section J, Appendix A, Statement of Work, except for the work covered by CLIN 0001H and CLIN 0002. The fee available is:

Year	Fixed Fee (FF)	Available Performance Incentive Fee (PIF)	Total Available Fee (FF + PIF)	Total Fee Earned	Estimated CSIF	CSIF Earned
8	NA	\$39,933,000	\$39,933,000		\$14,419,000	
9	NA	\$39,933,000	\$39,933,000		\$14,129,000	

CLIN 0001E OPTION III TERM (YEAR 10)

Services being Acquired under this CLIN: If this option is exercised, the Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely complete all work in accordance with Section J, Appendix A, Statement of Work, except for the work covered by CLIN 0001H and CLIN 0002. The fee available is:

Year	Fixed Fee (FF)	Available Performance Incentive Fee (PIF)	Total Available Fee (FF + PIF)	Total Fee Earned	Estimated CSIF	CSIF Earned
10	NA	\$39,933,000	\$39,933,000		\$21,933,000	

CLIN 0001F TRANSITION OF SAVANNAH RIVER TRITIUM OPERATIONS (SRTO) OPTION INTO THE CONTRACT

Services being Acquired under this CLIN: If this option is exercised, the Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely transition SRTO from the incumbent contract to this M&O contract.

The transition period for incorporation of the SRTO effort of six months will be on a cost reimbursement basis and the estimated cost is \$ TBD**. There will be no fee earned or paid for SRTO transition activities.

[**The estimated cost will be established with the Contractor at the time of option exercise and prior to commencement of the Transition Term.]

CLIN 0001G OPTION: SAVANNAH RIVER TRITIUM OPERATIONS (SRTO)

Services being Acquired under this CLIN: If this option is exercised, the Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely manage and operate the SRTO. If this option is exercised, the contract will be modified to revise the services being acquired and to increase the fee available amounts to add SRTO effort to CLIN 0001B, 0001C, 0001D, and 0001E.

CLIN 0001H WORK FOR OTHERS/OTHER REIMBURSABLE WORK

Services being Acquired under this CLIN: The Contractor shall, in accordance with Section J, Appendix A, Chapter II, 1.3 Work for Others/Other Reimbursable Work, 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 effectively, efficiently, and safely perform all Work For Others and Other Reimbursable Work efforts as directed by the Contracting Officer.

Year	Estimated Cost	Available Fixed Fee	Estimated Cost + Available Fixed Fee	Actual Fee Earned
1				
2				
3				
4				
5				
OPTION I	*****	*****	*****	*****
6				
7				
OPTION II	*****	*****	*****	*****
8				

9				
OPTION III	*****	*****	*****	*****
10				

[Table to be completed by the Government in accordance with Section B, B-2(a)(4).]

CLIN 0002 URANIUM PROCESSING FACILITY (UPF) PROJECT MANAGEMENT

Services being Acquired under this CLIN: The Contractor shall, in accordance with Section J, Appendix A, Chapter IV, and all other applicable terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely ensure the completion of UPF. The cost and fee associated with awarding this CLIN shall be accounted for and reported separately and be completely severable from all other parts of this contract.

The Maximum Available UPF Fee (MAUF) for construction management of UPF is:

Column A	Column B	Column C	Column D	Column E
Year	UPF Approved Cost Baseline	Percentage Multiplier of Notional Cost for MAUF	Calculated Dollar Value (\$) for MAUF	Reward Fee Earned or Penalty Fee Reduction
1	TBD	5.0%	TBD	TBD
2	TBD	5.0%	TBD	TBD
3	TBD	5.0%	TBD	TBD
4	TBD	5.0%	TBD	TBD
5	TBD	5.0%	TBD	TBD
6	TBD	5.0%	TBD	TBD
7	TBD	5.0%	TBD	TBD
8	TBD	5.0%	TBD	TBD
9	TBD	5.0%	TBD	TBD
10	TBD	5.0%	TBD	TBD

[Column B will be completed by the Government when the UPF project baseline is approved and will be updated annually. Accordingly, the percentage proposed by the Contractor (inserted into Column C) will be applied to the UPF approved cost baseline to establish Column D.]

The reward/penalty fee structure in Section J, Appendix G, UPF Project Management Plan, shall be utilized for the purposes of determining fee in Column E.

B-1 CONTRACT TYPE AND VALUE

This is a Performance Based Contract for the Management and Operation of DOE/NNSA facilities governed by FAR 17.6, DEAR 917.6 and DEAR Part 970. It is a Management and Operating (M&O) cost-reimbursement Contract with terms for a Fixed Fee, Performance Incentive Fee, and Cost Savings Incentive Fee for CLIN 0001 and a Maximum Available Uranium Processing Facility Fee for CLIN 0002.

The total estimated cost, excluding fee and Work for Others/Other Reimbursable Work related to NNSA work:

Year	Total Estimated Cost
1	\$1,775,166,000
2	
3	
4	
5	
OPTION I	
6	
7	
OPTION II	
8	
9	
OPTION III	
10	

[Table to be completed by the Government during the term of the Contract.]

B-2 CONTRACT FEE STRUCTURES

(a) Fee Structure for CLIN 0001

(1) Definitions.

Total Available Fee = Fixed Fee + Performance Incentive Fee

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

(i) Fixed Fee

The Contractor will be paid a Fixed Fee (except as identified in Section B, B-2(a)(4), Work for Others/Other Reimbursable Work Fixed Fee) during the first year of the Base Term in the CLIN 0001B table. No Fixed Fee will be paid for the remaining years of the Contract.

(ii) Performance Incentive Fee

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

(3) Cost Savings Incentive Fee

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

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

(4) Work for Others/Other Reimbursable Work Fixed Fee

The estimated cost and the available Fixed Fee for Work for Others/Other Reimbursable Work during the Base Term of the Contract and for each Option Term will be established by the NNSA prior to the commencement of the applicable year of the Contract and will be incorporated into the CLIN 0001H table through a modification to this Contract. The Fixed-Fee for Work for Others/Other Reimbursable Work will be up to 3% of the estimated cost of each project. If the work sponsor or the Government subsequently orders material changes in the amount or character of the Work for Others/Other Reimbursable Work, an equitable adjustment of the fee, if any, shall be made in accordance with the Contract's Section I Clause entitled "DEAR 970.5243-1, Changes." If the Contractor anticipates the amount of estimated cost to

change for Work for Others/Other Reimbursable Work due to new or deleted reimbursable work projects, an adjustment to the estimated cost and Work for Others/Other Reimbursable Work Fixed Fee for reimbursable work shall be submitted for approval by the Contracting Officer. Work for Others Fixed Fee is not a component of Total Available Fee under CLINS 0001B, 0001C, 0001D, 0001E and 0001G, if exercised.

(5) Provisional Payment of Fee

- (i) The Fixed Fee for the Base Term of the Contract shall be paid monthly at the rate of one-twelfth (1/12) of the annual Fixed Fee per month. Such payment amounts are to be drawn down by the Contractor from the Contract's special financial institution account in monthly installments on the last day of each month.
- (ii) The Performance Incentive Fee is authorized for draw down by the Contractor from the Contract's special financial institution account as follows:
 - (A) In monthly provisional fee payments equivalent to 3% of the Available Performance Incentive Fee, or
 - (B) Upon completion of milestones or any other methodology as set forth in the Performance Evaluation Plan (PEP) and its supporting documentation; and
 - (C) The balance, if any, upon issuance of the Contracting Officer's notification in accordance with Section B, B-7, Performance Evaluation Plan.
 - (D) If the provisional payments made above exceed the Performance Incentive Fee earned or the Contractor fails to fully accomplish the objective/incentive for which it has received milestone completion or provisional payments, the Contracting Officer will determine if the Contractor is to refund all or part of the provisional fee it has received. Any refund made shall include interest. Interest will be paid at the published prime rate of the financial institution (depository) in which the special account is established or at the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) whichever is higher, which is applicable to the period in which any unearned payments were made. Interest paid resulting from this clause is an unallowable cost.
 - (E) The Contractor shall remit any balance due payable to the Government in accordance with directions to be provided by the Contracting Officer.
- (iii) The Contractor may request approval from the Contracting Officer for semi-annual provisional payment of the Cost Savings Incentive Fee. If the provisional payment results in overpayment, the Contracting Officer will determine if the Contractor is to refund all or part of the provisional fee it has received. Any refund made shall

include interest. Interest will be paid at the published prime rate of the financial institution (depository) in which the special account is established or at interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) whichever is higher, which is applicable to the period in which any unearned payments were made. Interest paid resulting from this clause is an unallowable cost.

(6) Unearned Fee

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

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

(b) Fee Structures for CLIN 0002

- (1) The fee structure for UPF will be separate and severable from the other fee in this contract and is described in this section. The fee amounts will be incorporated into the Table in CLIN 0002 above. Notwithstanding the Contract's Section I Clause entitled "DEAR 970.5243-1, Changes," the Maximum Available Uranium Processing Facility Fee (MAUF) percentage in Column C of the table in CLIN 0002 is not subject to adjustment.
- (2) Provisional payment of MAUF under Column D in the CLIN 0002 table above will be approved by the Contracting Officer as part of the UPF Project Management Plan.
- (3) Unearned fee is subject to Section B, B-2(a)(6).

B-3 SINGLE FEE

- (a) For CLIN 0001. If the Contractor is part of a consortium, joint venture, and/or other Contractor Team Arrangement as defined in FAR 9.601, the team shall share in the Available Fee defined at Section B, B-2, Contract Fee Structures. Separate additional subcontractor fees for individual team members will not be considered an allowable cost under the Contract. If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit paid to such entity will not be considered an allowable cost under this Contract unless otherwise approved by the Contracting Officer.

- (b) For CLIN 0002. If the Contractor is part of a consortium, joint venture, and/or other Contractor Team Arrangement as defined in FAR 9.601, the team shall share in the MAUF defined at Section B, B-2, Contract Fee Structures. If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit paid to such entity will not be considered an allowable cost under this Contract unless otherwise approved by the Contracting Officer.
- (c) The subcontractor fee restriction in the paragraphs above does not apply to members of the Contractor team that are not wholly owned, majority owned, or affiliate of any team member, but are small business(es) or protégé firm(s) as part of an approved mentor-protégé relationship as described in DEAR 952.219-70, DOE Mentor-Protégé Program.

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") within the first two years of period of performance; 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 in fee for that position for each occurrence.

B-5 OBLIGATION OF FUNDS

Pursuant to this Contract's Section I Clause entitled "DEAR 970.5232-4, Obligation of Funds," the total amount obligated by the Government with respect to this Contract is \$4,000,000. The expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the DOE/NNSA may legally spend for such purposes.

B-6 AVAILABILITY OF APPROPRIATED FUNDS

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

B-7 PERFORMANCE EVALUATION PLAN (PEP)

- (a) Performance Evaluation Plan. A PEP developed by NNSA for this Contract, with Contractor input, shall document the process by which the Contractor's performance will be evaluated. The Parties will strive to reach mutual agreement on expected business, operational and technical performance and will work together to establish the performance evaluation plan.

In the event the parties cannot come to agreement on the PEP, the NNSA Nuclear Production Site Office Manager reserves the unilateral right to make the final decision, including changes thereto, on all performance objectives, goals, and measures and the methodology used to evaluate Contractor performance. The PEP shall be finalized, whether bilaterally or unilaterally, prior to the start of an appraisal period and incorporated into the Contract at Section J, Appendix B, Performance Evaluation Plan by a formal contract modification executed by the Contracting Officer. The Nuclear Production Site Office Manager may revise the PEP, consistent with Section J, Appendix A, Statement of Work (SOW), during the appraisal period of performance. The Contracting Officer will incorporate any revisions to the PEP through a contract modification. No changes will be made to the PEP with less than 60 days remaining in the appraisal period.

- (b) Contractor Appraisal Self-Assessment Report. A periodic self-assessment shall be prepared by the Contractor for consideration by the Government in developing an annual Performance Evaluation Report (PER).
- (c) Determination of Performance Incentive Fee
- (1) NNSA will evaluate the Contractor's performance against the PEP.
 - (2) The fee determination will be made in accordance with the PEP and supported by the PER. The determination as to the amount of fee earned is a unilateral determination made by the Fee Determination Official (FDO).
 - (3) The NNSA will promptly advise the Contractor in writing of the amount and the basis of the fee determination.
 - (4) Fee not earned (unearned fee) during the evaluation period will not be made available in future evaluation periods.
- (d) Schedule. The Nuclear Production Site Office Manager will issue the FDO's final total Performance Incentive Fee amount earned determination in accordance with this Contract. A determination will be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self assessment or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and Contracting Officer agree. Within ten calendar days of the FDO final determination, the Contracting Officer will issue a modification to the contract authorizing the payment of such fee. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount will be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned, less any provisional payments, at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is

published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

SECTION C

DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

C-1 STATEMENT OF WORK

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

SECTION D

PACKAGING AND MARKING (Reserved)

SECTION E

INSPECTION AND ACCEPTANCE

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

- (a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by re-performance, the Government may--
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may--
 - (1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
 - (2) Terminate the contract for default.

E-2 ACCEPTANCE

Acceptance for all work and effort under this Contract shall be accomplished by the Contracting Officer or any other duly authorized representative.

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 PERIOD OF PERFORMANCE

The effective date of the Contract is the award date identified in Section A.

(a) The Contract's period of performance includes:

Transition Term – the effective date of the Contract through April 30, 2013 months;

Base Term – May 1, 2013 through April 30, 2018; and, if exercised;

Option Term 1 – May 1, 2018 through April 30, 2020; and, if exercised;

Option Term 2 – May 1, 2020 through April 30, 2022; and, if exercised;

Option Term 3 – May 1, 2022 through April 30, 2023.

(b) The period of performance of this Contract will expire April 30, 2018, unless sooner reduced, terminated or extended in accordance with the provisions of this Contract. The Contract period of performance may be extended in increments, or portions thereof, for up to an additional period of five years of performance in accordance with Section F, F-5, Evaluation of Performance and Exercise of Option(s). The Contract's maximum period of performance, including the Transition Term and Options, if exercised, shall not exceed ten (10) years, four months.

(c) The Transition Term shall be for the transition activities identified in Section J, Appendix C, Transition Plan. The Contractor's responsibility for management and operation of the Sites against the Statement of Work shall commence with the Base Term. The Option Terms 1-3 conditions are set forth in Section F, F-5, Evaluation of Performance and Exercise of Option(s).

F-3 PRINCIPAL PLACE OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations within and outside the United States, with the principal locations of performance being at the Y-12 National Security Complex in Oak Ridge, Tennessee, the Pantex Plant near Amarillo, Texas, with an option for Savannah River Site Tritium Operations near Aiken, South Carolina.

F-4 STOP WORK IN EVENT OF IMMINENT DANGER

In the event that a determination or observation of conditions is immediately dangerous to the life or health of the workers, the public, or the environment, the Contractor shall immediately cease that activity. In the event of imminent danger, any Federal or Contractor employee is authorized to instruct the Contractor to properly 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 the Contract's Section F Clause entitled "FAR 52.242-15, Stop-Work Order Alternate I." The Contractor shall include this clause in all subcontracts to be performed at the sites.

F-5 EVALUATION OF PERFORMANCE AND EXERCISE OF OPTION(S) (THIS CLAUSE APPLIES TO CLIN 0001 ONLY)

This Contract includes several options: three options (Option Terms 1-3) extend the term of this Contract and an option to include SRTO within the scope of this Contract.

(a) Option Exercise for Additional Term

Gateway Decision: The Gateway Decision is a unilateral decision of the FDO based on the Contractor's performance rating under this Contract in accordance with the Performance Evaluation Plan, and the Contractor's delivery of cost savings reflected in the cost savings profile in Section J, Appendix D, Merger Transformation Plan. The standard of performance is such that the score in the annual PER must be "very good" or above (or achieve 80% or better) under the Performance Evaluation Plan for the performance years evaluated under the Base Term and Option Terms, if exercised, evaluated below. The Contractor must also meet a minimum of 80% of the total projected cost savings within the cost savings profile in Section J, Appendix D, Merger Transformation Plan for the combined performance years evaluated for each gateway decision point, as reflected in the table below. If the FDO's decision is to award additional term, the Contract will be modified unilaterally by the Contracting Officer to extend the term of the Contract, after considering NNSA requirements, in accordance with the Contract's Section I Clause entitled "FAR 52.217-9, Option to Extend the Term of the Contract".

Option Term 1: Commencing in the fourth year of the Contract, the Contract's period of performance may be extended for two additional years based on the standard of performance (score) and cost savings noted above.

Option Term 2: Commencing in the sixth year of the Contract, the Contract's period of performance may be extended for two additional years based on the standard of performance (score) and cost savings noted above.

Option Term 3: Commencing in the eighth year of the Contract, the Contract's period of performance may be extended for one additional year based on the standard of performance (score) and cost savings noted above.

The table below reflects Option Terms 1, 2, & 3.

	Gateway Decision Point	Performance Years* Evaluated	Option Years* Available
Option Term 1	Beginning of Year 4*	1-3	6-7
Option Term 2	Beginning of Year 6*	4-5	8-9
Option Term 3	Beginning of Year 8*	6-7	10

*Years are counted from the beginning of the Base Term.

(b) Option Exercise to add SRTO

This option allows for adding the SRTO scope of work to the Contract. If the NNSA determines it is in the best interest of the Government to exercise this option, the Contract will be modified unilaterally by the Contracting Officer to add the SRTO effort. Immediately upon option exercise, the Contractor will be required to provide a Transition Plan including the same elements as noted in Section F, F-7(a) and (b). The Contractor shall also update applicable Contract requirements, as directed by the Contracting Officer, including, but not limited to, the Performance Guarantee(s) and Subcontracting Plan, at the time of option exercise. NNSA may exercise the SRTO option at the end of the first year; however the determination will be based on NNSA mission requirements and other factors.

F-6 DELIVERABLES

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

F-7 DELIVERABLES DURING TRANSITION

Alternate due dates for transition deliverables may be suggested after the effective date of the Contract, provided they do not conflict with FAR or DEAR clauses. The Contracting Officer may approve changes in deliverable dates that make transition more effective and efficient for both parties.

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

- (a) Transition Plan. The Contractor shall provide a Transition Plan upon the effective date of the Contract for the transition activities at the Y-12 National Security Complex and Pantex Plant

following the guidance provided at Section J, Appendix C, Transition Plan. The Transition Term is specified in Section F, F-2, Period of Performance. The Transition Plan will become part of Section J, Appendix C, Transition Plan. This Transition Plan is separate from, and in addition to, the Merger Transformation Plan requested in paragraph (e) of this clause.

- (b) Transition Cost Estimate. The Contractor shall provide a Transition cost estimate for the transition activities at the Y-12 National Security Complex and the Pantex Plant to the Contracting Officer upon the effective date of the contract. The Transition cost estimate shall include: (1) the costs associated with the Transition Plan; and (2) the costs necessary for the Contractor to meet the transition requirements during the Transition Term. The Transition cost estimate will be subject to approval by the Contracting Officer. For the Contract's Transition Term, the Contractor shall provide a summary by major cost elements to perform the transition activities and meet transition requirements required during the Transition Term.
- (1) 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 separate 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) Indirects: 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.
- (iii) Materials, Equipment, Subcontracts, and Other Direct Costs: Provide an exhibit that summarizes proposed materials, equipment, services, space/lease costs, travel, and other direct cost items relating to the transition effort. Show the proposed quantity, unit price, and extended amounts, and provide the basis of estimate and supporting documentation used to determine the proposed prices.
- (iv) Relocation Costs: A relocation cost estimate shall be provided that separately identifies the proposed travel, services, and other direct costs items related to relocation of Key Personnel and any managers who directly report to them.
- (2) The Contractor shall also separately provide a cost summary for accomplishing those tasks required during the Transition Term that are identified in Section J, Appendix A, Statement of Work (Chapter III, 2.0 Workforce Transition). In addition to the requirements of paragraph (b)(1) of this clause, costs proposed must be cross-referenced to the specific tasks in Section J, Appendix A, Statement of Work (Chapter III, 2.0 Workforce Transition) that must be accomplished 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.

- (c) Community Commitment Plan. The Contractor shall deliver within 120 calendar days after the effective date of the Contract, a community commitment plan that has been discussed between the Contractor and the community. The Community Commitment Plan will consist of commitments between the Contractor and the surrounding communities of the sites under this Contract for purposes of supporting the communities and their economic base. As this plan will not become part of the resulting Contract requirements, reasonable costs associated with the development of the plan will be considered allowable, however costs associated with implementing the plan will be considered unallowable.
- (d) Key Personnel Cost Estimate.
 - (1) The Contractor shall propose initial total Key Personnel compensation costs for each of its Key Personnel for the first year of the Base Term for CLIN 0001 and CLIN 0002 upon the effective date of the Contract. The Key Personnel compensation costs will be subject to approval by the Contracting Officer during the Transition Term. For the first year of the Base Term, for Key Personnel, the Contracting Officer will approve one time salary requests. The Contractor shall provide supporting justification related to internal and external equity for each compensation request. The top contractor official's reimbursed base salary will serve as the maximum allowable salary reimbursement level. No reimbursement above the limits specified will be allowed under the Contract for the first year of the Base Term.
 - (2) The Contractor shall separately identify and provide a total summary of the annual compensation costs of the Contractor's proposed Key Personnel for the first year of the Base Term. Costs shall include annual base salaries, and applicable bonuses, incentive pay, fringe benefits, and other key personnel compensation. For each of the Key Personnel proposed, identify the individual's position, name, current annual salary, and basis for determining the proposed annual salary. Separately identify and describe the basis of estimate for applicable fringe benefits, incentive pay, bonuses, and any other forms of Key Personnel compensation. Provide narrative support sufficient to explain the development and reasonableness of the proposed compensation costs.
 - (3) Notwithstanding any other term or condition set forth in the Contract, the compensation reimbursed by the Government for each of the Contractor's Key Personnel shall not exceed \$693,951 or the revised benchmark amount, in any subsequent Government fiscal year, as determined by the applicable Determination of Executive Compensation Benchmark Amount Pursuant to Section 39 of the Office of Federal Procurement Policy Act (41 U.S.C. 435), as Amended, as required in FAR 31.205-6, Compensation for Personal Services; paragraph (p), Limitation on allowability of compensation for certain Contractor personnel. Any amount in excess of the OFPP benchmark must be identified and excluded from the Contractor's proposed Key Personnel Costs.

- (e) Merger Transformation Plan (MTP). Section J, Appendix A, Statement of Work, requires that the Contractor provide a “Merger Transformation Plan” for Contracting Officer’s approval within 60 calendar days after the effective date of the Contract. The Contractor may request modifications to the MTP during the Contract term and these changes will be reviewed and approved by the Contracting Officer. The Contractor’s Management Approach and Cost Savings which was submitted by the Contractor in its proposal for purposes of evaluation for award, shall be incorporated as a part of Section J, Appendix D, Merger Transformation Plan. The MTP shall also include Performance Fee Incentives, with associated objectives, measures, and targets to be considered for inclusion in the Contract’s Performance Evaluation Plan (PEP), which may be multi-year, and be used as consideration for additional Contract term. The MTP will contain information that will be utilized for development of the CRP as described in the Contract’s Section I Clause entitled “DEAR 970.5215-4, Cost Reduction”.
- (f) Conflict of Interest Compliance Plan. The Contractor shall submit a Conflict of Interest (COI) Compliance Plan to the Contracting Officer for approval within 60 days after the effective date of this Contract including UPF. The COI Compliance Plan shall address the Contractor's approach for adhering to the Contract’s Section I Clauses entitled “DEAR 952.209-72, Organizational Conflicts of Interest Alternate I” and “DEAR 970.5227-3, Technology Transfer Mission Alternate II” and describe its procedures for aggressively self-identifying and resolving both organizational and employee conflicts of interest. The COI Compliance Plan will also serve as the minimum standards for the conflicts of interest portion of the Contractor’s “written code of business ethics and conduct” which is required by this Contract’s Section I Clause entitled “FAR 52.203-13, Contractor Code of Business Ethics and Conduct.” The overall purpose of the COI Compliance 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. The COI Compliance Plan shall include the minimum standards at Section J, Appendix Q, Minimum Standards for Contractor’s COI Plans.
- (g) UPF Project Management Plan. Section J, Appendix A, Statement of Work, Chapter IV, requires that the Contractor provide an updated “Project Management Plan” for Contracting Officer’s approval within 90 calendar days after start of transition. The Acquisition Executive will maintain baseline control as prescribed in DOE O 413.3B. The UPF Project Management Plan shall be consistent with the Project Management Approach that was submitted with the Contractor’s proposal.

SECTION G

CONTRACT ADMINISTRATION DATA

G-1 GOVERNMENT CONTACTS & CORRESPONDENCE PROCEDURES

- (a) The NNSA Nuclear Production Site Office Manager for this Contract is the Contractor's primary point of contact for all technical and administrative matters, except as identified in Section G, G-3, DOE/NNSA Patent Counsel, regarding performance of this Contract. The Administrative Contracting Officer is the Contractor's primary point of contact for all contractual matters. The Nuclear Production Site Office Manager and Administrative Contracting Officer can be reached at:

NNSA Production Office, Y-12
Attn: NAME
P.O. Box 2050
Oak Ridge, TN 37831-8009

- (b) Technical and Administrative Correspondence:

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

- (c) Designation of Contracting Officer's Representative(s)

The Contracting Officer's Representative's official delegation of authority will be provided to the Contractor in writing. This delegation will describe the COR's authorities in detail. However, it is emphasized that only the Contracting Officer has the authority to modify the terms of the Contract, therefore, in no event will any understanding, agreement, modification, change order, or other matter deviating from the terms of the basic Contract between the Contractor and any other person be effective or binding on the Government. When/If, in the opinion of the Contractor, an effort outside the existing scope of the Contract is requested, the Contractor shall promptly notify the Contracting Officer in writing, before proceeding with the COR direction. No action shall be taken by the Contractor unless the Contracting Officer has issued a formal, written contractual change.

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

(d) Contractual Correspondence/Matters

Correspondence involving contractual matters shall be addressed to the Contracting Officer responsible for administration of this Contract. The Contracting Officer for NNSA is Leticia Y. Barela. This individual shall be primarily responsible for all Contractual actions required to be taken by the Government under the terms of this Contract.

Notwithstanding the above, in the event the above named individual is absent for an extended period or an urgent action is required, any other duly appointed Contracting Officer assigned shall be authorized to take the required Contractual action(s) within the limits of his/her authority.

(e) 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-NA0001942, (insert subject topic after Contract Number, e.g., "Request for subcontract placement approval").

(f) Distribution

A copy of correspondence addressed to the Contracting Officer shall be provided to the Nuclear Production Site Office Manager.

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 DOE/NNSA PATENT COUNSEL

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

NNSA Patent Counsel
Office of General Counsel (NA-GC)
P.O. Box 5400
Albuquerque, NM, 87185-5400
Phone: (505) 845-5172

G-4 DOE/NNSA ORGANIZATIONAL PROPERTY MANAGEMENT OFFICER

The Contractor may use the Organizational Property Management Officer as a point of contact for guidance and assistance involving property requirements. The Contracting Officer shall be contacted for any matter which 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:

Organizational Property Management Officer (OPMO)
Personal Property Albuquerque
P.O. Box 5400
Albuquerque, New Mexico, 87185-5400
Telephone: (505) 845-5437

G-5 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: John Howanitz
Position: Vice President, Bechtel National, Inc.
Company: Bechtel National, Inc.
Address: 12011 Sunset Hills Road, Reston, VA 20190
Phone: (301) 401-1775
E-mail: jhowanit@bechtel.com

G-6 PERFORMANCE GUARANTEE(S)

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

G-7 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 Consolidated Nuclear Security, LLC (CNS). This entity is comprised of: Bechtel National Inc., Lockheed Martin Services, Inc., ATK Launch Systems Inc., and SOC LLC.

- (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-8 RESPONSIBLE CORPORATE OFFICIAL

Notwithstanding G-6, Performance Guarantee(s), the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor. Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: John Howanitz
Position: Vice President, Bechtel National, Inc.
Company: Bechtel National, Inc.
Address: 12011 Sunset Hills Road, Reston, VA 20190
Phone: (301) 401-1775
E-mail: jhowanit@bechtel.com

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H-1 CONFIDENTIALITY OF INFORMATION

- (a) In accordance with the Contract's Section I Clause entitled "DEAR 952.209-72 Organizational Conflicts of Interest Alternate I," to the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
- (1) Information which, at the time of receipt by the Contractor, is in the public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies; or
 - (4) Information which the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, with each employee permitted access, whereby the employee agrees that he will not discuss, divulge, or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the terms of this clause, with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE/NNSA, it will execute a DOE/NNSA-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE/NNSA, such an agreement shall also be signed by Contractor personnel.
- (e) This clause shall flow down to all subcontracts.

- (f) Technical data is addressed in this Contract's Section I Clause entitled "DEAR 970.5227-2, Rights in Data-Technology Transfer."

H-2 NNSA PRIME CONTRACTS

- (a) In accordance with the Contract's Section I Clause entitled "DEAR 970.5243-1, Changes," the Contracting Officer may identify any of the work contemplated by Section J, Appendix A, Statement of Work, of this Contract to be performed either by another Contractor directly contracted by the DOE/NNSA or by Government employees. The Contractor agrees to fully cooperate with such other Contractors and Government employees, carefully fit its own work to such other work as may be directed by the Contracting Officer, and provide reasonable support as required. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees. For work identified for performance by another Contractor directly contracted by the NNSA:
- (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 the Contract.
 - (ii) Receipt, processing or adjudication of any claims, invoices, or demands for payment of any form.
 - (3) The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer's Representative, any performance of a designated Contract that may not be in compliance with its terms and conditions but is not authorized to take any other action regarding such noncompliance.

- (4) Additionally, the NNSA agrees to insert the clause below entitled “Other Government Contractors Performing Work at the Nuclear Production Sites,” substantially as written here, in all such Contracts as follows:

OTHER GOVERNMENT CONTRACTORS PERFORMING WORK AT THE NUCLEAR PRODUCTION SITES

In addition to this Contract, (Insert Contract Number), the Government may undertake or award other Contracts for additional work or services at the Nuclear Production 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 may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees at the site.

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

- (b) In the cases where the Government directly contracts with other entities and retains administration, the Contractor shall fully cooperate with these other entities and provide reasonable support as required.
- (c) Adjustments shall be made to the Contractor's Subcontracting Plan to recognize the changes to the subcontracting base and goals, if appropriate.

H-3 INSTRUCTIONS FOR UPDATING FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI) INFORMATION (JUN 2011)

- (a) In order to submit periodic updates or to report changes to Foreign Ownership, Control or Influence information as required by this Contract’s Section I Clause entitled “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 Service Center Procurement" as the FOCI Office that will review the FOCI Submission.
- (c) Electronic signatures are accepted; all FOCI documentation requiring signatures, dates, and company stamps, must be printed, completed, and uploaded into the Miscellaneous Tab within the eFOCI system. Hard copies are no longer required.

H-4 CONTINUITY DURING TRANSITION

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 will not implement a change until it is formally approved by the Contracting Officer.

H-5 SMALL BUSINESS PARTICIPATION

Small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns submitted by the Contractor in its proposal for purposes of evaluation for award, are incorporated into this Contract at Section J, Appendix K, Small Business Subcontracting Plan. To the extent that such concerns specifically were identified in the proposal, they are also incorporated into this Contract and the Contractor shall notify the Contracting Officer of any changes in scope and value, and any substitutions of firms. This notification shall include a rationale and justification for the changes.

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. Small business subcontracting goals for the consolidated contract should reflect a positive impact on local geographic areas affected by the consolidation. Except for the initial plan submitted with the proposal, this plan and accomplishments will be submitted through the eSRS System.

The Contractor's performance in meeting and exceeding its proposed socio-economic business participation shall be assessed as part of the fee determination under this Contract.

H-6 PARENT OVERSIGHT PLAN

- (a) If a Parent Oversight Plan is requested by the Contracting Officer pursuant to Section J, Appendix A, Chapter I, 4.4.3, the Parent Oversight Plan will be attached and made part of the Contract at Section J. Elements of the Plan may be incorporated into the Performance Evaluation Plan. The Parent Oversight Plan shall identify the official(s) responsible for administration of the plan.
- (b) The Contractor shall provide periodic reports of Parent Oversight activities and costs incurred as required by the Contracting Officer. Costs associated with Plan shall only include: the actual direct labor costs of the persons performing such services; a percentage factor of direct labor costs to cover fringe benefits and payroll taxes; travel; and other direct costs. Any fee or other indirect costs such as allocation for overhead, General and Administrative (G&A), and Cost of Money will not be reimbursed.

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

H-7 LOBBYING RESTRICTION (FULL-YEAR CONTINUING APPROPRIATIONS ACT, 2011)

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-8 CONSTRUCTION PROJECTS

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

H-9 LIMITATION ON PROTECTIVE FORCE SUBCONTRACTING

The Contractor shall not subcontract protective force services and responsibilities.

PART II – CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

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Notice: *Clauses incorporated by reference.*

I-1 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 (48 CFR CHAPTER 1) CLAUSES

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	Apr 1984
52.203-6	Restrictions on Subcontractor Sales to the Government	Sep 2006
52.203-7	Anti-Kickback Procedures	Oct 2010
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	Jan 1997
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	Jan 1997
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	Oct 2010
52.203-13	Contractor Code of Business Ethics and Conduct	Apr 2010
52.203-14	Display of Hotline Poster(s) <i>(b)(3) Required poster is: 'DOE Hotline Poster</i> http://ig.energy.gov/hotline.htm	Dec 2007
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	May 2011
52.204-7	Central Contractor Registration	Apr 2008
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	Jul 2010
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	Dec 2010
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations	May 2011
52.210-1	Market Research	Apr 2011
52.211-5	Material Requirements	Aug 2000

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
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
52.215-23	Limitations on Pass-Through Charges	Oct 2009
52.219-8	Utilization of Small Business Concerns	Jan 2011
52.219-9	Small Business Subcontracting Plan, Alternate II (Oct 2001)	Jan 2011
52.219-16	Liquidated Damages -- Subcontracting Plan	Jan 1999
52.219-25	Small Disadvantaged Business Participation Program— Disadvantaged Status and Reporting	Dec 2010
52.222-1	Notice to the Government of Labor Disputes	Feb 1997
52.222-3	Convict Labor	Jun 2003
52.222-4	Contract Work Hours and Safety Standards Act -- Overtime Compensation	Jul 2005
52.222-6	Davis-Bacon Act	Jul 2005
52.222-7	Withholding of Funds	Feb 1988
52.222-8	Payrolls and Basic Records	Jun 2010
52.222-9	Apprentices and Trainees	Jul 2005
52.222-10	Compliance with Copeland Act Requirements	Feb 1988
52.222-11	Subcontracts (Labor Standards)	Jul 2005
52.222-12	Contract Termination – Debarment	Feb 1988
52.222-13	Compliance with Davis-Bacon and Related Act Regulations	Feb 1988
52.222-14	Disputes Concerning Labor Standards	Feb 1988
52.222-15	Certification of Eligibility	Feb 1988
52.222-16	Approval of Wage Rates	Feb 1988

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.222-20	Walsh-Healey Public Contracts Act	Oct 2010
52.222-21	Prohibition of Segregated Facilities	Feb 1999
52.222-26	Equal Opportunity	Mar 2007
52.222-29	Notification of Visa Denial	Jun 2003
52.222-35	Equal Opportunity for Veterans	Sep 2010
52.222-36	Affirmative Action for Workers With Disabilities	Oct 2010
52.222-37	Employment Reports on Veterans	Sep 2010
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	Dec 2010
52.222-50	Combating Trafficking in Persons	Feb 2009
52.222-54	Employment Eligibility Verification	Jan 2009
52.223-2	Affirmative Procurement of Biobased Products Under Service And Construction Contracts	Dec 2007
52.223-3	Hazardous Material Identification and Material Safety Data, Alternate I (Jul 1995) <i>(b) Nothing identified to date.</i>	Jan 1997
52.223-5	Pollution Prevention and Right-to-Know Information, Alternate I (May 2011)	May 2011
52.223-10	Waste Reduction Program	May 2011
52.223-12	Refrigeration Equipment and Air Conditioners	May 1995
52.223-15	Energy Efficiency in Energy-Consuming Products	Dec 2007
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
52.224-1	Privacy Act Notification	Apr 1984
52.224-2	Privacy Act	Apr 1984
52.225-1	Buy American Act—Supplies	Feb 2009
52.225-13	Restriction on Certain Foreign Purchases	Jun 2008
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	Jun 2000

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.227-10	Filing of Patent Applications -- Classified Subject Matter	Dec 2007
52.229-8	Taxes -- Foreign Cost-Reimbursement Contracts <i>(a) Name of foreign government is 'the foreign country(ies) referenced in the applicable Work Authorization or as specified by the Contracting Officer'. Name of country is 'exempt under the laws of 'the Country(ies) referenced in the applicable Work Authorization or as specified by the Contracting Officer'.</i>	Mar 1990
52.230-2	Cost Accounting Standards	Oct 2010
52.230-6	Administration of Cost Accounting Standards	Jun 2010
52.232-17	Interest	Oct 2010
52.232-18	Availability of Funds	Apr 1984
52.232-24	Prohibition of Assignment of Claims	Jan 1986
52.233-1	Disputes, Alternate I (Dec 1991)	July 2002
52.233-3	Protest After Award, Alternate I (Jun 1985)	Aug 1996
52.233-4	Applicable Law for Breach of Contract Claim	Oct 2004
52.237-3	Continuity of Services	Jan 1991
52.242-1	Notice of Intent to Disallow Costs	Apr 1984
52.242-13	Bankruptcy	Jul 1995
52.244-5	Competition in Subcontracting	Dec 1996
52.244-6	Subcontracts for Commercial Items, Alternate I (Jun 2010)	Dec 2010
52.247-1	Commercial Bill of Lading Notations <i>(a) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'. (b) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'. Contract No. is 'DE-NA0001942'. Contact is 'the Contracting Officer'.</i>	Feb 2006
52.247-63	Preference for U.S.-Flag Air Carriers	June 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	Feb 2006
52.249-6	Termination (Cost-Reimbursement)	May 2004
52.249-14	Excusable Delays	Apr 1984
52.251-1	Government Supply Sources	Aug 2010

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.251-2	Interagency Fleet Management System Vehicles and Related Services	Jan 1991
52.253-1	Computer Generated Forms	Jan 1991

I-2 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 (48 CFR CHAPTER 9) CLAUSES

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
952.204-2	Security	Mar 2011
952.204-70	Classification/Declassification	Sep 1997
952.204-71	Sensitive Foreign Nations Controls	Mar 2011
952.204-75	Public Affairs	Dec 2000
952.204-77	Computer Security	Aug 2006
952.208-7	Tagging of Leased Vehicles	Apr 1984
952.209-72	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 J'.</i>	Dec 2000
952.217-70	Acquisition of Real Property	Mar 2011
952.223-75	Preservation of Individual Occupational Radiation Exposure Records	Apr 1984
952.223-78	Sustainable Acquisition Program	Oct 2010
952.226-74	Displaced Employee Hiring Preference	Jun 1997
952.227-82	Rights to Proposal Data <i>Pages is 'all'. Date is 'November 6, 2012'.</i>	Apr 1994

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
952.247-70	Foreign Travel	Jun 2010
952.251-70	Contractor Employee Travel Discount	Aug 2009
970.5203-1	Management Controls	Jun 2007
970.5204-1	Counterintelligence	Dec 2010
970.5204-3	Access to and Ownership of Records	Jul 2005
970.5208-1	Printing	Dec 2000
970.5211-1	Work Authorization	May 2007
970.5217-1	Work for Others Program (Non-DOE Funded Work)	Jan 2005
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
970.5226-1	Diversity Plan	Dec 2000
970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	Dec 2000
970.5226-3	Community Commitment	Dec 2000
970.5227-4	Authorization and Consent	Aug 2002
970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement	Aug 2002
970.5227-6	Patent Indemnity-Subcontracts	Dec 2000
970.5227-8	Refund of Royalties	Aug 2002
970.5228-1	Insurance-Litigation and Claims	Aug 2009
970.5229-1	State and Local Taxes	Dec 2000
970.5231-4	Preexisting Conditions, Alternate I (DEC 2000), Alternate II (DEC 2000)	Dec 2000

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
970.5232-1	Reduction or Suspension of Advance, Partial, or Progress Payments	Dec 2000
970.5232-4	Obligation of Funds	Dec 2000
970.5232-5	Liability with Respect to Cost Accounting Standards	Dec 2000
970.5232-7	Financial Management System	Dec 2000
970.5232-8	Integrated Accounting	Dec 2000
970.5236-1	Government Facility Subcontract Approval	Dec 2000
970.5242-1	Penalties for Unallowable Costs	Aug 2009
970.5243-1	Changes	Dec 2000
970.5245-1	Property	Dec 2000

Notice II: *Clauses incorporated in full text.*

I-3 FAR 52.202-1 DEFINITIONS (JUL 2004) (AS MODIFIED BY DEAR 952.202-1)

- (a) 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-
- (1) The solicitation, or amended solicitation, provides a different definition;
 - (2) The contracting parties agree to a different definition;
 - (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
 - (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.
- (b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.
- (c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

I-4 FAR 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (JAN 2011)

- (a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the Central Contractor Registration database at <http://www.ccr.gov>.
- (b) (1) The Contractor will receive notification when the Government posts new information to the Contractor's record.
- (2) The Contractor will have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.
- (3) (i) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.
- (ii) As required by section 3010 of Public Law 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

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

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days of contract expiration; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years.

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

- (a) The Contractor shall notify the Contracting Officer or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either
- (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or
 - (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.

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

- (b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall --
- (1) Be submitted in writing;
 - (2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
 - (3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.
- (c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.
- (d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

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

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

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

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

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

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

(2) Submit this estimate to the Contracting Officer.

I-8 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).

I-9 FAR 52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (SEP 2010)

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

“Commercially available off-the-shelf (COTS) item”—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

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

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

“Cost of components” means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - (ii) The construction material is a COTS item.

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

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

(b) *Domestic preference.*

- (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
- (2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: None.
- (3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

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

- (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
 - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.
 - (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

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

Foreign and Domestic Construction Materials Price Comparison

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

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

[Include other applicable supporting information.]

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

I-10 FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

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

- (1) By the Contractor under a cost-reimbursement contract; and
- (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

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

(c) Contractors shall submit the above referenced transportation documents to—

DOE Automated Transportation System in accordance with DOE Orders.

**I-11 FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984)
ALTERNATE I (APR 1984) SEE NOTE****

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

- (a) “Contractor’s principal officials,” as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing --
- (1) All or substantially all of the Contractor’s business;
 - (2) All or substantially all of the Contractor’s operations at any one plant or separate location in which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract.
- (b) Under Public Law 85-804 (50 U.S.C 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against --
- (1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;
 - (2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and
 - (3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.
- (c) This indemnification applies only to the extent that the claim, loss, or damage
- (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and
 - (2) is not compensated for by insurance or otherwise.

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

- (d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for --
- (1) Government claims against the Contractor (other than those arising through subrogation); or
 - (2) Loss or damage affecting the Contractor's property.
- (e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.
- (f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.
- (g) The Contractor shall --
- (1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may be reasonably be expected to involve indemnification under this clause;
 - (2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;
 - (3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and
 - (4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.
- (h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

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

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

(2) Not affected by this contract's *Availability of Funds or Obligation of Funds* clause.

(j) *The term "a risk defined in this contract as unusually hazardous or nuclear" as used in this clause means the risk of legal liability to third parties (including legal costs as defined in paragraph (jj) of section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2014(jj), notwithstanding the fact that the claim or suit may not arise under section 170 of said Act, 42 U.S.C. §2210) arising from the performance by the Contractor under this contract of non-proliferation, emergency response, anti-terrorism activities, or critical national security activities that involve the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities or devices, provided such activities are specifically requested or approved, in writing, by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary of Energy for Nuclear Security, and further provided that the request or approval specifically identifies the particular requested or approved activity and makes the indemnity provided by this clause applicable to that particular activity because it involves extraordinary risks.*

(k) *Additional Definitions of Terms*

As used in this clause,

(1) *the term "Contractor" except as used in paragraphs (a) and (e) of this clause means*

(A) *(Insert Name of Legal Entity)*_____.

(B) _____'s, parent organization,
_____, corporate successors of
_____, and corporate affiliates of
_____, and

- (C) *Employees, officers, and directors of any of the foregoing named or threatened to be named as defendants in lawsuits or litigation threatened or initiated by third parties which seek to impose or establish, or which could result in, a risk which is defined in this contract as unusually hazardous or nuclear, on account of actions or inactions of _____, or on account of actions or inactions undertaken by the corporations or individuals identified in subparagraph (A), (B), (C) above for, on behalf of, or with respect to, _____ under this contract; and*
- (2) *the term “Contractor” as used in paragraphs (a) and (e) of this clause means _____;*
- (3) *the term “Contractor’s business” means the management and operation of Y-12 National Security Complex (Y-12), Pantex Plant (Pantex), and Savannah River Tritium Operations (SRTO) (if option is exercised) for DOE under this contract;*
- (4) *the terms “Contractor’s operations at any one plant or separate location in which this contract is being performed” and “a separate and complete major industrial operation in connection with the performance of this contract” mean the Y-12, Pantex and SRTO (if option is exercised) facilities located at Oak Ridge, Tennessee, Amarillo, Texas, and Aiken, South Carolina, respectively.*
- (5) *the term “nuclear materials” means source, special nuclear, or byproduct materials as those terms are defined in section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2014;*
- (6) *the term “agency head” means the Secretary of Energy; and*
- (7) *the term “corporate affiliates of _____” means*
- (A) *any company that, directly or indirectly, owns 50 percent or more of _____ (including its corporate successors), or which otherwise controls _____, and*
- (B) *companies, other than _____, that directly or indirectly, are 50 percent or more owned by _____ or by any company referred to in paragraph (A) above, or which are otherwise controlled by _____, or by any such company.*
- (l) *This clause provides indemnification for the unusually hazardous or nuclear risks defined herein which are not covered by the Price Anderson Act (section 170d of the Atomic Energy Act of 1954, as amended 42 U.S.C. § 2210(d) or where the indemnification provided by the Price Anderson Act is limited by the restriction on public liability imposed by section 170e of the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2210(e)) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the Contractor is exposed.*

I-12 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):

<u>Federal Acquisition Regulations</u>	http://farsite.hill.af.mil/vffara.htm or https://www.acquisition.gov/far/index.html
<u>Federal Acquisition Forms</u>	http://www.gsa.gov/forms/farnumer.htm
<u>Department of Energy Acquisition Regulations</u>	http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation or http://farsite.hill.af.mil/vfdoea.htm

I-13 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.

I-14 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)

- (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 \$100 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.

**I-15 DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000)
(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.*

I-16 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000) (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.

I-17 DEAR 970.5215-1 [REMOVED AND RESERVED] (DEVIATION)

I-18 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)

(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 pursuant to the clause of this 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 225.1A).
 - (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 225.1A).
 - (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 *Manual 231.1-2* requirements; or internal oversight of DOE Order 440.1A 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.

I-19 DEAR 970.5215-4 COST REDUCTION (DEVIATION NOV 2011)

- (a) General. It is the Department of Energy's (DOE)/National Nuclear Security Administration's (NNSA) intent to have its facilities and laboratories operated in an efficient and effective manner where improvement to process is emphasized in an on-going manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract.

The Merger Transformation Plan (MTP) described in Section F, F-7(e), includes the Timeline of Projected Cost Savings. The Timeline of Projected Cost Savings will be the basis for the Cost Reduction Proposal (hereinafter referred to as the CRP) for the term of this Contract, and be subject to the requirements of this Clause. There is one CRP for all cost reductions under this Contract. The table below describes the relationship between the Approach, the Timeline, the MTP, the process and procedures, and the CRP.

Cost Reduction Process:

Steps	Items	Details
Step 1	Proposal: Approach and Timeline of Projected Cost Savings	Provided as part of the Contractor's proposal
Step 2	Develop and submit MTP	High level includes approach and cost savings profile, due within 60 days (see F-7(e)).
Step 3	Develop process and procedures for CRP	Will occur during transition term in accordance with this Clause.
Step 4	Develop and submit CRP	Due in accordance with process and procedures (see Step 3).
Step 5	Modify CRP	Throughout period of performance in accordance with process and procedures agreed upon in Step 3.

(b) Definitions.

Administrative cost is the Contractor cost of developing the CRP.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE/NNSA cost is the Government cost agreed to under the CRP as part of implementation.

Implementation cost is the Contractor cost such as tooling, facilities, documentation, products, etc., required to effect a design, process, or method change once it has been tested and approved, as well as relocation, training, severance, and any other costs that are required to effect the merger or continuous improvement activities. The Government will consider the allowability of implementation costs necessary to execute a CRP. The Government makes no commitment to fund implementation costs but will consider those within budget on the merits of the savings proposed. The Government's failure to provide funding for implementation will not entitle the Contractor to an equitable adjustment to proposed savings.

Hard savings means savings that directly reduce the overall cost of operations. Examples of hard savings include:

- i) Permanently eliminating or reducing recurring costs through innovative product designs, or process improvements including through merger activities;
- ii) Supply chain management activities resulting in actual savings (as opposed to potential or sourcing savings);
- iii) Integration of life cycle approaches for the design and development of systems that minimize costs (e.g. experimental, maintenance and operations);

- iv) Reducing direct or indirect material or labor costs;
- v) Reducing inventory levels of product or material, or reducing the cost of carrying the same levels;
- vi) Reducing utility or natural resource consumptions; or
- vii) Reducing or eliminating scrap material costs.

Net savings means the difference between hard savings and execution costs. Execution costs can include administrative costs, development costs, DOE/NNSA costs, and implementation costs associated with the CRP.

Soft Savings means:

- i) savings that cannot be demonstrated to reduce the bottom line operating costs including, for example, labor efficiency improvements that increase productivity but do not reduce total hours worked;
 - ii) savings that are intangible and consequently difficult to measure, for example, a wellness plan that is intended to reduce absenteeism, turnover or insurance costs; or
 - iii) cost avoidances that cannot be demonstrated to lower cost of products/services based on a comparison against baseline, for example, slowing the rate of a cost increase.
- (c) Consideration of Hard Savings. Proposed savings that will not be considered creditable by the Contracting Officer will include:
- (1) Savings resulting from formal or informal NNSA direction or changes in mission, work scope (including Work for Others growth), or routine Contractor adjustments due to budget changes;
 - (2) Underruns resulting from anything other than a Contractor efficiency improvement, including but not limited to additional NNSA funding, shifting of work scope to a future fiscal year, (e.g. moving upgrade to facilities or infrastructure to out years with no evidence of savings or computer buys that are routinely purchased on a 3 year basis are deferred for an additional two years) deferred maintenance, re-categorizing direct/indirect costs, or increases in the direct allocation bases;
 - (3) Site office initiatives, direction, work scope changes, mission changes, or reorganization, unless the Contractor can demonstrate a significant role in achieving savings resulting from the site office actions;
 - (4) Savings that have a negative impact on any existing Contract requirements such as scope, safety, or security;

- (5) Savings resulting from shifting the employer paid portion of employee benefits costs to employees beyond current industry trends;
 - (6) Soft savings; and
 - (7) Savings that have been credited elsewhere under this contract.
- (d) Process, procedures and requirements for CRP. Process and procedures, including modifications and disputes, for management of the CRP will be established by the Contracting Officer with Contractor input during the transition term with a goal for timely approval and validation of savings. The process and procedures will contain a change control process for the CRP.

The Contractor shall utilize an annual controlled baseline for all Contractor support costs and programs. CRP submitted by the Contractor shall contain, at a minimum, the following:

- (1) Current Baseline-A verifiable description of the current scope of work, cost, and schedule to be affected by the CRP, and supporting documentation.
- (2) Proposed Baseline-A verifiable description of the new scope of work, cost, and schedule, how the CRP will be accomplished and supporting documentation.
- (3) Feasibility Assessment-A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current baseline and proposed baseline including all related costs.

Contractor institutional cost reporting and program cost data is a tool that will be used to measure savings in cost and associated resources. Cost data must be compatible with, and in a format, required by Section J, Appendix O, Program Management and Cost Reports.

- (e) Evaluation and Decision. The CRP must be submitted to the Contracting Officer and those with proposed cost reductions above an agreed-upon dollar-threshold will require pre-approval by the Contracting Officer. NNSA encourages the Contractor to perform work consistent with commercial and industry best practices. For NNSA to accept and support the Contractor's successful implementation of the CRP there should be a discussion included in the information provided by the CRP to the extent the proposed cost reduction effort may—
- (1) Pose a risk to the mission, security, health and safety of workers, the community, and the environment;
 - (2) Require a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;
 - (3) Require a change in other contractual agreements;

- (4) Result in significant organizational or personnel impacts;
 - (5) Create a negative impact on the cost, schedule, or scope of work in another area;
 - (6) Pose a potential negative impact on the credibility of the Contractor or the DOE;
 - (7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline; and
 - (8) Significantly impact internal controls.
- (f) Acceptance or Rejection of the CRP. Acceptance or rejection of the CRP, or modification thereto, is a determination made by the Contracting Officer based on but not limited to the evaluation criteria established in paragraph (c) and (e). The failure of the Contracting Officer to notify the Contractor of the acceptance or rejection of the CRP, or any modification, shall not be construed as approval.
- (g) Sharing Arrangement. If the CRP is accepted, the Contractor may share in the shared net savings. The sharing arrangement shall be as follows:
- (1) For savings proposed in conjunction with the Merger Transformation Plan, the sharing arrangement shall be as follows:
 - (i) 50 / 35 %* of the net savings shall be the Government's share in savings,
 - (ii) 0 / 35 %* of the net savings shall be share in savings fee payable to the Contractor,
 - (iii) As negotiated in the approved CRP, 50 / 30 %* of the shared savings shall remain under this Contract for the following contract activities consistent with the other terms and conditions of this contract:
 - (A) Implementation cost for future cost savings initiatives.
 - (B) Program, project, or indirect cost activities to finance additional mission work that has been approved by the HQ office;
 - (C) Projects that serve the M&O site as a whole, such as a parking structure, an office building or building a cafeteria that doesn't serve a discrete program and could be built with institutional general plant project funds;
 - (D) Employee compensation for non-key personnel in accordance with Appendix I. For the purposes of this clause, "employee compensation" means a one-time non-base lump sum payment which does not count towards the employee's pensionable earnings.
 - (iv) The savings period will be 2 years.

*The first number is the percentage that applies to benefit savings and second number is the percentage that applies to all other savings.

- (2) Modifications to the CRP that increase the savings will include the specific percentage and sharing period, which will be negotiated and set forth in the approved CRP. Share in savings > 40% and/or a share period > 2 years will be considered and may be approved by the Contracting Officer if it is advantageous to the Government (e.g., because it results in greater savings).
- (h) Validation of Net Savings. The Contractor shall certify the amount of savings achieved and sustained from previous period(s) under the sharing arrangement identified in (g). Fee will be paid after Contracting Officer validation from the annual or semi-annual period achieving sustainment through the remainder of the sharing period. An external validation may be utilized by the Contracting Officer. The Government's validation of cost savings will ensure NNSA mission deliverables (quality or timeliness) were not negatively impacted.
- (i) Relationship to Other Incentives. Only those benefits of an accepted CRP not awardable under other clauses of this contract shall be considered under this clause.
- (j) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in the CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

**I-20 DEAR 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER (DEC 2000)
ALTERNATE I (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)**

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
 - (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (h) of this clause.
 - (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (i) of this clause.
 - (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
 - (7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.
 - (8) *Open Source Software, as used in this clause, means computer software that is distributed under a license in which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).*
 - (9) *Patent Counsel means the National Nuclear Security Administration (NNSA) Patent Counsel assisting the DOE/NNSA contracting activity.*
- (b) Allocation of Rights.
- (1) *Except as may otherwise expressly provided or directed in writing by the Patent Counsel the Government shall have:*

- (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
 - (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE/NNSA, appropriate instances of the DOE /NNSA Work for Others Program;
 - (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE/NNSA personnel to perform such inspection;
 - (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause ("Rights in Limited Rights Data") or paragraph (i) of this clause ("Rights in Restricted Computer Software"); and
 - (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE/NNSA concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE/NNSA will notify the Contractor of the action taken.
- (2) The Contractor shall have:
- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

- (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology, provided the data requirements of this Contract have been met as of the date of the private use of such data; and
 - (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.
- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE, *NNSA* or a third party, including a DOE *or NNSA* contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE/*NNSA*, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.
- (c) Copyright (General).
- (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.
 - (2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles)

- (1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
- (2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [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, 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 WFO, authorization from the CRADA Participant(s) or User Facility User(s), or WFO, as applicable, shall be additionally obtained for OSS release.*

- (ii) *If the software is developed with funding from a federal government agency or agencies other than DOE or NNSA, then authorization from all the funding source(s) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency. However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If majority approval from such federal government agency(s) is not practicable, Patent Counsel may provide approval instead.*
- (2) *Assert Copyright in the OSS. Once the Contractor has obtained Funding Source approval in accordance with subparagraph (1) of this section, copyright in the software to be distributed as OSS, may be asserted by the Contractor, or, for OSS developed under a CRADA or User Facility, or WFO, either by the Contractor, CRADA Participant, or User FacilityUser, or WFO, as applicable, which precludes marking such OSS as Protected Information.*
- (3) *Form DOE F 241.4 for OSS to ESTSC. The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE or NNSA) to DOE's Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.*
- (4) *OSS Record. The Contractor must maintain a record, available for inspection by DOE or NNSA, of software distributed as OSS. The record shall contain the following information: (i) name of the computer software (or other identifier), (ii) an abstract with description or purpose of the software, (iii) evidence of the funding Program's or source's approval, (iv) the planned or actual OSS location on the Contractor's webpage or other publicly available location (see subparagraph (5) below); (v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered; (vi) the type of OSS license used; and (vii) release version of the software for OSS containing derivative works. Upon request of Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the record.*
- (5) *Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible as an open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, NNSA, or other industry standard means.*
- (6) *Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property and/or NNSA Patent Counsel may periodically issue guidance on OSS licenses. Each Contractor created OSS license, must contain, at a minimum, the following provisions:*

- (i) *A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and*
 - (ii) *A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (10) below). This provision might allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.*
- (7) *Collection of administrative costs is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.*
- (8) *Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled Technology Transfer Mission (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties as set forth elsewhere in this clause is not modified by this section.*
- (9) *Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews of the derivative versions.*
- (10) *Determine if Trademark Protection for the OSS is Appropriate. DOE and NNSA Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the Program or the Contractor may want to seek trademark protection. If the OSS is protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.*
- (11) *Government License. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.*

(12) *Availability of Original OSS. The object code and source code of the original OSS developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is publicly available. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.*

(g) Subcontracting.

- (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE/NNSA.
- (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
 - (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

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

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. *(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.

**I-21 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 Work for Others (WFO); 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, WFO, 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 Work For Others) 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 WFO 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 WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs 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) Work for Others and User Facility Programs.
- (i) Work for Others (WFO) 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., WFO 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 WFO 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 Work for Others and User Class Waivers) or individually negotiated waiver that applies to the agreement.

(5) Conflicts of Interest.

- (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:
 - (A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee –
 - (1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;
 - (2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or
 - (B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

- (ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.
 - (iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.
- (o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.
- (p) Technology Partnership Ombudsman.
- (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 (i) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

I-22 DEAR 970.5227-12 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/documents/organization/123747.pdf>*. DOE/NNSA reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.
- (7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE/NNSA pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE/NNSA may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE/NNSA, and DOE/NNSA may grant or refuse to grant such a request by the Contractor employee-inventor.
- (9) Government assignment of rights in Government employees' subject inventions. If a DOE or NNSA employee is a joint inventor of a subject invention to which the Contractor has rights, DOE or NNSA, *as applicable*, may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE or NNSA employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the

Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE *or* NNSA employee.

- (10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor.

- (1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the contracting officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event 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.

I-23 DEAR 970.5232-2 PAYMENTS 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-. 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.

**I-24 DEAR 970.5232-3 ACCOUNTS, RECORDS AND INSPECTION (DEC 2010)
(DEVIATION NOV 2011)**

- (a) Accounts. The Contractor shall maintain *a single financial management system with separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract.* The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.
- (d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of

accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

- (e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any employee regarding such transactions.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.
- (i) Internal audit. The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.
 - (1) Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—
 - (i) The internal audit organization's placement within the contractor's organization and its reporting requirements;
 - (ii) The audit organization's size and the experience and educational standards of its staff;

- (iii) The audit organization's relationship to the corporate entities of the Contractor;
 - (iv) The standards to be used in conducting the internal audits;
 - (v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;
 - (vi) The intended use of external audit resources;
 - (vii) The plan for audit of subcontracts, both pre-award and post-award; and
 - (viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.
- (2) By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.
- (3) By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.
- (4) The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.
- (j) Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

I-25 DEAR 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)

Any uncollectible receivables resulting from the Contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the Contractor, and the United States Government shall have no liability to the Contractor for the Contractor's uncollected receivables. The Contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the Contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE *and NNSA* directives clause of this contract and such advance cannot be obtained. The Contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the Contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE *and NNSA* directives clause of this contract have elapsed. The Contractor's utilization of contractor corporate funds does not relieve the Contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

I-26 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (AUG 2009) (NNSA CLASS DEVIATION OCT 2011)

- (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 \$100,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.
- (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

- (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than \$25,000, but not greater than \$100,000, 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 Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$100,000 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 \$100,000 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.* Identification, inspection, maintenance, protection, and disposition of Government Property shall conform with the policies and principles of 48 CFR part 45, 48 CFR part 945, the Federal Property Management Regulations, 41 CFR chapter 101, the DOE Property Management Regulations, 41 CFR chapter 109, and their contracts.
- (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
- (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) Davis-Bacon 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 Act clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
- (7) *Rights to Proposal Data (Technical) clause prescribed in 48 CFR 27.409(l).*
- (8) *Walsh-Healy Public Contracts Act clause prescribed in 48 CFR 22.610.*
- (9) *Patent Indemnity clause prescribed in 48 CFR 27.201-2(c).*

(y) *Legal Services.* Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

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SECTION J

APPENDIX A

STATEMENT OF WORK

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CHAPTER I. Objectives, Scope, and Requirements

1.0 OBJECTIVE

The objective of this Contract is to obtain nuclear production services to support National Nuclear Security Administration (NNSA) and broader national security requirements. This objective includes obtaining services to meet the production requirements derived from the nuclear weapons stockpile plan updated and released by the President of the United States annually. The Contractor shall be fully responsible for high-hazard enriched uranium, special nuclear material (SNM), high-explosive and nuclear weapon assembly/disassembly functions to support NNSA Stockpile Stewardship and Management Program activities directed by the Office of Defense Programs (DP). The Contractor shall function as the single integrating contractor for scheduling parts and performing material logistics within the Nuclear Security Enterprise (NSE). The Contractor shall provide a single management structure and interface to the Government for integrating production across the NSE.

NNSA tritium supply management functions are also included in Contractor responsibilities if this option is exercised. Furthermore, the Contractor shall directly support the NNSA Offices of Naval Reactors and Nuclear Non-Proliferation in addition to other Department of Energy (DOE) offices. Beyond DOE/NNSA, the Contractor shall provide unique services to ongoing missions for other Government agencies or privately owned organizations on a non-interference basis with the DOE/NNSA workload.

This statement of work includes two Contract Line Item Numbers (CLINs). CLIN 0001 covers the management and operation of Pantex and Y-12 for the initial five year base with sub-CLINs for three option periods, transition of SRTO, and inclusion of SRTO, respectively. CLIN 0002 covers the Uranium Processing Facility (UPF) at Y-12.

In addition to achieving Presidential goals outlined in the April 2010 Nuclear Posture Review, this Contract will fully support the DOE and NNSA Strategic Plans and will strengthen NNSA's vision for a fully integrated and interdependent Nuclear Security Enterprise (NSE), consisting of all eight NNSA sites, by achieving the following four specific objectives:

- (i) Improving performance in the completion of national security missions for nuclear production operations;
- (ii) Transitioning and merging operations at geographically-dispersed centers of excellence for: nuclear weapon assembly/disassembly; enriched uranium; SNM; high-explosive production; and, tritium supply management under a single Contract;
- (iii) Reducing the cost of performing work; and
- (iv) Requiring actions that support operation as an integrated DOE/NNSA enterprise.

This Contract does not affect the physical location of nuclear production center of excellence designations at the respective sites.

2.0 BACKGROUND

2.1 The NNSA Mission

The NNSA, 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 DOE, is responsible for the management and security of the nation's nuclear weapons, non-proliferation, and naval propulsion programs. It also responds to nuclear and radiological emergencies in the United States and abroad, and NNSA federal agents provide safe and secure transportation of nuclear weapons, components and special nuclear materials.

2.2 The NNSA Organization

NNSA relies on Management and Operating (M&O) Contractors to manage day-to-day site operations and to adhere to its policies when operating its laboratories, production plants, and other facilities in the NSE. Together, the M&O Contractors implement NNSA's all-encompassing Stockpile Stewardship Program managed by Defense Programs that includes operations associated with surveillance, assessment, maintenance, refurbishment, manufacture and dismantlement of the nuclear weapons stockpile as well as research, development and certification efforts.

2.3 Becoming an Enterprise

Overall, the NNSA needs to carry out its mission within research, development, and manufacturing organizations that are safe, secure, integrated, efficient, and cost effective. Work must be aligned with requirements received from key customers in a manner that strives to retain the intellectual excellence and key infrastructure capabilities demanded by national interests.

Throughout the 1990s, the DOE/NNSA took steps to consolidate to its current configuration of three national laboratories, four production plants, and a nuclear test site. In an evaluation of the NSE completed in October 2008, NNSA published a Supplemental Programmatic Environmental Impact Statement (SPEIS) that analyzed alternatives for transforming the complex into a smaller more efficient enterprise that responds to changing national security challenges and ensures the long-term safety, security, and reliability of the nuclear weapons stockpile. Two Records of Decision (RODs) informed by this SPEIS were published in December 2008.

While the RODs look at transforming the physical infrastructure, other initiatives have been undertaken to improve management and business practices. Two councils have been formed: one among the Contractor senior management and another among the federal site managers. The main function of these councils is to improve the integration and communication within the enterprise. Also, governance reform is an NNSA management initiative that focuses on developing a partnering relationship between the federal team and the supporting M&O Contractors.

2.4 Location of Performance

The three sites under this Contract are:

- 2.4.1** Y-12 National Security Complex (Y-12): Y-12 is a Government-owned site located in Oak Ridge, Tennessee, on approximately 800 acres within the 34,000 acre Oak Ridge Reservation. The NNSA facilities at Y-12 consist of over 350 buildings with approximately 5,800,000 gross square feet (gsf). Another 1,730,000 gsf are facilities that are the responsibility of the Office of Science, Office of Nuclear Energy, or the Office of Environmental Management.
- 2.4.2** Pantex Plant (PX): PX is a Government-owned site located near Amarillo, Texas, on approximately 10,500 acres at Pantex Plant proper and 1,100 acres of detached property called Pantex Lake, approximately 2.5 miles northeast of the main plant site. In addition, PX leases 5,800 acres south of the plant as a security buffer. The total acreage under Federal control is approximately 17,400 acres. The facilities on the site consist of 638 buildings comprising approximately 3,110,000 gsf.
- 2.4.3** Savannah River Tritium Operations (SRTO): SRTO is within the Savannah River Site (SRS) which is a Government-owned Environmental Management site located in south-central South Carolina and occupies approximately 198,420 acres in Aiken, Barnwell, and Allendale Counties. SRS is approximately 15 miles southeast of Augusta, Georgia, and 12 miles south of Aiken, South Carolina. The NNSA SRTO consists of approximately twenty-nine acres centrally located within the site. The SRTO facility is comprised of 32 buildings consisting of approximately 377,809 gsf.

3.0 SCOPE

This Contract is comprehensive with an objective to perform all necessary operational, coordination, and management functions at Y-12, PX, and SRTO (should this option be exercised) required to support NNSA and broader national security missions assigned to these sites. This includes but is not limited to all ongoing missions and functions, as well as those that may be assigned during the term of the Contract. It further includes all infrastructure management and maintenance; information technology; human resource management including critical skills recruitment and retention; environmental management; health, safety and security systems; and purchasing and other administrative systems.

In the execution of this Contract, and particularly program integration, the Contractor shall meet rigorous quality and reliability standards essential for the U.S. nuclear deterrent; maintain sufficient production capacity and produce at rates defined in planning documents; and implement flexible production management and execution processes to accommodate a dynamic national security environment. The Contractor shall balance risk management and cost reduction initiatives to provide increased value to the Government. This applies both internally to this Contract and to improving the overall cost efficiency of the NSE.

The Contractor shall be fully responsible and accountable for the safe and secure accomplishment of all work, whether performed by its own personnel or team members, including subcontractors. The Contractor shall be responsible for planning and coordinating production schedules; integrating, managing and executing the programs; supporting and executing large and small projects; and completing operations and other activities as described in this Statement of Work.

3.1 Mission

The Contractor shall safely and securely complete all mission responsibilities and improve performance in the completion of national security missions for nuclear production operations and all other national security missions, as applicable. NNSA has a Work Breakdown Structure (WBS) that is discussed further in Section J, Appendix F, Work Breakdown Structure. At a minimum, the Contractor shall:

- (i) Sustain the necessary workforce and exercise essential capabilities for: nuclear weapon assembly/disassembly, enriched uranium and lithium, SNM, high-explosive production, and tritium supply management centers of excellence;
- (ii) Maintain authorization basis for high-hazard operations;
- (iii) Operate high-hazard chemical processing facilities and systems within approved authorization basis;
- (iv) Assure the availability of core capabilities, regardless of stockpile size;
- (v) Implement and oversee the nuclear explosive and weapons surety program to include nuclear weapon/nuclear explosive safety, security and use control;
- (vi) Sustain and modernize the infrastructure;
- (vii) Interface with and support other contractors performing work at any of the sites;
- (viii) Balance available resources to meet mission requirements and infrastructure sustainment while maintaining safe, secure, environmentally compliant and responsive operations; and
- (ix) Effectively partner with other Contractors within the NSE to manage the master schedule for all production activities and be responsible for the execution of uranium, SNM, high explosives, nuclear weapons assembly/disassembly, dismantlement, and surveillance functions in support of the Stockpile Stewardship Program. In performing this responsibility, issues between the NSE contractors will be brought to Defense Programs management for resolution.

3.2 Merging of Operations

The Contractor shall merge operations, in accordance with Section J, Appendix D, Merger Transformation Plan, at geographically-dispersed centers of excellence for: nuclear weapon assembly/disassembly; enriched uranium; SNM; high-explosive production; and, tritium supply management (if exercised by option) under a single Contract. At a minimum, the Merger Transformation Plan shall describe how the Contractor will:

- (i) Manage merger of operations without negatively impacting mission;
- (ii) Ensure critical skills necessary to maintain capabilities;
- (iii) Identify and streamline redundant technical and business operations across the sites under this Contract;
- (iv) Incorporate governance (Section J, Appendix A, Chapter I, 4.4); and
- (v) Maintain relationships and regulatory interfaces, and assume responsibility for permits with local, State and Federal entities, other DOE offices, and stakeholders.

3.3 Scope and Financial Management

The Contractor shall support the DOE/NNSA Planning, Programming, Budgeting and Evaluation (PPBE) process. In supporting PPBE, the Contractor shall provide financial data for Government systems, such as:

- Standard Accounting and Reporting System (STARS)
 - STARS information is provided under the Institutional Cost Reporting Categories
- iMANAGE
- Enterprise Portfolio Analysis Tool (EPAT)
 - The EPAT information shall be collected in accordance with the Work Breakdown Structure (WBS) (see Section J, Appendix F)
- Facilities Information Management System (FIMS)

The Contractor shall maintain financial cost reporting systems to provide detailed cost reports for cost, scope, and schedule for direct and indirect costs for all work 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 transparency into those financial cost reporting systems and shall provide routine reports to allow NNSA visibility into program and cost management supporting reports to external sources (see Section J, Appendix O). The Contractor's financial cost reporting systems shall support the DOE STARS, iMANAGE, EPAT and support systems, such as FIMS, as well as other Government systems as they are developed and implemented.

The NNSA will provide the initial cost information, FTE data and scope framework on the effective date of the Contract. The Contractor shall develop a baseline for all Contractor direct programs and indirect support costs in accordance with DOE institutional cost reporting categories as found in Section J, Appendix M, Institutional Cost Reporting, and utilize the WBS reporting structure for further program granularity, as applicable and as it continues to develop within NNSA. The baseline shall include cost, scope of work, and schedule with a change control process. Baselines will be utilized for implementing the cost reduction features under this Contract. The baseline will be reviewed and approved annually by the Contracting Officer.

The Contractor shall have in place tools to: 1) manage mission and indirect changes in scope, cost, and schedule; 2) compare actual costs of work performed (ACWP) to budgeted costs of work performed (BCWP); 3) accurately forecast estimated costs to complete (ETC) and estimated total costs at completion (EAC); and 4) document deviations from the baselines described above in this paragraph and, on a timely basis, notify the Contracting Officer of such changes. The Contractor shall not make retroactive changes to records pertaining to work performed that will change previously-reported costs, except for correction of errors and routine accounting adjustments and not make retroactive changes for funding fluctuations or revisions in EAC.

3.4 Enterprise Success

The Contractor shall participate with NNSA and other NNSA M&O Contractors as part of an "enterprise organization" to evaluate, plan, develop and implement strategic initiative activities that optimize mission and business operations across the NSE. The goal of these initiatives is to increase the efficiency and cost effectiveness from a business and mission perspective, to include:

- Reduced operational costs enterprise-wide,
- 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 across the NSE; and
- Increased awards to small business entities.

NNSA expects these and other initiatives to result in a shift to an enterprise focus, based on the Contractor who possesses the most expertise and experience level within the NSE.

The Contractor shall cooperate with NNSA and NSE Contractors in identifying potential cross-NSE benefits to be derived from implementing common practices and goals across the NSE in the areas of mission workload and enterprise functional support.

The Contractor and NNSA shall establish performance incentives with performance measures and targets for strategic efforts that result in enterprise performance improvement overall for the Government.

4.0 ADMINISTRATIVE AND TECHNICAL REQUIREMENTS

4.1 Integrated Safety Management (ISM), Integrated Safeguards and Security Management (ISSM), Environmental Management System (EMS), and Quality Assurance Systems (QAS)

The Contractor shall ensure that ISM, ISSM, EMS, and QAS are integrated into its operations and that its Contractor Assurance System (CAS) reflects Contractor integrated performance related to these systems.

4.2 Work Authorization (WA) System

Specific work requirements under this Contract will be established annually and updated as needed by the Contracting Officer in accordance with the applicable DOE Order and the Contract's Section I Clause entitled "DEAR 970.5211-1, Work Authorization."

4.3 Information Technology (IT)

The NNSA seeks to optimize the efficiency of the NSE through the NNSA Network Vision (2NV) that seeks to consolidate IT infrastructure/services and eliminate redundant systems, to increase efficiency through mobility and cloud computing, and to improve business processes to better integrate across sites. To accomplish these goals, the Contractor must evaluate feasibility of removing redundant systems by completing a careful examination of existing systems and architecture across the sites to 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. With respect to production, these efforts shall include, but are not limited to, the implementation of multi-site, integrated manufacturing based information systems that support weapons production, special nuclear material (SNM) accountability, production scheduling and flow, surveillance, weapon retirement, process knowledge archiving, and preservation of production and certification records. Desktop and back-office computing capabilities should be compatible with those used by NNSA entities. Back-office functions shall include, but not be limited to, payroll, finance, project management, human resources, etc.

The Contractor shall deliver, within 180 days of the Base Term, a draft "to-be" architecture and information technology transition plan that integrates production and business systems at Pantex and Y-12, and further considers integration of SRTO as directed by the Government in a manner that is consistent with the overall enterprise and yields the best value to the Government. This plan shall present a cost and schedule baseline against which performance can be measured. Specifically, the plan must address network consolidation to generate cost efficiencies, mobility to replace manual processes and facilitate a mobile work environment, data center consolidation to generate energy savings, and cloud computing to improve business agility. In addition, the plan must consider (where feasible) replacement of legacy applications with Commercial Off the Shelf (COTS) systems, elimination of redundant IT systems, and collection of data in accordance with DOE or industry standards to improve NSE interoperability.

If the Contractor plans to offer an IT deliverable that is not Internet Protocol version 6 (IPv6) and Homeland Security Presidential Directive (HSPD)-12 compatible, the Contractor agrees to (1) obtain the Contracting Officer's approval before starting work on the deliverable; and (2) provide a migration path and firm commitment to upgrade to IPv6 and HSPD-12 compatibility for all application and product features.

The Contractor, prior to using any Contractor-owned software and systems where reimbursement is expected, shall request approval by the Contracting Officer. The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any Contractor-owned software and systems brought in and used. Said license shall be limited to the continued nuclear production work by successor Contractors.

4.4 Governance

Governance is the system of management and controls exercised in the stewardship of the organization. The governance system shall be consistent with NNSA governance documents (NAP-21 included in Section J, Appendix N, List of Applicable Directives). Contractors must self govern and deliver mission results in a safe and secure manner. The Contractor shall implement governance through a collaborative partnership with NNSA to form the self-governance framework by which the mission is accomplished in an effective and efficient manner. The governance framework invokes trust and confidence between parties, defines expectations and authorities and verifies performance by utilizing objectives, requirements, assessments, metrics and rewards. The Contractor will focus on NNSA transformation activities that maximize the ability to complete the mission in a way that ensures effective and efficient stewardship of the taxpayers' money. The Contractor shall streamline operations and reduce costs to maximize mission accomplishment through a common understanding of expectations and performance accountability, supported by a strong Contractor Assurance System (CAS). The Contractor shall have a CAS as a subordinate and supporting feature of Governance as described in 4.4.1 below.

4.4.1 Contractor Assurance System: The Contractor shall have a Contractor designed and utilized system to manage performance consistent with Contract requirements. 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; 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 as described in NAP-21. NNSA oversight shall not be relied upon by the Contractor as the primary feedback in assessing its performance. The Contractor is fully accountable for performing its own assessment of these areas.

- 4.4.2** Standards and Directives Reform: The Contractor shall submit a plan within 180 days after start of Base Term that identifies standards (e.g., ISO 9001, 14001, 18001, or other international or industry standards) to be utilized to replace other DOE requirements and provide the ability for the Contractor to operate with industry best practices. The plan shall describe how quickly the Contractor will achieve ISO certifications or other recommended standards but commit to completion no later than by the end of the second year of the Base Term. In addition, the Contractor, as part of its governance, shall continuously evaluate and examine DOE directives, orders, and requirements to propose needed exemptions or modifications to allow the Contractor to operate in the most effective and efficient manner and to assist in delivering cost savings to the Government.
- 4.4.3** Parent Organization(s): The Contractor, through its Parent Organizations, shall develop, at a date agreed upon by the Contracting Officer and the Contractor, a multi-year strategy and oversight plan that details (1) its planned efforts and expected accomplishments by year, to continuously improve its management and performance, and (2) the planned efforts and contributions of its Parent Organizations. The Contractor shall also provide an Oversight Plan from its Governing Board (if applicable), which shall be submitted three months prior to each fiscal year for Contracting Officer approval. The Plan shall identify the Board's annual activities to: (1) monitor the Contractor's performance of Statement of Work activities including CAS performance and (2) to assist the Contractor in meeting NNSA's mission and operational requirements. Elements of the plan may be incorporated into the Contractor's Performance Evaluation Plan. The utilization of Parent Organization experts via the Board's activities, which are defined herein as employees of Parent Organization(s), is encouraged for the purpose of achieving improvement in management and performance to resolve deficiencies identified through the Board's oversight or unusual issues encountered in site operations. The Board shall conduct periodic briefings throughout the annual rating period to NNSA management relating their oversight activities against the Plan and effects on production plant performance.

The Contractor is encouraged to identify opportunities for the use of parent corporate systems and corporate home and branch office personnel for site operations for the purposes of monitoring plant performance, assisting the plant in meeting its mission and operational requirements, streamlining the Contractor's administrative and business systems, improving performance, and adapting private sector expertise to plant issues.

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.

The Contractor, prior to using any parent corporate systems or home and branch office personnel where reimbursement is expected, shall submit a plan for review and approval by the Contracting Officer. In reviewing the plan, the Contracting Officer will consider the extent to which each separate element of the plan is more efficient and represents an overall cost savings to the Government versus existing site systems, assists the parent corporation or the Contractor in monitoring plant

performance and in meeting mission and operational requirements or brings value-added expertise to plant issues. The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any Contractor-owned software and systems brought in and used. Said license shall be limited to the continued nuclear production work by successor Contractors.

4.4.4 Performance Evaluation Plan: The Contractor shall participate in the formulation of Performance Evaluation Plans (PEP) that covers a defined period of time. The PEP shall include performance objectives, goals and measures.

4.4.5 Performance Metrics: The Contractor shall propose a list of performance metrics that provide Contractor and NNSA management an overall assessment of the “health of the operation” quickly and accurately. Once established, the metrics shall be part of the CAS and be provided with transparency to aid in the identification and understanding of significant performance issues.

4.5 Contractor Human Resources

The Contractor shall have the flexibility to restructure the workforce and make changes to employee benefits throughout the term of the Contract, as may be permitted by this Contract and applicable law, to maximize efficiencies. The Contractor shall be responsible for identification and maintenance of critical skills and for the employment of all professional, technical, skilled, and other personnel engaged and to be engaged by the Contractor in the work hereunder, and for the training of personnel, including apprentice programs. Persons employed by the Contractor or its subcontractors or consultants shall not be deemed employees of the Government. The Contractor shall follow the Human Resources (HR) requirements pertaining to workforce transition and management in accordance with Section J, Appendix A, Chapter III, Human Resources.

4.6 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" at the sites.

- (i) 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.
- (ii) The Contractor shall accept, in its own name, service of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this Contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to clauses of this Contract. The Contractor shall notify the Contracting Officer promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties. Nothing stated above shall affect the Contractor's right to challenge or contest the applicability or validity of such NOVs/NOAVs and fines and penalties.

- (iii) 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 Contractor.
- (iv) For SRTO, if this option is exercised, the Contractor shall be responsible for becoming a party to all regulatory compliance agreements, and licenses and permits issued by any federal, state or local regulatory agency associated with the Statement of Work under this Contract, including those previously executed.
- (v) When providing NNSA with documents that are to be signed or co-signed by NNSA, the Contractor will accompany such document with a certification statement, signed by the appropriate Contractor corporate officer, 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.

4.7 Defense Nuclear Facilities Safety Board and Other Government Agencies Support and Liaison

The Contractor shall support NNSA in interfacing with various Government agencies such as the Defense Nuclear Facilities Safety Board (DNFSB), Department of Defense and state regulatory agencies.

The Contractor shall conduct activities in accordance with those DOE commitments to the DNFSB which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of responses to DNFSB issues and recommendations which affect or can affect Contract work. The Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the applicable DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

4.8 Interfaces with Other Site Users

Within the three sites, there are multiple Contractors responsible for a variety of broad-based programs. Within 90 calendar days after the start of transition for the Base Term and if the option for SRTO is exercised, within 60 calendar days after the start of transition, the Contractor shall submit, for NNSA approval, an Interface Management Plan (IMP) for the affected sites to identify and manage site interfaces/services between DOE, NNSA, DOE/NNSA Contractors, and tenant entities engaged in onsite activities. The IMP should identify any costs related to other site users. The IMP shall also address security in accordance with Section J, Appendix A, Chapter II, 1.2.5, Defense Nuclear Security. The Contractor IMP(s) will become part of the Contract as Section J, Appendix H, Interface Management Plan. For the sites, services that require interface agreements shall be provided in accordance with existing or newly developed memoranda of understanding or other appropriate agreements. The Contractor will provide input to the Nuclear Production Site Office regarding effective support toward common site security and operational objectives. The Government will not consider such input if one contractor has any potential Organizational Conflict of Interest with the other contractor.

4.9 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 the Contract's Section I Clause entitled "FAR 52.224-2, Privacy Act". The applicable systems of records are available on the Federal Register. A list of applicable records will be finalized after contract award.

4.10 Cost Reduction

The Contractor shall submit a Cost Reduction Proposal (CRP) in accordance with the Contract's Section I Clause entitled "DEAR 970.5215-4, Cost Reduction".

CHAPTER II. Work Scope Structure

1.0 PROGRAMS

The Contactor shall support the following program activities:

1.1 Defense Programs

1.1.1 Directed Stockpile Work (DSW): The DSW program is responsible for maintaining and enhancing the safety, security, and reliability of the U.S. nuclear weapons stockpile without using underground testing. To meet this goal, DSW provides nuclear warheads and bombs to the Department of Defense (DoD) in accordance with the President's Nuclear Weapons Stockpile Plan. The Plan directs the number and type of weapons that the United States needs to maintain to ensure a credible deterrent. DSW includes weapons and production support programs. These programs are performed to achieve stockpile evaluation, stockpile maintenance, and nuclear weapons assembly and disassembly objectives in accordance with DOE/NNSA requirements plan.

Within DSW, the types of activities include, but are not limited to, the assembly and disassembly of nuclear weapons and individual components in support of Life Extension Programs, the Stockpile Evaluation Program, and dismantlement goals and objectives. In addition, it includes the disposition of weapon components, maintaining a weapons quality control program, providing production information systems, and providing laboratory analytical services. Also, each site performs research, development, testing and engineering work for the current and future production missions in support of the weapon laboratories. At Pantex, the high hazard fabrication of high explosive materials, interim storage of SNM and components, and nuclear weapons assembly/disassembly are key deliverables; Y-12 provides the Canned Subassemblies and Savannah River provides tritium supply management services and loaded reservoirs for the weapons. All operations shall meet DOE/NNSA requirements for nuclear facility safety, criticality safety, and nuclear explosive safety. Projected work scope for the NSE within this program includes, but is not limited to:

- (i) W76 and B61 Life Extension Program (LEP) deliverables;
- (ii) All other LEP deliverables;
- (iii) 800-1200 weapon systems equivalent unit operations per year for assembly/disassembly for: (1) surveillance, LEP and dismantlement; (2) Joint Test Assemblies (JTA); and (3) Limited Life Components (LLCs). These operations are on the B53, B61, W62, W69, W70, W71, W76, W78, W80, B83, W84, and W88 systems; (The W87 LEP (Assembly/Disassembly) is the standard equivalent unit and is equal to 1.0 equivalent unit. All other weapons program deliverables are defined as either 0.xx or 1.yy equivalent units based on the number of hours of production time and whether it is greater or less than that standard.)

- (iv) Meet annual Defense Program deliverables at Y-12 inclusive of assemblies, subassemblies, piece parts, phases of a dismantlement or surveillance, container refurbishments, and shipments from Area 5;
- (v) If SRTO option is included in Contract, 1100-2100 reservoir equivalents per year for loading, 100-170 reservoir equivalents per year for unloading, and 240-350 per year reservoir equivalents for Gas Transfer System Surveillance;
- (vi) Maintain and exercise production process capabilities such as casting, rolling, forming, and machining;
- (vii) Support of multi-program initiatives including Product Realization Integrated Digital Enterprise and Requirements Modernization and Integration;
- (viii) Storage and disposition of excess legacy components from weapons activities;
- (ix) Support expense projects, such as the Manufacturing Operations Management at Y-12 (CD-4) and the Operations System Design and Integration at Pantex (CD-4).

1.1.2 Campaigns: Campaigns are focused efforts to address critical capabilities needed to achieve key future program objectives. Campaigns are technically challenging, multi-function efforts that have definitive milestones and specific work plans. For this Contract these campaigns include, but are not limited to, the Engineering and Readiness Campaigns. Projected work scope within this program includes, but is not limited to:

- (i) Support advanced technology projects in support of the NSE such as lithium technologies, microwave deployment, wet chemistry replacement, lithium oxide replacement, high explosives development;
- (ii) If SRTO option is included in Contract, maintain operational capabilities to perform one or more tritium extractions per year for Tennessee Valley Authority supplied target rods; and
- (iii) Support transition of designated Campaign activities to DSW.

1.1.3 Readiness in Technical Base and Facilities (RTBF): RTBF provides the physical and operational infrastructure required to conduct the scientific, technical, and manufacturing activities of the Stockpile Stewardship Program. The RTBF mission is to ensure that the sites comprising the NSE are implementing the technologies and methods necessary to make construction, operation, energy efficiency and maintenance of production facilities safe, secure, reliable and cost effective and that the right facilities and infrastructure are in place to manufacture and certify the 21st century nuclear weapons stockpile.

The key areas within RTBF include, but are not limited to, construction, construction support and contractor integration, management of containers (onsite and offsite), operations of facilities, management and storage of materials (plutonium, highly-enriched uranium (HEU), Tritium, SNM and other materials), Material Recycle and Recovery, and Program Readiness. Projected work scope within this program includes, but is not limited to:

- (i) Maintain annual mission critical facility availability;
- (ii) Maintain mission critical facilities and mission dependent, not critical facilities;
- (iii) Project Management
 - (A) The Contractor shall perform design and construction activities for all projects under \$10M (Expense and General Plant Projects). New projects over \$10M, including Expense and Line Item, may be included if determined by the NNSA to be in the Government's best interest.
 - (B) The Contractor shall perform initial project development (for all projects regardless of dollar value), project management, design, and construction management activities in accordance with required DOE Orders.
 - (C) The Contractor shall recognize existing Construction Labor Agreements and shall require subcontractors engaged in construction on the construction project to recognize the Construction Labor Agreement.
 - (D) The Contractor shall maintain project baselines, develop Documented Safety Analysis, 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 directed by the Contracting Officer.

(E) Line Item Projects covered by this Contract include, but are not limited to:

- Uranium Processing Facility (UPF)
 - CLIN 0001: Contractor completes design and retains Design Authority
 - CLIN 0002: If awarded, see Chapter IV of this SOW
- High Explosive Pressing Facility (HEPF) (CD-4 thru 2016)
 - Contractor provides design support for the US Army Corps of Engineers
 - Contractor supports construction and completes start-up and commissioning
- Nuclear Facility Risk Reduction Project (Critical Decision (CD) 3B in 2012 and CD-4 in 2016)
 - Contractor completes design
 - Contractor completes construction, start-up, and commissioning
- Security Improvement Project (CD-4 in 2014)
 - Contractor completes construction, start-up, and commissioning

- (iv) Manage and disposition waste generated at the sites;
- (v) Operate enriched uranium recycle and recovery systems at Y-12 to include chemical processing, metal working, purification, accountability, storage, disposition, breaking, casting, high precision machining, oxide conversion, metal production, and canning;
- (vi) Operate lithium recycle and recovery systems at Y-12;
- (vii) Reduce the backlog of Highly Enriched Uranium (HEU) material at Y-12 in order to fully execute Material Disposition Plan and manage newly generated low-equity material by processing to a form suitable for long-term storage or discard of material which is below the Economic Discharge Limit;
- (viii) Safe and secure storage, management, and disposition of nuclear and non-nuclear materials (weapon assemblies, pit staging, war reserve storage, enriched uranium, Li^6 , heavy water, plutonium, and satisfy NNSA and other DOE customer material requirements (also, if SRTO option is included in the Contract, tritium and He^3);
- (ix) Support DOE enterprise-wide nuclear materials management and storage initiatives including, supporting the development and update of material management plans, supporting the DOE Nuclear Materials Management Team, and performing special studies related to uranium, lithium, heavy water as requested;

- (x) Deliver containers according to Shipment Schedules in support of DSW and other missions; and
- (xi) Support footprint reduction efforts at the sites.

1.1.4 Secure Transportation: This is the mechanism for the movement of weapons and materials between sites. Key facilities are located in Amarillo, Texas and Oak Ridge, Tennessee. Support under this Contract shall include maintenance of facilities, vehicle maintenance and support, and other activities.

1.2 Other NNSA Work

1.2.1 Infrastructure and Environment: These programs include Site Stewardship, Long-term Environmental Stewardship, NNSA recapitalization programs, Nuclear Materials Management Team, and energy savings initiatives required by the DOE. Projected work scope for the NSE within this program includes, but is not limited to:

- (i) Overseeing roofing projects under Enterprise-wide Roofing Asset Management Program;
- (ii) Completing recapitalization and deferred maintenance projects; and
- (iii) Completing High Pressure Fire Loop at Pantex (CD-4).

1.2.2 Nuclear Counterterrorism Incident Response and Other Nuclear Emergency Response Programs: The Nuclear Counterterrorism Incident Response (NCTIR) program ensures that capabilities are in place to respond to any DOE/NNSA facility emergency, nuclear, or radiological incident within the United States or abroad, and to provide operational planning and training to counter both domestic and international nuclear terrorism and assure that DOE can carry out its mission-essential functions. This includes DOE's radiological assistance program, NNSA's worldwide weapons accident response management, and other investigations or advisory groups.

1.2.3 Nuclear Non-Proliferation: Defense Nuclear Nonproliferation programs work closely with a wide range of international partners, key U.S. federal agencies, the U.S. national laboratories, and the private sector to detect, secure, and dispose of dangerous nuclear and radiological material, and related weapons of mass destruction technology and expertise. Projected work scope for the NSE within this program includes, but is not limited to:

- (i) Integrate, plan and execute disposition projects for DOE complex-wide inventories of surplus and excess nuclear material;
- (ii) Complete 100% of scheduled deliveries of excess enriched uranium to customers;

- (iii) Provide effective and rapid response to emergent non-proliferation and international security requirements;
- (iv) Partner with DOE/NNSA laboratories to leverage resources and expertise in support of nuclear non-proliferation goals and objectives;
- (v) Support of global nonproliferation activities; and
- (vi) Meet 100% of scheduled deliveries for the supply of nuclear materials to foreign and domestic research and isotope production reactors and other Y-12 customers.

1.2.4 Naval Propulsion: Naval Reactors programs require production and delivery of feedstock supporting their nuclear fuel program. Projected work scope for the NSE within this program includes, but is not limited to:

- (i) Complete 100% of scheduled deliveries of feedstock to NA-30; and
- (ii) Complete annual evaluation, maintain, and submit 20-year plan for NA-30 feedstock requirements.

1.2.5 Defense Nuclear Security (DNS): The DNS program protects NNSA interests from theft, diversion, sabotage, espionage, unauthorized access, compromise, and other hostile acts which may cause unacceptable adverse impacts on national security, program continuity, security of employees, and the public. As required by the security assets at each site, the Contractor shall provide a highly trained, competent, qualified, and certified Protective Force (PF) to protect nuclear explosives, SNM, classified matter, and other NNSA property. The actual PF staffing is determined by the posts and patrols and their required hours of operation. The Contractor is expected to provide staffing to meet requirements in a cost-effective manner. These responsibilities include planning, integration, management, and execution of all program elements excluding drug and alcohol testing for all site personnel.

PF operations are included in the scope of this Contract for Pantex and Y-12 and not SRTO. The Government will furnish PF operations at the SRTO. In accordance with the Contract's Section H, H-9, Limitation on Protective Force Subcontracting, the Contractor shall not subcontract protective force services and responsibilities.

The Contractor shall interface, as directed by the CO, with other contractors that perform safeguards and security work within the Oak Ridge Reservation and the Savannah River Site. In addition, at Pantex and Y-12 the scope entails coordination with local law enforcement agencies as well as management and operation of all shared security support services (e.g., Technical Surveillance Countermeasures and pre-event discovery operations) and facilities (inclusive of the Central Training Facility) in Oak Ridge, as well as implementation of the “Graded Security Protection Policy”. The Contractor shall establish a formal training program which ensures appropriate personnel are competently trained, and fully qualified to perform the tasks within their assigned responsibilities under both normal and emergency conditions. This responsibility also includes the DOE standardized security training of DOE-Oak Ridge PF personnel at the Central Training Facility. For other PF contractors within the ORR, the Contractor shall develop and conduct site-specific training curricula through coordination with the affected contractors.

1.2.6 Cyber Security: The NNSA Cyber Security program ensures that sufficient information technology and information management security safeguards are implemented throughout the NSE to adequately protect information assets. The overarching goal is to implement a flexible, comprehensive, full life-cycle, risk-based cyber security program including a cyber security architecture aligned with the NNSA enterprise architecture and plans of the NNSA Office of the Chief Information Officer. The Contractor shall allow full, unfettered access to security logs and cyber security sensor data to the Joint Cyber Coordination Center (JC3) to provide cyber security situational awareness for the NSE. The Contractor shall implement a cyber security baseline program and provide adequate performance metrics to generate a risk-based budget process for the NSE.

1.3 Work for Others/Other Reimbursable Work

This includes the management and execution of other assigned programs related to national security missions for DOE, other Government agencies, or privately owned organizations on a non-interference basis with NNSA work as approved by the Contracting Officer.

2.0 FUNCTIONAL SUPPORT

The Contractor shall provide:

2.1 General Support:

General management and program management functions including: executive direction, human resources, financial support services, procurement, legal services, central administrative services, program and project controls, information outreach, information services, and other general support functions.

In addition, provide legacy health and welfare benefits administration regarding former Contractor employees at Portsmouth Gaseous Diffusion Plant, located near Piketon, Ohio and Paducah Gaseous Diffusion Plant, located approximately 15 miles west of Paducah, Kentucky. Provide legacy pension, health and welfare benefits administration regarding former Contractor employees at K-25, located five miles west of Y-12.

2.2 Mission Support

Mission support functions including environmental, safety and health, facilities management, maintenance, utilities, safeguards and security, logistics support, quality assurance, and laboratory/technical support.

In addition, provide services and support, as directed by NNSA, in the following areas:

- (i) Office of Secure Transportation facilities;
- (ii) DOE Central Scrap Management Office;
- (iii) DOE Business Center for Precious Metals Sales and Recovery;
- (iv) DOE Tri-Laboratory Office; and
- (v) Sandia-operated Weapons Evaluation Test Laboratory (WETL) operations.

2.3 Site Specific Support

Site specific support includes management and incentive fee administration, state and local taxes, and direction of a DOE-approved Plant-Directed Research, Development and Demonstration (PDRD) Program that supports science-based manufacturing related to the NNSA weapons mission, and encourages advanced research, development, and demonstration work to enhance the science and technology capabilities and core competencies required to fulfill the mission of nuclear production.

CHAPTER III. Human Resources

1.0 DEFINITIONS

Incumbent Employees are the employees in good standing of B&W Technical Services Pantex, LLC and B&W Technical Services Y-12, LLC under Contracts DE-AC04-00AL66620 and DE-AC05-00OR22800, and the Protective Services subcontract DE-AC55-07NA25750 between G4S Government Solutions, Inc., d/b/a WSI-Oak Ridge and B&W Technical Services Y-12, LLC, respectively as of the effective date of the Contract, and Tritium Operations and select employees of the Savannah River Nuclear Solutions, LLC Contract DE-AC09-08SR22470 as of the date of SRTO option exercise.

Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor upon the beginning of the Base Term at Y-12 and PX and new hires other than Incumbent Employees at SRS who perform Tritium Operations work under this Contract.

2.0 WORKFORCE TRANSITION

The following are requirements the Contractor shall carry out during the Transition Term. After the effective date of the Contract, the Contractor may propose alternate due dates for the deliverables described in 2.1, Staffing Plan, 2.2, Pay & Benefits, 2.3, Incumbent Employees Right of First Refusal, and 2.4, Advance Understanding on Human Resources. The Contracting Officer may approve such changes provided the deliverable dates make transition more effective and efficient for both parties.

2.1 Staffing Plan

No later than 30 calendar days after the effective date of the Contract the Contractor shall provide NNSA its plan for achieving the right workforce size and skills mix and an estimate of the number of employees at each site to whom they expect to make employment offers.

2.2 Pay & Benefits

Consistent with the requirements identified in **3.0 COMPENSATION** and **4.0 BENEFITS** below, the Contractor shall develop and submit for NNSA approval an integrated pay and benefits program to cover non-bargaining unit Incumbent and non-bargaining unit Non-Incumbent Employees at PX & Y12. It is expected that the benefits program will be developed utilizing best practice and market based design concepts to achieve maximum efficiency and lower cost through such features as vendor and benefit plan consolidation. If the SRTO option is exercised, the Contractor shall provide information regarding their plans to incorporate SRTO employees into their integrated pay and benefits program.

2.2.1 No later than 45 calendar days after the effective date of the Contract, the Contractor shall submit for NNSA approval all proposed benefit plans. The submission shall include all plan documents that will describe benefits provided to employees at Y12 and PX including existing plans to which the Contractor becomes a sponsor at the beginning of the Base Term as well as newly proposed plans.

The submission shall also include an “Employee Benefits Value Study” comparing the proposed benefit plans for non-bargaining unit Incumbent Employees and non-bargaining unit Non-Incumbent Employees using the NNSA Consolidated Employee Benefit Value Study methodologies and comparator companies, to be provided by the Contracting Officer, described in 4.1.5 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.

2.2.2 No later than 120 calendar days after the effective date of the Contract, the Contractor shall submit a plan with a timeline for implementing an integrated Compensation system that meets the criteria defined **3.0 COMPENSATION** below.

2.3 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 (provided by the incumbent Contractor) 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 position. Such offer shall be provided to employees as soon as possible, however, no later than no later than **90** calendar days after the effective date of the Contract.

2.4 Advance Understanding on Human Resources

The Contractor shall submit no later than 120 calendar days after the effective date of the Contract a proposed Human Resources Plan. The Plan shall describe the Contractor’s proposed Human Resources policies, programs and related expenses that will have cost implications under the Contract. The plan should provide information showing that these proposed policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce. This document will serve as the starting point for negotiation with which NNSA and the Contractor will reach an advance understanding on Contractor Human Resources costs. The advance understanding enables both the Contractor and the NNSA to determine allocability, allowability and reasonableness of costs prior to incurrence, thereby avoiding (to the maximum extent possible) subsequent disallowance and disputes; provide appropriate and reasonable compensation levels to recruit and retain Contractor employees to meet NNSA mission objectives; and assure prudent expenditure of public funds. The language identified in **3.0 COMPENSATION, 4.0 BENEFITS, 5.0 LABOR RELATIONS, and 6.0 WORKFORCE PLANNING** below will serve as the governing text for development of the advance understanding. The Personnel Appendix will include but is not limited to such topics as compensation, welfare benefits, labor relations, retirement plans, severance schedules, holidays, vacation, etc., or any other human resource costs the Contractor or NNSA deems necessary. It is understood that any advance understanding will be

appended to the Contract as the Personnel Appendix (Section J, Appendix I, Personnel Appendix).

3.0 COMPENSATION

The Contractor shall recruit and retain a highly skilled, motivated, and experienced workforce in a cost effective manner capable of carrying out the technical and other requirements set forth elsewhere in this Statement of Work.

3.1 Total Compensation System

Consistent with the requirement in 2.2, Pay and Benefits, the Contractor shall establish an integrated, 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 including a compensation system Self-Assessment Plan 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 as 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.

3.2 Cash Compensation

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

- 3.2.1** Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the total compensation system.
- 3.2.2** Any proposed major compensation program design changes prior to implementation.
- 3.2.3** An Annual Compensation Increase Plan (CIP). The CIP shall be provided 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) 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 plan year.
 - (B) All pay actions granted under the CIP are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.
 - (C) Specific payroll groups (e.g., exempt, nonexempt, key personnel) 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.

(viii) A discussion of the impact of budget and business constraints on the CIP amount; and

(ix) Discussion of relevant factors other than market average pay (e.g., turnover and offer-to-acceptance statistics, collective bargaining provisions, geographic considerations, total compensation).

3.2.4 The compensation actions for all Key Personnel shall be submitted for approval upon replacement. The top contractor official (i.e., Nuclear Production Contract Plant 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 serve as the maximum allowable salary reimbursement under the Contract. With these compensation actions, the Contractor shall provide supporting justification related to internal and external equity, individual performance and the Application for Contractor Compensation Approval Form (DOE 3220.5).

3.2.5 For any proposed establishment of an Incentive Compensation Plan (variable pay plan/pay-at-risk), documentation shall be provided to the Contracting Officer 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 passover rate, i.e., percent of participants who will not receive an incentive;
- (v) Requirement for an annual summary report on distributions made under an Incentive Compensation Plan; and
- (vi) For any Executive Incentive Plans, a requirement for pay at risk.

3.2.6 Assignments of employees 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.

3.2.7 The Contractor's Total Compensation System (e.g., to be set forth in Section J, Appendix I, Personnel Appendix), shall meet the tests of allowability in FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, be consistently applied, and be acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be approved by the Contracting Officer. Any changes to the Total Compensation System shall be submitted to the Contracting Officer 60 days prior to implementation. Changes that impact current or future costs shall be approved by the Contracting Officer prior to implementation.

3.2.8 As a part of the Human Resources Plan the Contractor shall submit a severance plan. The severance plan must include the notification period, pay-in-lieu 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 is not payable to an employee under this Contract if the 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.

Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement Contract.

3.3 Reports and Information: Compensation

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

- (i) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure, showing actual against approved amounts, no later than 30 days after Compensation Increase Plan expenditures.
- (ii) Other compensation reports as requested by the Contracting Officer.

4.0 BENEFITS

4.1 Assumption of Existing Pension Plan

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.

- 4.1.1** No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans which will result in additional costs. Justification for new benefit plans and changes to plan design or funding methodology which will increase costs must include cost impact, and the basis of determining cost. The Contractor shall notify the Contracting Officer prior to implementation of benefit plans that are either new or first time for the site, are a significant impact to employees, or which may set a precedent for the DOE/NNSA contractor system.
- 4.1.2** Cost reimbursement for pension and other benefit programs sponsored by the Contractor for non-bargaining and bargaining unit employees will be based on the “Employee Benefits Value Study” and an “Employee Benefits Cost Survey Comparison” as described in 4.1.5.1 and 4.1.5.2 below.
- 4.1.3** The Contractor shall notify the Contracting Officer prior to terminating any benefit plan during the term of the Contract.
- 4.1.4** Service Credit for cost reimbursement for employee benefits to include PRB eligibility will be determined in accordance with NNSA Supplemental Directive NA SD O 350.1, M&O Contractor Service Credit Recognition.
- 4.1.5** Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall participate in and/or submit the studies required in paragraphs 4.1.5.1 and 4.1.5.2 below. The studies shall be used by the Contractor in calculating the cost of 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 to a pension or other benefit plan that will increase costs.
 - 4.1.5.1** The NNSA Consolidated Employee Benefits Value Study for non-bargaining unit employees, must be completed every two years or as directed by the Contracting Officer. The Contractor will utilize the comparator companies previously utilized in the last NNSA 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 and capital accumulation plans and death, disability, health, and paid time off welfare benefit programs in the Value Study. To the extent that the value study

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.

An Employee Benefits Value Study for bargaining unit employees must be completed 6 months prior to the end of the bargaining unit Contract. The Benefits Value Study must include at least 15 comparator companies approved by the Contracting Officer. The Value Study must include major non-statutory benefit plans offered by the Contractor, including qualified DB & DC retirement and capital accumulation plans and death, disability, health, and paid time off welfare benefit programs. To the extent that the value study does not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources.

4.1.5.2 An Employee Benefits Cost Survey Comparison for non-bargaining and bargaining unit employees, must be completed annually. The cost Survey must utilize a professionally recognized measure approved by the Contracting Officer that analyzes the Contractor's employee benefits cost for employees on a per capita basis per full time equivalent employee and compares it with appropriate comparator data.

4.1.5.3 When the weighted average net benefit value for all employees (including different tiers of benefits or groups of employees) exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer no later than 60 days after the Benefit Value Study is conducted.

4.1.5.4 When the average total benefit per capita cost exceeds the comparator group by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan within 60 days after the Benefits Cost Survey is conducted, to achieve conformance with the comparator group.

4.1.5.5 Within two years of Contracting Officer approval of the Contractor's corrective action plan for non-bargaining employees, or upon the next collective bargaining period for bargaining unit employees, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.

4.1.6 In the event the NNSA determines it is appropriate to spin off any portion of any defined benefit plan in order to address benefits for employees who used to perform work under the former M&O Contract, but who subsequently perform work under a different NNSA contract, the Contractor shall negotiate in good

faith regarding the disposition of pension plan assets and liabilities consistent with direction from the Contracting Officer.

4.2 Reports and Information: Benefits

The Contractor shall provide to the Contracting Officer:

- (i) Annually, the Report of Contractor Expenditures for Employee Supplemental Compensation (DOE F 3220.8); and
- (ii) Quarterly, input requested benefits data into DOE's iBenefits pension and benefits management system.

4.3 Workers' Compensation

4.3.1 The Contractor, unless workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new workers' compensation policies and all initial proposals for self-insurance. Additionally, Contractors shall provide copies to the Contracting Officer of all renewal policies for workers' compensation.

4.3.2 Workers' compensation loss income benefit payments when supplemented by other programs (such as salary continuation, short term disability) are to be administered so that the total benefit payments from all sources shall not exceed 100% of employee's net pay.

4.4 Pension Plans

4.4.1 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 (ERISA) as amended and any other applicable laws.

4.4.2 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 a DOE cost-reimbursement Contract. Each Contractor pension plan shall be submitted to an annual, full-scope audit by an outside independent organization and the resulting report, submitted to NNSA, must provide the accounting details specified in ERISA Sections 103 and 104.

4.4.3 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 a minimum contribution payment is required to avoid benefit restrictions to Plan participants, the Contractor shall notify the Contracting Officer at least sixty (60) days prior to the date the payment is 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. Timing of a Contractor's contributions to a plan must enable a plan's actuary to certify that a plan is adequately funded at the beginning of a plan year.

4.4.4 At least 60 days prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required in 4.4.4.1 and 4.4.4.2 below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

4.4.4.1 For proposed changes to DB and DC plans that are not mandated by law 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 new amendment indicated in redline/strikeout;
- (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 legal counsel for purposes of compliance with all legal requirements applicable to private sector DB pension plans;
- (iv) The Summary Plan Description; and
- (v) Any such additional information as requested by the Contracting Officer.

When changes to DB and/or DC plans are required by law, 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 30 days before the new amendment is to take effect.

4.4.4.2 The Contractor shall obtain the advance written approval of the Contracting Officer for any required pension plan changes that are not required by law and which may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide the Contracting Officer 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.

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

- 4.4.5.1 No further benefits for service shall accrue;
- 4.4.5.2 The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the NNSA Contract;
- 4.4.5.3 The Contractor shall base its DB pension liabilities attributable to NNSA Contract work on the market value of annuities or dispose of such liabilities through a competitive purchase of annuities. The Contractor, as pension plan sponsor, must adhere to Department of Labor guidance set forth at 29 CFR 2509.95-1 regarding selection of an annuity provider for the purpose of benefit distributions from a DB pension plan;
- 4.4.5.4 Assets shall be determined using the “accrual-basis market value” on the date of termination of operations; and
- 4.4.5.5 NNSA and the Contractor shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all NNSA assets assigned to a spun-off or terminating plan shall be placed in a 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.”

4.4.6 Terminating Plans.

- 4.4.6.1 NNSA Contractors shall not terminate any pension plan (commingled or site specific) without notifying the Department at least 60 days prior to the scheduled date of plan termination.
- 4.4.6.2 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. 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. The Contractor shall apply the assumptions and termination procedures of the Pension Benefit Guaranty Corporation.
- 4.4.6.3 Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.

- 4.4.6.4 If ERISA or IRC rules prevent a full transfer of excess NNSA reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to NNSA according to a schedule of payments to be negotiated by the parties.
- 4.4.6.5 On the same day as the Contractor notifies the IRS of the plan termination, all NNSA assets will be placed in a high-yield, fixed-income portfolio until full disposition of the terminating plan's liabilities. The portfolio shall be rated no lower than Standard & Poor's "AA."
- 4.4.6.6 NNSA liability to a commingled pension plan shall not exceed that portion which corresponds to participants' service accrued for their work under an NNSA Contract. The NNSA shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- 4.4.6.7 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 which accrue on that amount because of a delay in the payment to NNSA. Such amount and such earnings shall be subject to NNSA audit. To affect the purposes of this paragraph, NNSA and the Contractor may stipulate to a schedule of payments.

4.4.7 Post Contract Responsibilities for Pension and Other Benefit Plans

- 4.4.7.1 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 assets assigned to a spun-off 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."

4.4.7.2 If this Contract expires or terminates and NNSA has not awarded a Contract to a new Contractor under which the new Contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for purposes of this paragraph), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination elsewhere in this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:

- (i) Subject to paragraph 4.4.7.2(ii) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
- (ii) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable Contract provisions.

4.4.8 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.

4.4.8.1 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.

4.4.8.2 Copies of IRS Forms 5500 with Schedules for each NNSA-funded pension plan, no later than that submitted to the IRS.

4.4.8.3 Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

4.4.8.4 The annual Pension Management Plan as described below (4.5 Pension Management Plan) by January 30 of each year.

4.5 Pension Management Plan

4.5.1 The Contractor shall submit a plan for management and administration (Pension Management Plan) for each defined benefit pension plan (Plan) for which the Department has a continuing obligation to reimburse pension contributions that is consistent with the terms of this Contract and which includes projected assets, projected liabilities, and estimated contributions and the prior year's actuarial valuation report annually on January 30.

4.5.2 The Pension Management Plan shall include:

4.5.2.1 The Contractor's best projection of the contributions which it will be legally obligated to make to the Plan(s), beginning with the required contributions for the current fiscal year, based on the latest actuarial valuation, and continuing for the following four fiscal years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the Plan document(s). All contribution calculations should reflect payments made during DOE fiscal years, beginning Oct 1, through September 30, and the next succeeding six fiscal years. Please include a summary of the key actuarial assumptions used to determine the required contribution. All projections must be based upon the most recently available asset information for the Plan. For example, for a Plan with a July 1 valuation date, project the July 1, value of assets for the current year to be used in the calculation from the actual January 1, value of assets from the same year.

4.5.2.2 If the actuarial valuation submitted pursuant to the annual Pension Management Plan update indicates that the sponsor of the Plan must impose benefit restrictions, the Contractor shall provide the following information:

- (i) The type of benefit restriction that will take place;
- (ii) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction;
- (iii) The amount of money that would need to be contributed to the Plan and the timing of such contribution to avoid legally required benefit restrictions; and

- (iv) A recommendation regarding whether the additional money should be contributed to the Plan and the rationale for the recommendation.

4.5.2.3 A detailed discussion of how the Contractor intends to manage the Plan(s) to maximize contribution predictability (i.e. forecasting accuracy) and to contain current and future costs, to include the rationale for selection of all Plan assumptions (i.e., actuarial experience studies) that determine the required contributions and which impact the level and predictability of required contributions. As part of the Contractor's plan to maximize contribution predictability, the Contractor may propose funding strategies other than ERISA minimums for NNSA's consideration and approval. The Contractor shall submit the following for NNSA to consider in deciding on the alternate funding strategy:

- (i) Identify whether the current year additional amount can be absorbed within the current operating budget;
- (ii) Discuss the integration of Plan's funding strategy and investment strategy taking into consideration the plan's demographic profile, liability duration, and impact of current year funding decisions on future year contribution requirements;
- (iii) Discuss the strategy for achieving fully funded status and protecting against erosion of the Plan's funded status;
- (iv) Discuss the strategy for specifically protecting any pension funding contributions reimbursed in excess of the minimum required contribution against the risk of significant loss; and
- (v) Discuss whether the plan has a prefunding or funding standard carryover balance that could be used to improve the plan's AFTAP without requiring additional contributions. Provide a rationale regarding the recommended use of the available balance(s).

4.5.2.4 An assessment to evaluate the effectiveness of the Contractor's Plan(s) investment management/results. The assessment must include at a minimum: a review and analysis of Plan investment objectives and asset allocations; results of the most recent asset liability study and investment policy review; the strategies employed to achieve the Plan's investment objectives; and the methods used to monitor execution of those strategies and the achievement of the investment objectives. The Contractor shall also identify its plans, if any, for revising any aspect of its Pension Management Plan based on the results of the review.

Within thirty (30) days after the date of the submission, appropriate Contractor representatives will meet with the Contracting Officer and other DOE/NNSA representatives to discuss the Contractor's proposed Pension Management Plan. The Contractor must be prepared to discuss any differences between the prior fiscal year's projected pension

contributions for future fiscal years and the most recent projected pension contributions for future fiscal years and the rationale for any such discrepancies. In addition, discrepancies between the actual contributions made for the most recent fiscal year preceding the meeting and the projected contributions for that fiscal year and the rationale for any such discrepancies, and funding strategies for the Plan will be discussed.

5.0 LABOR RELATIONS

- (i) The Contractor shall comply with the National Labor Relations Act, DEAR Subpart 970.2201, and all applicable Federal and State labor laws.
- (ii) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of determining the allowability of cost associated with the Contractor's economic bargaining objectives, prior to negotiation of any collective bargaining agreement, extension or revision thereto. As part of the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which could increase costs under this Contract or which could involve other items of special interest to the Government. As part of the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer in advance before proposing or agreeing to changes in any pension or other benefit plans which would increase costs.
- (iii) The Contractor shall provide an electronic copy of the bargaining agreement to the Contracting Officer 30 days after formal ratification. The Contractor shall provide the "Report of Settlement" 30 days after formal ratification using the Work Force Information System (WFIS).
- (iv) The Contractor shall notify the Contracting Officer in a timely fashion of labor relations issues that may cause a significant impact to the workforce.
- (v) The Contractor shall immediately advise the Contracting Officer of the following:
 - (A) Possible strike situations or other actions affecting the continuity of operations including work stoppages and picketing;
 - (B) Formal action by the National Labor Relations Board (NLRB) including but not limited to issuance of a complaint against the Contractor. Copies of complaints, settlement agreements, judgments and any other documents issued in connection with Contractor actions with respect to labor practices shall be provided to the Contracting Officer;
 - (C) Recourse to procedures under the Labor-Management Relations Act of 1947 as amended or any other state law;
 - (D) Any grievance scheduled for arbitration under any collective bargaining agreement that has the potential for significant economic or other impact as well as the decision of the arbitrator; and
 - (E) Other significant issues that may involve review by other federal or state agencies.

6.0 WORKFORCE PLANNING

6.1 Workforce Planning - General

The Contractor shall analyze workforce requirements consistent with current and future mission requirements and develop appropriate workforce transition strategies to ensure appropriate skills are available at the right time, in the right number, in the right place. Particular attention shall be paid to current and future critical skills. This analysis shall be available for review upon Contracting Officer request.

6.2 Reductions in Contractor Employment – Workforce Restructuring

6.2.1 Voluntary Separations: In order to minimize the number of involuntary separations and mitigate the impact on affected employees, the Contractor will consider in consultation with the Contracting Officer, 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 for approval by the Contracting Officer prior to implementation regardless of the number of employees involved. No reimbursement of costs associated with VSPs will be allowable if not approved by the Contracting Officer prior to implementation.

6.2.2 Involuntary Reductions in Contractor Employment

6.2.2.1 If the restructuring involves separating between 10-99 employees in a rolling twelve-month period, the Contractor shall notify the Contracting Officer no later than 15 days in advance of the action.

6.2.2.2 For restructuring actions that involve separating between 50-99 employees, the Contractor shall prepare a specific workforce restructuring plan and submit the plan to the Contracting Officer for informational purposes. In addition, the Contractor shall perform a diversity impact analysis and provide a copy of the analysis to the NNSA Site Counsel at the Nuclear Production Site Office for any restructuring actions that involve 50 or more employees within a 12 month period.

If the restructuring may involve the separation of 100 or more employees within a 12-month period, the Contractor shall submit a specific workforce restructuring plan, for approval by the Contracting Officer, to enable compliance with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 at a minimum, no later than 90 days in advance of the date the Contractor needs to begin notification to employees in accordance with the law and its attendant timeframes to effect the separations.

6.2.2.3 All notifications to the NNSA must contain pertinent information such as reasons, costs, dates, and numbers of impacted employees.

6.2.3 Any payment of benefits beyond those already approved in the Contract must be approved by the Administrator, NNSA, through the Contracting Officer.

CHAPTER IV. Uranium Processing Facility (UPF)

1.0 INTRODUCTION

As discussed in Section J, Appendix A, Chapter II, Work Scope Structure, the Contractor is responsible for design and retains Design Authority for the Uranium Processing Facility at Y-12 under CLIN 0001. CLIN 0002 (defined herein) is inclusive of all construction management elements associated with the construction, start-up, and turnover to operations of the facilities and processes for UPF. Applicable requirements discussed in Section J, Appendix A, Chapter I, Objectives, Scope, and Requirements, Chapter II, Work Scope Structure, and Chapter III, Human Resources, also apply to CLIN 0002, and supplemental requirements for CLIN 0002 are contained in this Chapter.

2.0 BACKGROUND

The UPF project is the solution to meeting NNSA's mission need for Enriched Uranium (EU) processing – by consolidating Y-12's EU processing and manufacturing into a modern, high-security facility while eliminating the high cost and risk of maintaining Y-12's aging infrastructure. Existing EU processing equipment and technologies are out-dated and oversized for the current mission. Y-12 facilities face significant deferred maintenance, require intensive routine maintenance, and are subject to escalating operating, utility, and maintenance costs. Worker protection relies on administrative controls and personal protection equipment rather than engineered controls. Replacement of the Y-12 facilities and equipment will be required to sustain operations, incorporate updated technology, and right-size processes.

3.0 GOALS AND OBJECTIVES

The benefits of executing the UPF project include ensuring reliable, long-term, consolidated EU processing capability for the NSE through modern technologies and facilities, an improved security posture, and an improved health and safety environment for workers. The goals and objectives of the UPF project are to:

- (i) Improve the security posture;
- (ii) Replace end-of-life facilities and ensure a reliable EU processing capability to meet the mission of NNSA;
- (iii) Improve responsiveness, agility, and efficiency and reduce operating costs by consolidating and modernizing equipment and operations;
- (iv) Reduce the required size of the Protected Area and reduce the operational cost for security required to meet Graded Security Protection (GSP) guidelines;
- (v) Improve worker protection with an emphasis on incorporating engineered controls; and
- (vi) Comply with modern codes, standards, and Environmental Safety and Health (ES&H) practices.

4.0 PROJECT DESCRIPTION

The Contractor shall be responsible for performance of all UPF project activities including the following:

- (i) Completing a detailed cost estimate and schedule to establish a baseline for scope associated with long-lead procurements and site preparations;
- (ii) Obtaining approval of the full project performance baseline as well as start of building construction;
- (iii) Constructing the main building shell;
- (iv) Constructing the Process Support Facility and the Administrative Building;
- (v) Procuring and installing major electrical components, major heating, ventilation and air conditioning equipment, communications, fire system monitoring, diesel generators, and fire water storage and distribution;
- (vi) Procuring and installing process services equipment for delivery of industrial gases, chemicals, cooling water, etc.;
- (vii) Constructing/installing electrical substation;
- (viii) Installing security systems;
- (ix) Installing information technology systems;
- (x) Completing Perimeter Intrusion Detection and Alarm System (PIDAS) and portal work;
- (xi) Installing long-lead items as received to support the construction schedule;
- (xii) Procuring the balance of process equipment and install the remaining capabilities for full functionality of UPF;
- (xiii) Constructing the Highly Enriched Uranium Materials Facility (HEUMF) Connector; and
- (xiv) Completing final site work.

The facility is being designed for a 50-year life cycle, and the design will include engineering improvements that will enable the operating staff to be reduced from the staffing levels for the existing plant. This reduction reflects a decrease in personnel for some disciplines with an increase in others.

Designing engineered controls into the facility equipment and processes will reduce or eliminate the numerous administrative controls relied on today. Consideration of long-term maintenance and reliability is an important aspect of facility and equipment design and selection to ensure a reliable, cost-efficient UPF while providing a safe workplace. Equipment will be selected with appropriate assessment of life cycle cost factors. Automation and/or remote operation is being considered where hazardous conditions, human factors, and/or efficiency of operations warrant.

The core EU processing capabilities that will be transitioned from the aging Y-12 infrastructure to the new UPF include, but are not limited to:

- (i) Assembly of weapon subassemblies from refurbished and new components;
- (ii) Disassembly of returned subassemblies with recycle, refurbishment, reuse (as required), and disposal of components;
- (iii) Quality Evaluation (QE) of selected subassemblies and components to assess future reliability of weapons systems in the stockpile;
- (iv) EU Metalworking (e.g., casting, machining);
- (v) Chemical Processing, including conversion of scrap and salvage EU to metal and other compounds;
- (vi) Product Certification (e.g., dimensional inspection, physical testing, radiography); and
- (vii) Analytical Services, including laboratory analysis and non-destructive assay.

5.0 PROJECT GOALS AND MILESTONES

Project management of UPF includes the construction management, title III services (Architect Engineer (AE) support services covered under CLIN 0001), test and check out, integration with ongoing operations, and transition to operations, which shall be performed in accordance with the UPF Project Management Plan (Section J, Appendix G). The project management objectives provided in Section J, Appendix A, Chapter II, 1.1.3(iii), paragraphs (A) through (D) applies to the UPF project as well as the following:

- (i) Executing the project consistent with a comprehensive plan and the UPF Program Requirement Document for managing EU production capabilities at Y-12 enabling NNSA to meet its mission;
- (ii) Completing design and construction of the UPF in accordance with the current design information provided by the Government and the approved design for the final update of the UPF Project Management Plan, within the approved total project cost range and the funding profile;
- (iii) Installing and starting the EU process capabilities in the UPF, with priority given to moving EU operations from building 9212, the existing uranium processing facility;

- (iv) Completing UPF building construction by the end of FY2020, initial functionality for capabilities in building 9212 by the end of FY2021, installation of equipment by the end of FY2024, and full functional UPF capability by the end of FY2026;
- (v) Managing under project management best business practices to include, but not limited to configuration control such that changes in the scope, cost, and schedule basis are documented;
- (vi) Providing regular updates of estimates at completion will be provided to NNSA;
- (vii) Collaborating on business practices with the Chemical Metallurgical Radiological Replacement facility at the Los Alamos National Laboratory to maximize efficiencies; and,
- (viii) Documenting project management requirements in accordance with DOE O 413.3B entitled "Program and Project Management for the Acquisition of Capital Assets".

6.0 COST REQUIREMENTS

Manage the UPF activities defined above, as a severable cost center within the M&O contract structure, to include project management, budget, real property, and personnel resources. This includes support to be obtained from organizations within the M&O contract or from other contractors.

SECTION J

APPENDIX B

PERFORMANCE EVALUATION PLAN

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[Note: To be inserted by the Contracting Officer after contract award.]

SECTION J

APPENDIX C

TRANSITION PLAN

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

Guidance: In accordance with Section F, F-7(a), Deliverables During Transition, the Contractor shall submit a Transition Plan that describes the process, details, and schedule for providing an orderly transition during the Contract's Transition Term stated in Section F, F-2, Period of Performance, in accordance with the guidance herein for all elements of Section J, Appendix A, Statement of Work. The plan shall only consider the transition of the Y-12 National Security Complex and the Pantex Plant. If the Savannah River Tritium Operations option is subsequently exercised, a separate tailored transition plan will be required. The objectives of the Transition Plan are: to minimize the impacts on continuity of operations; maintain communication with staff and affected communities; identify key issues; and 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 of all transition activities at both sites. The Contractor shall develop a resource-loaded project management schedule using software that is capable of integrating with the incumbents' and the DOE/NNSA software. Milestones and measurable commitments will be included in the schedule. The Contractor will regularly report status to the DOE/NNSA at periodic meetings and through regular written reports. The Contractor may also be called upon to periodically brief the 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 will be provided in accordance with Section F, F-7(b). The Contractor shall use its Payments-Cleared Financing Arrangement for reimbursement of Transition Plan costs. 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 Y-12 National Security Complex and the Pantex Plant. Upon receipt of written notification from the Contracting Officer that the Transition activities are considered complete, the Contractor shall assume full responsibility for the Nuclear Production Plants, effective 12:01 A.M. at the start of the Contract's Base Term.

SECTION J

APPENDIX D

MERGER TRANSFORMATION PLAN

TABLE OF CONTENTS

[Note: To be inserted by the Contracting Officer after contract award.]

SECTION J

APPENDIX E

PERFORMANCE GUARANTEE AGREEMENT(S)

SECTION L
ATTACHMENT A
PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-SOL-0001458 for the management and operation of the Y-12 National Security Complex and Pantex Plant (the "Contract") dated _____, by and between the Government and Consolidated Nuclear Security, LLC (Contractor), the undersigned, Bechtel National, Inc. (Guarantor), a corporation incorporated in the State of Nevada with its principal place of business at 5275 Westview Drive, Frederick, MD 21703 hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of

which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

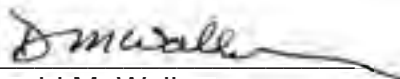
Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

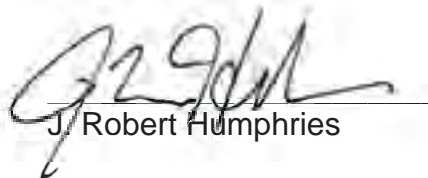
In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on 1-27-2012.

Bechtel National, Inc.



David M. Walker
President

I, J. Robert Humphries, Assistant Secretary, hereby attest that David M. Walker, who signed this certificate on behalf of Bechtel National, Inc., was then President of said Corporation.



J. Robert Humphries





Kenneth R. Possenriede
Vice President and Treasurer

05 March 2012

National Nuclear Security Administration
Department of Energy
Albuquerque, NM
USA

Guaranty No. 2012-511

Gentlemen:

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract Number _____ for the management and operation of the Y-12 National Security Complex and Pantex Plant (the "Contract") dated _____, by and between the Government and Consolidated Nuclear Security LLC (Contractor), the undersigned, Lockheed Martin Services, Inc. (Guarantor), a corporation incorporated in the State of Delaware with its principal place of business at 2339 Route 70 West, Floor 3 West Cherry Hill, NJ 08002 hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the



Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.



In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on 05 March 2012.

LOCKHEED MARTIN SERVICES, INC.



By: *Kenneth R. Possenriede*

Name: Kenneth R. Possenriede
Title: Vice President and Treasurer

Address for notice:
6801 Rockledge Drive
Bethesda, MD 20817
U.S.A.
Attention: Treasurer
Facsimile: 301-897-6929
Telephone: 301-897-6000

Kenneth R. Possenriede is the duly appointed, qualified and acting Vice President and Treasurer of Lockheed Martin Services, Inc. as of the date of this signature and that the signature set forth above is his true and correct signature.

WITNESS my hand and the seal of Lockheed Martin Services, Inc. on this 5th day of March 2012.

Maritza Cordero

Name: Maritza Cordero
Title: Assistant Secretary

(SEAL)



**SECTION L
ATTACHMENT A
PERFORMANCE GUARANTEE AGREEMENT**

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-SOL-0001458 for the management and operation of the Y-12 National Security Complex and Pantex Plant (the "Contract") dated _____, by and between the Government and Consolidated Nuclear Security, LLC (Contractor), the undersigned, ATK Launch Systems Inc. (Guarantor), a corporation incorporated in the State of Delaware with its principal place of business at 5000 S 8400 W, Magna, Utah 84044 hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as

aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

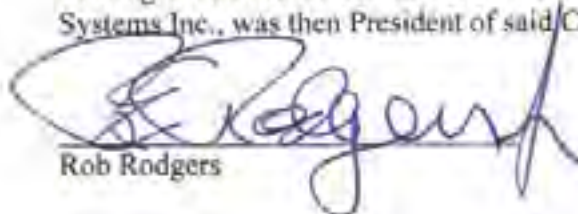
In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer on 3/7/12.

ATK Launch Systems Inc.



Blake Larson
President

I, Rob Rodgers, Vice President of Finance of ATK Launch Systems Inc., hereby attest that Blake Larson, who signed this certificate on behalf of ATK Launch Systems Inc., was then President of said Corporation



Rob Rodgers

[Note: Pursuant to the ATK Launch Systems Inc. bylaws, ATK Launch Systems Inc. does NOT have an authorized corporate seal]

SECTION L
ATTACHMENT A
PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-SOL-0001458 for the management and operation of the Y-12 National Security Complex and Pantex Plant (the "Contract") dated _____, by and between the Government and Consolidated Nuclear Security, LLC (Contractor), the undersigned, SOC LLC, (Guarantor), a limited liability company organized in the State of Delaware with its principal place of business at 15002 Northridge Drive, Chantilly, Virginia 20151 hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor

affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.


Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on August 28, 2012.

SOC LLC


John DiMarco
President, SOC LLC.



SECTION J

APPENDIX F

WORK BREAKDOWN STRUCTURE

The Department of Energy, National Nuclear Security Administration (DOE/NNSA), manages a large and diverse portfolio of activities across the Nuclear Security Enterprise (NSE). To help facilitate and integrate the management of this portfolio, the Program Offices utilize an Work Breakdown Structure (WBS) comprised of all Programs' WBS elements. The WBS provides a consistent framework for planning, programming, budgeting, and evaluation (PPBE) of work required to execute their mission. The WBS includes work planning, scheduling, cost estimating, executing work, measuring performance, and reporting the status of work performed. It is expected that the WBS will be used in all Programmatic processes and Contractor support will be required to support those initiatives.

The WBS will be a tool used to define and group discrete work elements (or tasks) in a way that helps organize and define the total work scope of a Program. By grouping work into discrete, manageable elements, the WBS will help to organize and define the total Programs work scope across the NSE. The WBS element may be a product, service, or a combination of products and services. The WBS also provides the necessary framework for scheduling, cost estimating, and controlling a Program's work. As a dynamic tool the WBS, will be revised and updated annually or as required. The WBS is a tool that can be used by NNSA programs to:

- Provide a common framework for defining, managing, and reporting work throughout the PPBE process;
- Account for all work performed by an Program across the NSE;
- Enable program managers to better understand, plan and manage programs and projects;
- Provide greater transparency into how the Program is allocating and spending funds; and
- Establish work definitions to meet current and future cost estimating, scheduling, and performance measurement of Program activities.

SECTION J

APPENDIX G

URANIUM PROCESSING FACILITY (UPF)

PROJECT MANAGEMENT PLAN

[Note: To be inserted by the Contracting Officer after contract award.]

SECTION J

APPENDIX H

INTERFACE MANAGEMENT PLAN (IMP)

[Note: To be inserted by the Contracting Officer after contract award.]

SECTION J

APPENDIX I

PERSONNEL APPENDIX

[Note: To be inserted by the Contracting Officer after contract award.]

SECTION J

APPENDIX J

KEY PERSONNEL

[Note: To be inserted by the Contracting Officer after contract award.]

SECTION J

APPENDIX K

SMALL BUSINESS SUBCONTRACTING PLAN

Small Business Subcontracting Plan

FAR 19.708(b) prescribes the use of the Contract's Section I Clause entitled "FAR 52.219-9, Small Business Subcontracting Plan." The following is a suggested model for use when formulating such subcontracting plan. While this model plan has been designed to be consistent with FAR 52.219-9, other formats of a subcontracting plan may be acceptable. However, failure to include the essential information as exemplified in this model may cause a delay in plan review and approval. The use of this model is not intended to waive other requirements that may be applicable under the Contract's Section I Clause entitled "FAR 52.219-9, Small Business Subcontracting Plan." "Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the Contract or subcontract.

Contractor	<u>Consolidated Nuclear Security, LLC</u>
Address	<u>5275 Westview Drive, Frederick, MD 21703-8306</u>
Solicitation Number	<u>DE-SOL-0001458</u>
Item/Service	<u>Management and Operation of the Y-12 National Security Complex and Pantex Plant and associated activities</u>
Amount of Contract for Fiscal Year 2013	<u>Estimated \$1,300,000,000</u>
Period of Contract Performance	<u>FY12-FY22</u>

Type of Plan (Check One)

- Individual Plan (All elements developed specifically for this Contract and applicable for the full term of this Contract.)
- Master Plan (Goals developed for this Contract; all other elements standard; must be renewed every three years.) (See FAR 52.219-9(f)(1)-(3)).
- Commercial Plan (Contractor sells large quantities of off-the-shelf commercial items to many Government agencies. Plans/goals are negotiated by a lead agency on a company-wide basis rather than for individual Contracts. Plan effective only during the year for which it is approved. The Contractor must provide a copy of the lead agency approval). (See FAR 19.704(d) and 52.219-9(g)).

I. Goals

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. Small business subcontracting goals for the consolidated contract should reflect a positive impact on local geographic areas affected by the consolidation. Except for the initial plan submitted with the proposal, this plan and accomplishments will be submitted through the eSRS System.

This submittal shall include goals for Small Business concern (SB), Veteran-owned Small Business concern (VOSB), Service-disabled Veteran-owned Small Business concern (SDVOSB), HUBZone Small Business concern (HubSB), Small Disadvantaged Business

concern (SDB), and Women-owned Small Business concern (WOSB), collectively referred to as “small business concerns”. The goals will be negotiated once each fiscal year and will be set forth by letter as agreed to by the Contractor and Contracting Officer.

The proposed goals shall be based upon the estimated budget and commercial purchases, including those for Large Business concerns (LB), which will be derived from the current fiscal year budget. Goals may be changed within the first six months of each fiscal year by agreement between the Contracting Officer and the Contractor if there is a cancellation or an addition of program or project funding. Goals for the utilization of SB, VOSB, SDVOSB, HubSB, SDB, and WOSB subcontractors shall be submitted as follows unless otherwise required by the Contracting Officer.

The goals shall be expressed in both dollars and percentages for LB, SB, VOSB, SDVOSB, HubSB, SDB, and WOSB.

A. The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) are applicable to the Contract period Year One.

1. The total estimated dollar value of all planned subcontracting (to all types of business concerns) under this Contract is \$ 400,000,000 (100%).

a. LB Concerns. Total estimated dollar value and percent of planned subcontracting with large businesses (all business concerns classified as “other than small”) (% of 1. above): \$ 140,000,000 and 35 %.

b. SB Concerns. Total estimated dollar value and percent of planned subcontracting with small businesses (include SB, VOSB, SDVOSB, HubSB, SDB, and WOSB concerns) (% of 1. above): \$ 260,000,000 and 65 %.

c. VOSB Concerns. Total estimated dollar value and percent of planned subcontracting with veteran-owned small businesses (% of 1. above): \$ 16,000,000 and 4 %. This amount is included in the amount shown under A.1.b, above, as a subset.

d. SDVOSB Concerns. Total estimated dollar value and percent of planned subcontracting with service-disabled veteran-owned small businesses (% of 1. above): \$ 12,000,000 and 3 %. This amount is included in the amount shown under A.1.b, above, as a subset.

e. HubSB Concerns. Total estimated dollar value and percent of planned subcontracting with HUBZone small businesses (% of 1. above): \$ 16,000,000 and 4 %. This amount is included in the amount shown under A.1.b, above, as a subset.

f. SDB Concerns. Total estimated dollar value and percent of planned subcontracting with small disadvantaged businesses (% of 1. above): \$ 40,000,000 and 10 %. This amount is included in the amount shown under A.1.b, above, as a subset.

g. WOSB Concerns. Total estimated dollar value and percent of planned subcontracting with small women-owned businesses (% of 1. above): \$ 40,000,000 and 10 %. This amount is included in the amount shown under A.1.b, above, as a subset.

B. A description of all the types of products and/or services that will be acquired under this Contract is necessary to determine how the subcontracted dollars are to be spent.

1. The following principal products and/or services will be subcontracted under this Contract, and the types of businesses supplying them are as follows:

Subcontracted Product/Service	Business Size							Subcontract %
	Other	SB	SDB	WOSB	HubSB	VOSB	SDVOSB	
A&E	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>			2.0
Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10.0
Consultants	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				0.05
Equipment Maintenance/ Repair/ Calibration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	0.5
General Commodities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.0
General Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	30.0
Professional Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	35.0
Research and Development	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	0.5
Software Maintenance and Licensing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2.0
Training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	0.1

2. Include a description of the method used to develop the subcontracting goals for SB, VOSB, SDVOSB, HubSB, SDB, and WOSB concerns; i.e., explain the method and state the quantitative basis (in dollars) used to establish the percentage goals; how the areas to be subcontracted to SB, VOSB, SDVOSB, HubSB, SDB, and WOSB concerns were determined; and how the capabilities of SB, VOSB, SDVOSB, HubSB, SDB, and WOSB were determined. Include any source lists used in the determination process.

To establish goals and commitments, we gathered available CNS information, forecasted probable acquisition needs, and analyzed project estimates. We used procurement historical data and experience to determine potential requirements and contingencies. Our subcontracting goals are both realistic and attainable. We will continually identify and review potential sources of supplies and services including, but not limited to, the following:

- a) Government Central Contractor Registration (CCR) Dynamic Small Business Search database (formerly PRO-Net)
 - b) State and regional Small Business Administration (SBA) resources
 - c) National Minority Purchasing Council Vendor Information Service
 - d) Research and Information Division of the Minority Business Development Agency in the Department of Commerce
 - e) Trade associations for SB, VOSB, SDVOSB, HubSB, SDB, and WOSB concerns
 - f) Sponsorship of and/or participation in various local, regional, and national SB trade fairs and conferences
 - g) Membership in and coordination and cooperation with SB organizations, economic development organizations, and commercial and government organizations at the local, state, and national levels
3. Indirect cost have _____ have not X been included in the dollar and percentage subcontracting goals stated above. (Check one)
 4. If indirect costs have been included, explain the method used to determine the proportionate share of such costs to be allocated as subcontracts to SB, VOSB, SDVOSB, HubSB, SDB, and WOSB concerns.

- ◆ Coordinating contractors' activities prior to and during federal agency compliance reviews
- ◆ Mentoring SBs currently under subcontract and enhancing their ability to provide timely, cost-effective, and quality services
- ◆ Facilitating contact between SB suppliers and respective procurement and technical/program personnel
- ◆ Advising and training project management personnel on the purposes of the Small Business Subcontracting Plan and fostering their support of the plan
- ◆ Attending SB training and monitoring program changes to ensure compliance at CNS
- ◆ Reviewing, revising, and amending applicable procedures and instructions
- ◆ Verifying that subcontracts contain the flowdown clauses pertaining to SB concerns, when required, and maintaining the policies and procedures required by the prime contract
- ◆ Reviewing and approving small business subcontracting plans submitted by large businesses, where applicable
- ◆ Verifying that lower-tier large business subcontractors submit small business subcontracting plans (when applicable) and the required semi-annual and annual subcontracting reports, and verifying compliance
- ◆ Establishing and maintaining contacts and communication with our parent organizations and networking with other SB program advocates within these organizations to support, implement, or enhance the CNS SB program
- ◆ Maintaining good working relationships with SBA representatives to obtain assistance and coordination in finding capable SBs
- ◆ Maintaining a close working relationship with NNSA to ensure that our project objectives and activities are consistent with NNSA programs
- ◆ Submitting monthly progress reports to NNSA reporting on small business utilization

III. Equitable Opportunities and Outreach Efforts

Describe efforts the offeror will make to ensure that SB, VOSB, SDVOSB, HubSB, SDB, and WOSB concerns will have an equitable opportunity to compete for and secure subcontracts. These efforts may include, but are not limited to, the following activities:

A. CNS outreach efforts to obtain sources:

- ◆ Provide a full-time onsite small business program manager who will serve as a liaison among the SB community, internal acquisition personnel, and the client
- ◆ Plan solicitations (including time for preparation and development of SOW, quantities, specifications, and delivery schedules) to facilitate SB participation in subcontracting opportunities and solicitation, offer, and proposal activities
- ◆ Establish and maintain contacts with SB trade associations and business development organizations
- ◆ Attend SB, VOSB, SDVOSB, HubSB, SDB, and WOSB business procurement conferences and trade fairs
- ◆ Conduct external workshops, seminars, and training programs to ensure SBs are familiar with the requirements for doing business at CNS
- ◆ Maintain an elective outreach program by sponsoring and attending regional procurement conferences, trade fairs, and other functions to locate additional qualified sources
- ◆ Implement an ongoing "in-reach" program that provides SBs access and exposure to key project planners and managers

- ◆ Request sources from the SBA commercial market representative and access the CCR Dynamic Small Business search database when needed
- ◆ Utilize newspapers and magazine ads to encourage small business participation
- ◆ Develop a comprehensive source list of SB on-site service providers that includes past performance and is easily accessible and useful to acquisition personnel
- ◆ Select and qualify SB concerns to perform specific scopes of work
- ◆ Structure the program to help develop the capabilities and quality of services provided by SB suppliers and subcontractors under contract
- ◆ Use book references, catalogs, source lists, or other reference material to identify SB, VOSB, SDVOSB, HubSB, SDB, and WOSB sources before the acquisitions are placed

B. CNS's internal efforts to guide and encourage purchasing personnel:

- ◆ Conduct internal workshops, seminars, and training programs to ensure that internal customers and acquisition personnel are acquainted with the Small Business Subcontracting Plan, our policies, and prime contract requirements
- ◆ Establish, maintain, and use SB, VOSB, SDVOSB, HubSB, SDB, and WOSB source lists, guides, and other data for soliciting subcontracts
- ◆ Monitor activities to evaluate compliance with the subcontracting plan
- ◆ Issue letter from the President and General Manager to show support for the SB program and to encourage the use of small businesses
- ◆ Establish and maintain CNS's Small Business Policy

IV. Subcontracting Plan Flowdown

The Contractor agrees to include the Contract's Section I Clause entitled "FAR 52.219-8, Utilization of Small Business Concerns", in all subcontracts that offer further subcontracting opportunities. All subcontractors, except small business concerns, which receive subcontracts in excess of \$650,000 (\$1,500,000 for construction) must adopt and comply with a plan similar to the plan required by FAR 52.219-9, Small Business Subcontracting Plan, (FAR 19.704). The prime Contractor cannot alter this requirement.

V. Reports and Surveys

The Contractor gives assurance of:

- A. Cooperation in any studies or surveys that may be required by the Contracting agency, or the U.S. Small Business Administration (SBA).
- B. Submission of periodic reports, which show compliance with the subcontracting plan.
- C. The Contractor shall submit the Individual Subcontracting Report (ISR) and Summary Subcontract Report (SSR) using the Government's Electronic Subcontract Reporting Systems (eSRS). The Contractor shall submit the ISRs and SSRs electronically to a single, Government wide system, which can be accessed at the following website: www.esrs.gov. The eSRS is a single reporting tool for all subcontracting plan accomplishments, will streamline the reporting process, and provide the Government with immediate access to the Contractor's subcontracting data. The Contractor shall be responsible for inputting accurate and complete reports into the eSRS. Contractor reporting of ISR and SSR accomplishments using the eSRS will commence upon receipt of written notification from the Contracting Officer's Representative.

- D. Ensuring that large business subcontractors with subcontracting plans agree to submit ISRs and SSRs as determined necessary by the Contracting Officer to comply with DOE/NNSA internal procedures/practices.

Reporting Period	Report Due	Due Date
October 1–March 31	ISR	April 30
April 1–September 30	ISR	October 30
October 1–September 30	SSR	October 30

Submittals: Except for the initial plan submitted with the proposal, this plan and accomplishments will be submitted through the eSRS in accordance with FAR 19.704, FAR clause 52.219-9, and clause H-5 of the RFP.

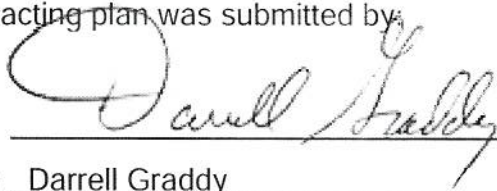
VI. Records and Procedures

The following is a recitation of the types of records and procedures the Contractor will maintain to demonstrate compliance with the requirements and goals in the subcontracting plan. These records will include, but are not limited to the following:

- A. If the Prime Contractor is not using CCR as its source for SB, VOSB, SDVOSB, HubSB, SDB, and WOSB concerns, list the names of guides and other data identifying such vendors;
- B. Organizations contacted in an attempt to locate SB, VOSB, SDVOSB, HubSB, SDB, and WOSB sources;
- C. On a Contract-by-Contract basis, records on each subcontract solicitation resulting in an award of more than \$150,000 indicating whether SB, VOSB, SDVOSB, SDB, and WOSB concerns were solicited, and if not, why not; and if applicable, the reason that the award was not made to a small business concern;
- D. Records to support other outreach efforts, e.g., contacts with minority and small business trade associations, attendance at small and minority business procurement conferences and trade fairs;
- E. Records to support internal guidance and encouragement provided to buyers through (1) workshops, seminars, training programs, incentive awards; and (2) monitoring of activities subcontract award data including the name, address, and business size of each subcontractor (this item is not required on a Contract-by-Contract basis for company or division-wide commercial plans);
- F. On a Contract-by-Contract basis, records to support subcontract award data including the name, address, and the business size of each subcontractor (this item is not required on a Contract-by-Contract basis for company or division-wide commercial plans); and
- G. Additional Records

This subcontracting plan was submitted by:

Signed:




Typed Name: Darrell Graddy

Title: Mission Support Manager

Date: March 9, 2012

Phone No.: TBD

PLAN CONCURRED ON BY:



NNSA Small Business Program Manager

Date: 1-7-13

PLAN ACCEPTED BY:



NNSA Contracting Officer

Date: 1-7-13

SECTION J

APPENDIX L

DIVERSITY PLAN GUIDANCE

In accordance with the Contract's Section I Clause entitled "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 Clause's Diversity elements. The contractor must address the elements below in their Diversity Plan:

Work Force

The Contractor shall have policies or plans to implement Equal Opportunity and Affirmative Action.

Educational Outreach

The Contractor shall have policies or plans that provide Contractor employees an opportunity to improve their employment skills and opportunities and support Historically Black Colleges and Universities, Hispanic Serving Institutions, and Native American Institutions.

Community Involvement and Outreach

The Contractor shall have policies or plans that support Community Involvement and Outreach for equal opportunity activities.

Subcontracting

The Contract contains the Section I Clause entitled "FAR 52.219-9, Small Business Subcontracting Plan, Alternate II" and other small business related clauses.

Economic Development (Including Technology Transfer)

The Contractor shall have policies or plans that relate to small business concerns for the purpose of assisting the economic development of , or transferring technology to such a business.

Prevention Of Profiling Based On Race Or National Origin

The Contractor shall have policies or plans that address the following : (1) avoid profiling based on race or national origin; (2) provide informational or educational programs that ensure managers and employees understand these issues; (3) provide employees with avenues for raising issues or concerns about profiling; (4) use education, training, and community outreach to partner with its work force and with established advocacy groups to recruit, retain, and promote a diverse work force and to review administrative processes that may impact achievement of a

truly diverse work force and work place; and (5) will hold management and leadership responsible and accountable for performance under the diversity plan.

SECTION J

APPENDIX M

INSTITUTIONAL COST REPORTING

Overview - The Office of Finance and Accounting implemented a new institutional cost reporting process in FY 12 that was piloted in FY 11 to replace the Functional Cost reporting process. The pilot effort was undertaken to improve the transparency of contractor institutional and functional costs. The DOE Office of Finance and Accounting requires Contractors to comply with this institutional cost reporting process.

Purpose – The purpose of the DOE/NNSA Institutional Cost Report is to provide transparency of DOE/NNSA Laboratory and Plant M&O costs. The reporting approach was designed with the following guiding principles in mind: (1) balance DOE/NNSA’s requirements for cost information against what the contractor can efficiently provide; (2) use the contractor’s existing accounting and cost classification system to extent possible; and, (3) align with standard government cost classification definitions.

General Guidelines – On a quarterly basis, the Contractor will provide the following information in support of this effort:

- (1) Breakdown of original cost transaction by category
- (2) Breakdown of overhead cost by functional category
- (3) Labor-based allocations
- (4) Overhead-based allocations

Definitions provide for reconciling original costs to STARS cost data. NNSA requires information annually for functional cost charged directly to programs, in addition to those functional costs that are a component of overhead allocations. The contractor shall submit data for labor and overhead based allocations at the level identified in the Funding Program by Subprogram tables in the President’s Budget Request.

The Contractor shall use Excel templates provided and submit the files to the NNSA Field Chief Financial Officer (CFO) and through iPortal. The Contractor shall also provide necessary information to allow DOE/NNSA to have institutional cost reporting. The definitions are provided below.

Original cost category definitions:

Salaries - compensation paid by employer for employee’s services, including: base salary, overtime, performance bonus, executive and incentive compensation. Cost for paid absences is part of base salary and is not treated as part of fringe for purposes of this reporting.

Fringe Benefits – Amounts paid by an employer (net of employee contributions) to provide employees with benefit coverage such as medical and dental insurance, retirement plans including savings plans, legally mandated employment related payment (e.g. social security, unemployment, workers comp, etc.), disability plans and other costs normally included in a fringe pool. Fringe cost is to be broken out by the following subcategories:

- Defined Benefit Pension Plan - Employer cost associated with a retirement plan where the employer makes contributions to a general fund and employee benefits are guaranteed based on a formula using factors such as earnings history and tenure of service¹.
- Defined Contribution Plan - Employer cost associated with retirement plan contributions paid into individual employee accounts. The funding is often in form of a specific percentage of employee contributions to the same account.
- Active Medical - employer cost related to providing medical, dental, vision and the like to its active employees.
- Legally Mandated - Medicare, social security, unemployment, workers comp and like payments required by federal, state or local government to be paid by the employer (include only employer share of the payment)
- Retiree Medical - Employer cost of plans similar to active medical but provided to retirees².
- Other Benefits - any other benefit provide to employees with cost covered by the employer (life insurance, disability, tuition refund, etc.)

Travel - Cost associated with business travel, including: airfare, lodging, meals, transportation / car rental, registration, and other travel related cost included on an employee expense report.

Procurements - Cost of purchasing goods or basic services. Break out cost by the following subcategories:

- Electricity
- Other Utilities (payments made to a utility provider for sewer, water, etc. Excludes phone, which is be reported under Other Procurements)
- Facility Leases
- Other Procurements (includes purchases and leases of equipment, etc)

Subcontracts - Cost incurred under a contract placed primarily to furnish professional services.

Management / Award / Incentive Fee - The base and/or incentive fee that is paid to a contractor and charged as cost to the contract. Such fees are often in whole or in part based on performance under the contract and to include shared savings incentive payments (tied to achieving cost reductions).

Taxes - Includes State and municipal taxes, as well as "payments in lieu of taxes." Does NOT include taxes that are payroll related (e.g. included in the "Fringe" category).

¹ This amount should agree with amount reported in STARS for SGL 68000200, Employer Contributions to Contractor Defined Benefit Pension Plans.

² This amount should agree with amount reported in STARS for SGL 68000300, Employer Contributions to Contractor Post Retirement Defined Benefit Plans Other than Pensions.

Other - Cost of operating an institution not identified in another Cost Element category. Provide details of cost reported in this category if amount is greater than 5% of the Total Original Cost.

Original cost element reporting format and reconciliation to STARS:

Contractors should use the format provided (Exhibit 1) to report original cost transactions and provide a reconciliation to total STARS cost. Provide fiscal year projections based on information generated during your planning process or, if no formal planning based budget exists, use an analysis of prior year trends to establish a projection. Projections may be updated quarterly if better information becomes available.

For reconciliation purposes, the STARS cost amount includes the following SGL balances:

61000000 – Operating Expenses/Program Costs
61009900 – Integrated Contractor Cost Overruns and Undistributed Costs
63300000 – Other Interest Expenses
80100100 – Cost of Work Performed Between DOE Entities
88020100 – Purchases of Capitalized PP&E
88030300 – Purchases of Funded Inventory

Reconciling items are to be categorized as follows:

Variance – Variances associated with the application and recovery of indirect rates vs. actual cost incurred.

Suspense / Undistributed - Undistributed cost relates to the suspense of accounting transactions when it is not practical to identify the ultimate account, or the ultimate account is known but it is not possible to resolve costing issues prior to financial processing deadlines. This balance must be zero at year-end.

Other – Use this line to identify other reconciling items that do not fit in the above categories.

(1) Overhead Cost by Category:

Overhead cost is identified as cost allocated through a cost pool, usually recovered via the application of a rate (e.g. dollar per unit, percentage of cost). An overhead cost can be an allocation to either a final cost objective or an intermediate cost objective (recycled through other cost pools). Examples include: general & administrative, organizational burden, site services, allocation of space cost, etc.

Service Centers (e.g. a cost pool that is allocated using a rate based on type of service) can be allocated to either a direct cost objective or to another cost pool. Service center cost is reported to the extent it is allocated to an overhead pool (in the reporting category of the area receiving the service center charge).

There are two exceptions to this guideline: (1) service center cost that is a key element of operating the institution (e.g. utilities, space cost, etc.) regardless of materiality, and (2) service centers that allocate a major portion of their cost to overhead pools and the amount charged to overhead that represents more than 5% of total indirect cost. In these two cases the service center cost should be treated entirely as an overhead cost for the purposes of this reporting.

Total overhead cost to be reported should be based on the total of all allocations to final cost objectives that are from an overhead cost pool. Recycled overhead (e.g., overhead cost allocated to another overhead pool) will be washed out in the Organizational Management/ Other category. Overhead cost plus direct cost should be reconciled to total cost reported in STARS.

Overhead cost category definitions:

Report cost defined as overhead (per the general guidelines) in the following cost categories based on how it was classified when charged to the overhead pool.

Executive Direction - Includes costs normally associated with the highest level executive management (unless more appropriately associated with management of the other reporting categories). Examples of activities in this account are the Laboratory Director, President and other top level management and immediate staff (Secretary, Special Assistants, etc.), Science Advisors and Deputy Directors, Vice Presidents, etc. This category also includes institutional level strategic planning and the cost of contractor performance assurance. All other management/supervisor activities, including related incidental costs, should be reported in the most appropriate cost category other than Executive Direction.

Human Resources - Includes costs associated with recruiting, salary administration, equal employment opportunity and diversity programs, benefits administration, employee concerns programs, central training development (job specific training development curriculum should be included in the specific category to which it applies), industrial relations, personnel records, employee concerns programs/hotline, educational programs, providing for undergraduate and graduate course work and other personnel related services.

Chief Financial Officer - Includes costs associated with activities of a financial nature, such as general accounting, payroll, travel accounting, funds control, WFO administration, cost accounting, accounts payable, internal control programs (including A-123), financial systems management and non-project / program specific budget coordination and control, indirect rate planning/budgeting, and similar financial related activities.

Internal Audit - Cost of the Internal Audit function, including production / execution of annual audit plan and tracking of correction actions until closed.

Procurement / Acquisitions - Includes costs associated with contracting for goods and services, purchasing, P-Card program, electronic buying (B2B), contract administration, procurement program management and conducting compliance and cost/price analysis activities.

Legal - Includes costs associated with legal counsel support and litigation support. Includes outside legal support and ethics functions. Legal settlements should be classified as Other.

Central Administrative Support – Includes costs associated with food service, printing and graphic support, records management, mail service including postage, subcontracted delivery services, and all library-related activities.

Program / Project Planning & Control – Includes cost associated with support and execution of program / project budgeting, funding requests, baseline control and preparation, master scheduling, project management system administration, and baseline pricing and validation efforts.

Technology Transfer – Includes all cost associated with activities that encourage the further development of promising technologies, dissemination of information to appropriate researchers, organizations, industries, governmental bodies and other institutions; and other activities that assist in affecting the introduction of technologies in the marketplace.

Outreach Activities - Cost associated with media communication, public relations, educational programs, employee outreach program, stakeholder-related outreach, activities contributing to the development of the local/regional economy, and other information or outreach activities such as HBCU (Historically Black Colleges and Universities) and other University-related activities, including stakeholder agencies and Congressional liaison activities.

Business Development / Client Liaison – Cost of activities associated with familiarizing current or possible clients with capabilities offered and/or opportunities to fund work, assessment and planning for potential new business areas, client relationship management and liaison with clients.

Information Management - Cost associated with office automation (desktop software, video conferencing, collaboration, email, access management), network services (groups of computers that communicate with each other, share peripherals and access remote hosts or other networks), telecommunications (communication by electronic submission of impulses over telephone/optic lines including cell phones and voice over internet protocol), application and data hosting (providing central computer facilities, data backup and restore, data processing, and network file and printer services), and general business information system technology not specific to a single system. This category includes systems analysts/programmers; however, specific systems management and administrative costs for various business and scientific systems should be included in their respective cost categories. (Note: Dedicated scientific activities, experiments, analysis, etc., should be included in the appropriate category.)

Environmental – Includes costs associated with the development, implementation and maintenance of Laboratory systems for the compliant management of radioactive and hazardous waste; safe packaging and transportation of hazardous materials (non-waste); effluent controls and monitoring and surveillance; permitting; auditing and evaluation to assure compliance and pollution prevention. These activities, performed on a routine basis, are necessary to maintain compliance with Federal, State and local regulations, as well as applicable DOE Orders and directives. This category does not include third party treatment or disposal costs which are charged direct to a project; it also does not include cleanup activities.

Safety & Health - Costs associated with safety and health programs, such as integrated safety management, emergency preparedness, fire protection, industrial hygiene, industrial safety, occupational medical services, nuclear safety, work smart programs, radiation protection, transportation safety (does not include traffic management functions - include this item in logistics) and related management oversight. These activities, performed on a routine basis, are necessary to maintain compliance with Federal, State, and local regulations, as well as applicable DOE Orders and directives.

Facilities Management & Operations - Cost associated with providing facilities and equipment including facility related services required in performance of the contract. Facilities management activities add to existing property, plant and equipment or extend the life of existing property, plant and equipment. This is distinct from maintenance activities which are reported in separate categories. Maintenance activities sustain existing property, plant and equipment in a usable condition and do not result in increasing capabilities of existing property, plant or equipment. Examples of activities in this category are: facilities remodeling, facilities utilization analysis, modification and upgrade analysis, facilities planning and condition determinations, and lease and rental of real property. Rents and leases of other than real property are included in the appropriate category. Facilities Management includes engineering activities such as HVAC systems, electrical mechanical activities, and repair and maintenance analysis if they extend the current useful life or result in improvements beyond existing capabilities. Major functions also included in this category are the cost of janitorial services, pest control and other services to keep these facilities usable.

Maintenance - Facilities - includes costs to perform activities that sustain or continue existing functionality of real property. These are *not* activities that increase functionality or extend useful life. Costs that increase functionality or that extends useful life are treated in accordance with the capital assets accounting requirements. Maintenance functions include supervision, planning and scheduling, and storage and staging of materials and supplies required for maintenance activities. All phases of maintenance are included: preventive, predictive and corrective maintenance.

Maintenance - General - includes costs to perform activities that sustain or continue existing functionality of all other property and equipment not included in facilities maintenance. These are not activities that increase functionality or extend useful life. Costs that increase functionality or that extend useful life are treated in accordance with the capital assets accounting requirements. Examples of functions included in this category are: maintenance on production and process equipment/machines; maintenance of roads and grounds; maintenance of utilities; calibration, care, repair and storage of equipment used in monitoring, or the actual performance of, maintenance work; and planning and scheduling, and storage and staging of materials and supplies required for maintenance activities.

Utilities - Costs include utility-related engineering, operating utility (heat, electrical,, water,etc.) plants and equipment, contract services for fuel, water treatment chemicals, or support needed to provide electric power, heat, steam, chilled water, potable water, process gases and sanitary waste disposal to support business and research. This element includes all costs associated with contract services in support of utilities, such as fuel, water treatment chemicals and control systems (also include energy management related activities).

Safeguards & Security – Includes all overhead funded costs of a central program associated with the development and implementation of a Safeguards and Security Program to protect nuclear materials, nuclear weapons, classified information and government property from theft, sabotage, espionage, or other acts that may cause adverse impacts on national security or to the safety of the public and employees. Excludes requirements which are funded by the S&S direct program and overhead cost that is embedded in other functional categories such as organizational management. Also excludes the allocable share of direct funded site S&S expenses funded from the tax applied to WFO and reported in the **WFO Funded Safeguards and Security** category. Cost *excludes* Cyber Security which is reported separately. Note that this category will be eliminated in FY12 when all S&S cost must be charged direct.

WFO Funded Safeguards and Security - Includes the allocable share of direct funded site S&S expenses recovered through taxes applied to WFO orders in accordance with FY 2012 budget guidance. This does not include any marginal S&S costs incurred to support the projects of individual WFO customers - these are reported as a direct WFO cost.

Cyber Security – Cost charged to overhead for core Cyber related program activities, including: operation of unclassified networks, establishing and maintaining institutional level controls to prevent unauthorized access; purchasing and maintaining institution wide software for protection against malware, viruses and the like; and routine monitoring of network traffic to identify and isolate threats including cyber analytics. Additionally, based on the manner that the system or process is being charged, costs could include implementing corrective actions, activities conducted by line personnel, and operation of unclassified networks. Excludes overhead cost that is embedded in other functional categories such as organizational management.

Logistics Support - Costs associated with shipping, receiving, transportation (excluding maintenance which is included in the Maintenance category), warehousing, motor pools, office equipment pools, property management and excessing activities; routine inventory write-offs and other logistic support activities.

Quality Assurance - Costs associated with all quality assurance, reliability and regulatory activities associated with nuclear, construction, research, management, and software functions. Included in this category are costs associated with PAAA/DRCP compliance, quality engineering and inspection services, quality assurance audits, occurrence reporting (such as the Occurrence Reporting and Processing System), development of quality program plans, operational readiness review coordination and other activities related to ensuring the quality assurance of site operations and facilities. This does not include costs incurred for weapons stockpile certification.

Management / Award / Incentive Fee – The based and/or incentive fee that is paid to a contractor and charged as cost to the contract. Such fees are often in whole or in part based on performance under the contract and to include shared savings incentive payments (tied to achieving cost reductions).

Taxes - Includes State and municipal taxes, as well as "payments in lieu of taxes." Does NOT include taxes that are payroll related.

LDRD - LDRD portion reflects costs incurred in accordance with DOE Order 413.2A for the purpose of pursuing new and innovative scientific concepts of benefit to the DOE. Excludes allocation of overhead other than organizational burdens. This would include PDRD and SDRD reflecting costs incurred in accordance with the legislative authority for these activities.

IGPP / IGPE - Institutional General Plant Projects (IGPP) / Institutional General Purpose Equipment (IGPE):
IGPP projects are overhead funded minor new construction projects of a general nature, the total cost of which may not exceed the congressionally established line item limit. This category should include all capital construction that is not direct funded. Institutional General Purpose Equipment (IGPE) is overhead funded capital equipment that is required for Laboratory wide needs. IGPE is administrative in nature, i.e. not research equipment, of a general use or institutional nature that benefits multiple cost objectives. Each contractor should report cost following their DOE approved policies for IGPP/IGPE.

Organizational Management / Other – Report all other overhead cost which is *not* identified in another cost category. This includes general organizational management activities (e.g., organizational burden pools). The amount reported in this category washes out recycled overhead (e.g., overhead cost allocated to another overhead pool). Generally the amount reported in this category will be determined by total overhead cost (based on all allocations to final cost objectives that are from an overhead cost pools) less the amounts reported in all other cost categories. The resultant amount should be evaluated for reasonableness by comparing the calculated amount to organizational burden allocated to final cost objectives plus other miscellaneous overhead cost minus recycled overhead (overhead allocated to other overhead pools). Provide details of cost reported in this category if amount is greater than 25% of the Total Overhead Cost.

Overhead cost reporting format and reconciliation to STARS:

Format (Exhibit 2) should be used to report overhead cost by functional category and provide a reconciliation to total STARS cost. Provide fiscal year projections based on information generated during your planning process or, if no formal planning based budget exists, use an analysis of prior year trends to establish a projection. Projections may be updated quarterly if better information becomes available.

Reconciling items are to be categorized as follows:

Direct Cost – Cost charged direct to project (final cost objective), such as Direct Material, Direct, Labor, and Other Direct Cost, and is not the result of the application of an indirect rate. This cost will be net of any lab level service activity reported in total as overheads.

Variance Suspense / Undistributed – Variances associated with the application and recovery of indirect rates vs. actual cost incurred. Undistributed cost relates to the suspense of accounting transactions when it is not practical to identify the ultimate account, or the ultimate account is known but it is not possible to resolve costing issues prior to financial processing deadlines. This account must be zero at year-end.

Other – Use this line to identify other reconciling items that do not fit in the above categories.

(3) Distribution Tables: Labor and Overhead Allocations

To allow DOE the ability to allocate cost by high level program, either in total or by category, contractors will provide two allocations tables (reference Exhibits 3 & 4) reflecting the percentage of total cost to final cost objective summarized by DOE Fin Plan (at the two digit BNR level), DHS, Other DOE, and all other WFO.

- (1) Labor – percentage of total direct labor charged to final cost objectives summarized by DOE, DHS, Other DOE, and WFO. DOE Fin Plan should be reported at the two digit BNR level. Allocations should reflect all amounts categorized as labor (to include salaries and benefits), whether it is based on actual salary rates or average labor rates. Note: This approach ignores labor charged to overhead and service center pools as it cannot easily be tracked back to final cost objectives. This data will be used to allocate benefit costs (e.g., fringe), in total and/or by element. If labor cost is not an accurate representation of how benefit cost is allocated then please use fringe only data or other more accurate representation if it is available
- (2) Overheads – percentage of total overhead cost from all pools defined as overhead as allocated to final cost objectives summarized by DOE Fin Plan (at two digit BNR level), DHS, Other DOE, and WFO. Refer to definition of overhead cost provided Overhead Cost by Category section. Do NOT include service centers in the allocation base for the purpose of allocations. This data will be used to allocate overhead costs, in total and/or by element. If this is not an accurate representation of how overhead cost is allocated then use a more accurate representation if it is available.

SECTION J**APPENDIX N****LIST OF APPLICABLE DIRECTIVES**

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. This List excludes directives that have granted an exemption from the CRD in whole or in part. For those Directives whereby the Contractor has been granted an exemption from the CRD, the Contractor shall comply only with the Operating Requirements identified in Appendix N-1. Directives identified in Appendix N-1 are for reference purposes only, i.e., only those provisions set forth in Appendix N-1 constitute binding Operating Requirements.

Directives that have been reviewed and approved by the Joint Operating Requirements Review Board (JORRB) may be reflected here if local authority has been delegated.

Reference Document	Title
BOP 003.08	Management and Operating Contractor Business Meals and Light Refreshment
BOP 50.002	Value Management Policy
BOP 50.003	Independent Project Review Policy
NA SD O 350.1	Management and Operating Contractor Service Credit Recognition
IBP-202	Record of Assembly and Disassembly
IBP-401	Product Definition Exchange Process
IBP-404	Engineering Authorization System
NA SD M 452.3-1	DEFENSE PROGRAMS BUSINESS REQUIREMENTS AND PROCESSES MANUAL as implemented through the Requirements, Modernization, and Integration (RMI) Explorer Portal, the gateway to content related to the Weapons Acquisition Lifecycle requirements and processes (rmi.sandia.gov, web-based application)
PSLM	Primary Standards Lab Memo
DOE M 440.1-1A	DOE Explosive Safety Manual
DOE M 452.2-1A	Nuclear Explosive Safety Manual
DOE M 452.2-2	Nuclear Explosive Safety Evaluation Processes
DOE O 450.2	Integrated Safety Management
NFPA Codes and Standards	NFPA Codes and Standards
Executive Order 13514	Federal Leadership in Environmental, Energy, and Economic Performance
Executive Order 13423	Strengthening Federal Environmental, Energy, and Transportation Management
Executive Order 13526	Classified National Security Information
Executive Order 13556	Controlled Unclassified Information
Standard Building Code	International Building Code
ASME NQA-1 2008, 2009 Addenda, 1b 2011	Quality Assurance Requirements for Nuclear Facility Application
Baseline Security Procedure for NNSA SAP	Baseline Security Procedure for NNSA SAP
DOE O 544.1	Priorities and Allocations Program

Reference Document	Title
DOE M 140.1-1B	Interface with the Defense Nuclear Facilities Safety Board
DOE M 205.1-3	Telecommunications Security Manual
DOE O 232.2	Occurrence Reporting and Processing of Operations Information
DOE M 435.1-1 Chg 2	Radioactive Waste Management Manual
DOE M 441.1-1	Nuclear Material Packaging Manual
DOE O 442.2	Differing Professional Opinions for Technical Issues Involving Environmental, Safety, and Health Technical Concerns
DOE M 457.1-1	Control of Improvised Nuclear Device Information
DOE O 470.4B	Safeguards and Security Program
DOE O 472.2	Personnel Security
DOE O 471.1B	Identification and Protection of Unclassified Controlled Nuclear Information
DOE M 471.3-1	Manual for Identifying and Protecting Official Use Only Information
DOE O 471.5	Special Access Programs
DOE M 483.1-1	DOE Cooperative Research and Developments Agreements Manual
DOE O 452.1D	Nuclear Explosives and Weapons Surety Program
DOE O 452.2D	Nuclear Explosive Safety
DOE O 130.1	Budget Formulation
DOE O 142.3A	Unclassified Foreign Visits and Assignment Program
DOE O 150.1	Continuity Programs
DOE O 151.1C	Comprehensive Emergency Management System
DOE O 153.1	Radiological Emergency Response Assets
DOE O 205.1B	Department of Energy Cyber Security Program
DOE O 206.1	Privacy Program
DOE O 210.2A	DOE Corporate Operating Experience Program
DOE O 221.1A	Reporting Fraud, Waste and Abuse to Office of Inspector General
DOE O 221.2A	Cooperation with the Office of Inspector General
DOE O 225.1B	Accident Investigations
DOE O 226.1B	Implementation of Department of Energy Oversight Policy
DOE O 241.1B	Scientific and Technical Information Management
DOE O 252.1A	Technical Standards Program
DOE O 231.1B	Environment, Safety and Health Reporting
DOE O 341.1A	Federal Employee Health Services
DOE O 350.2B	Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, DC Area
DOE O 410.2	Management of Nuclear Materials
DOE O 412.1A	Work Authorization System
DOE O 413.1B	Internal Control Program
DOE O 413.3B	Program and Project Management for Acquisition of Capital Assets
DOE O 414.1D	Quality Assurance
DOE O 420.1B Chg 1	Facility Safety
DOE O 425.1D	Verification of Readiness to Startup and Restart of Nuclear Facilities
DOE O 426.2	Personnel Selection, Training, Qualification and Certification Requirements for DOE Nuclear Facilities
DOE O 430.1B Chg 2	Real Property and Asset Management

Reference Document	Title
DOE O 433.1B	Maintenance Management Program for DOE Nuclear Facilities
DOE O 435.1 Chg 1	Radioactive Waste Management
DOE N 435.1	<u>Contact-Handled and Remote-Handled Transuranic Waste Packaging</u>
DOE O 436.1	Departmental Sustainability
DOE O 440.2C Chg 1	Aviation Management and Safety
DOE O 443.1B	Protection of Human Research Subjects
DOE O 452.3	Management of DOE Nuclear Weapons Complex
DOE O 457.1	Nuclear Counterterrorism
DOE O 458.1 Chg 2	Radiation Protection of the Public and the Environment
DOE O 460.1C	Packaging and Transportation Safety
DOE O 460.2A	Departmental Materials Transportation and Packaging Management
DOE O 461.1B	Packaging and Transportation for Offsite Shipment of Materials of National Security Interest
DOE O 462.1	Import and Export of Category 1 and 2 Radioactive Sources and Aggregate Quantities
DOE O 227.1	Independent Oversight Program
DOE O 470.3B	Graded Security Protection (GSP) Policy
DOE O 471.3 Chg 1	Identifying and Protecting Official Use Only Information
DOE O 471.6	Information Security
DOE O 473.3	Protection Program Operations
DOE O 474.2 Chg 1	Nuclear Material Control and Accountability
DOE O 475.1	Counterintelligence Program
DOE O 475.2A	Identifying Classified Information
DOE O 534.1B	Accounting
DOE O 458.1 Chg 2	Radiation Protection of the Public and the Environment
DOE O 422.1	Conduct of Operations Requirements for DOE Facilities
DOE O 551.1C	Official Foreign Travel
DOE O 452.8	Control of Nuclear Weapon Data
DOE O 5639.8A	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities
DOE P 470.1A	Safeguards and Security Program
DOE SNL TYPEBARG	Tie-down Procedure for Type A, B, ARG, and Miscellaneous Containers
EP-401075 Issue D	Electrical Testers for Nuclear Explosives
NAP 9A	Secon Implementation
NAP 14.1-C	NNSA Baseline Cyber Security Program
NAP 14.2-C	NNSA Certification and Accreditation (C&A) Process for Information Systems
NAP 14.3-B	Transmission of Restricted Data over Secret Internet Protocol Router Network (SIPRNet)
NAP 21	Transformational Governance and Oversight
NAP 70.2	Physical Protection
NAP 70.4	Information Security
QC-1 Revision 10	DOE/NNSA Weapon Quality Policy (QC-1)
DOE STD 1073-2003	DOE Standard – Configuration Management
DOE STD 3007-2007	DOE Standard – Preparing Criticality Safety Evaluations at DOE
DOE STD 3024-98	DOE Standard – Content of System Design Description
Site Specific CRD	Startup and Restart of Operations, Activities and Facilities

Reference Document	Title
Site Specific CRD	Directive Systems Process
YSO-CRD-09-01	Projects Contractor Requirements Document (CRD)
DOE O 452.4B	Security and Use Control of Nuclear Explosives and Nuclear Weapons
AL 56XB	Development and Production Manual
DOE O 461.2	Onsite Packaging and Transfer of Materials of National Security Interest
Letter	Letter dated 6/2/2010 from Thomas D. D'Agostino to Theodore Sherry, Expert-Based Unreviewed Safety Question Determination Procedure
DOE O 580.1 Chg 1	Department of Energy Personal Property Management Program
DOE G 580.1-1	Department of Energy Personal Property Management Guide
BOP 001.311	NNSA Budget Validation Process
BOP 001.5	Management & Operating Contractor Employment Reporting

(A) Implementation of applicable directives.

- (1) The Contractor shall submit an implementation plan to the Contracting Officer when required by the directive or other instruction of the Contracting Officer and within 60 days of the effective date of the Contract or acceptance of the directive after the effective date of the Contract.
- (2) The Contracting Officer will approve or disapprove the plan and notify the Contractor of the decision. If the Contracting Officer disapproves the plan, he/she shall clearly identify all deficiencies and provide reasonable suggestions for making the plan acceptable. Within 30 days after notification of the disapproval of a plan, the Contractor shall submit to the Contracting Officer the revised plan for approval as described above.
- (3) During the process of implementation, the Contractor will notify the Contracting Officer if modifications to the plan are required for any reason. The Contracting Officer will consider all such requests and will not unreasonably withhold his/her approval to modify such plans when circumstances warrant modification.

Appendix N-1 Operating Requirements

The Contractor shall comply with the Operating Requirements listed herein. **The identified directives are listed for reference purposes only, i.e., only those provisions set forth herein constitute binding Operating Requirements.** The NNSA Administrator has granted exemptions from some of the directives referenced herein while other directives have an alternative applicable authority for exemption. The applicable authority for exemption for each directive is cited in their respective endnotes.

The contractor is responsible for flowing down requirements in Appendix N-1 and other contract requirements, when applicable, to ensure compliance with the terms and conditions of the prime contract.

The paragraph numbering under each heading below corresponds to the Contractor Requirements Document (CRD) in the referenced directive for ease of traceability.

DOE O 200.1A, **Information Technology Management**, Effective Date: 12/23/2008

1. INFORMATION TECHNOLOGY STRATEGIC PLANNING. Maintain a strategic plan that coordinates IT planning and investment decisions and links to the Departmental strategic plan.
2. CAPITAL PLANNING AND INVESTMENT CONTROL. Develop, implement, and maintain a Capital Planning and Investment Control (CPIC) process that supports Department-wide CPIC efforts.
3. ENTERPRISE ARCHITECTURE. Maintain an Enterprise Architecture for the life-cycle management of information resources and related IT investments funded by or operated for DOE.
4. HARDWARE AND SOFTWARE ACQUISITION
 - b. Implement a Software Quality Assurance (SQA) program.
5. IT OPERATIONS AND USE. Ensure that information published to Federal service-to-citizens public websites are accessible to the public and individuals with disabilities.

DOE O 243.1, **Records Management Program**, Effective Date: 02/03/2006

1. The Contractor shall:
 - a. Implement a records management program in compliance with requirements for managing records in all formats, including early capture and control throughout their life cycles.
 - (1) Electronically formatted records will be maintained in an approved electronic records management application meeting the requirements of DOE-STD-4001-2000, "Design Criteria Standard for Electronic Records Management Software Applications," dated March 2000.
 - b. Create and maintain current file plans/indexes that describe all categories of records created, received, and maintained by personnel in the course of their official duties.
 - c. Preserve and disposition records in the same manner as National Archives and Records Administration (NARA)-approved records disposition schedules [Title 36, Code of Federal Regulations (CFR), Chapter 12].
 - d. Preserve records placed under a destruction moratorium (freeze),
 - e. Request disposition authority from NARA, through the Departmental Records Officer, for all unscheduled records.
 - f. Store records in a manner that meets the requirements of 36 CFR 1228, Subpart K placed on DOE [36 CFR 1228.220-1228.224]. Unscheduled records are not to be sent offsite for storage at either NARA or commercial facilities.
 - g. Review capital planning and investment control (CPIC) proposals and information architecture plans for electronic records management provisions.
 - h. Conduct internal evaluations of records management practices and programs, including the economy of the operation, at least every 3 years.
 - i. Ensure that records management program training is provided for all personnel with records management responsibilities.
 - j. Identify vital records and preserve them in a manner that ensures they are maintained, kept current and where appropriate, available in the event of a continuity of operations or catastrophic event.
 - k. Ensure that the site exit process includes a requirement for the transfer of custodianship of Federal records.

DOE O 243.2, **Vital Records**, Effective Date: 02/02/2006

1. REQUIREMENTS

- a. A DOE contractor must identify and preserve vital records in support of the Department's emergency preparedness responsibilities (as outlined in Executive Order (E.O.) 12656, "Assignment of Emergency Preparedness Responsibilities").

- c. A contractor must implement vital records programs that include the following:
 - (1) Procedures for identifying, protecting, controlling access to, and ensuring availability of records and information systems that-
 - (a) Specify how the organization will operate in case of an emergency and how it will support civil defense associated with disasters and attacks;
 - (b) Are needed for the continued operations of the organization and mission delivery of the organization both during and after an emergency or disaster; and
 - (c) Are essential to the preservation of the legal rights and interests of the Government and its citizens.
 - (2) Procedures for accessing records required to support critical activities the contractor performs when DOE operates under abnormal business conditions and/or at a location other than the normal place of business.
 - (3) Vital records inventory plans that include-
 - (a) Requirements for proper labeling and handling;
 - (b) Security precautions;
 - (c) Frequency of updates;
 - (d) Media, hardware, software, and supporting service needs; and
 - (e) Provisions for access from remote locations.
 - (4) An inventory system that identifies hardcopy and electronic records by-
 - (a) Series or system title,
 - (b) Description,
 - (c) Type,
 - (d) Name of the responsible office and individual,
 - (e) Physical location of copies, and
 - (f) Date of latest revision.
 - (5) Provisions for protecting against or assessing damage to or loss of records and recovering records affected by an emergency or disaster must include:
 - (a) copies of the vital records and the inventory maintained at separate locations to ensure immediate access in any situation;
 - (b) records maintained in media feasible for accessing and reviewing information during or immediately following an emergency;

- (c) evaluation of electronic records based on-
 - 1. Volume,
 - 2. Frequency of updates required,
 - 3. Availability of electricity, computers, software and support services needed to permit access, and
 - 4. Potential for accessing electronic records from remote locations via virtual private networks or compact disks.
- (6) A process for selecting storage/backup protection methods that must include:
 - (a) Evaluation of the effectiveness,
 - (b) Cost,
 - (c) Degree of risk or potential loss,
 - (d) Physical susceptibility to destruction,
 - (e) Need for special environmental conditions for transporting, storing, and updating records.
 - (f) Ability to retrieve records quickly during an emergency or disaster.
- (7) An ongoing appraisal of vital records and complete review at least annually to ensure that changing conditions are addressed and records are up-to-date and immediately accessible.
- (8) A plan must be developed and maintained to recover records that are damaged in an emergency or disaster, regardless of media. This plan must include the priorities for restoring or recovering multiple damaged systems and the options for recovery and replacement. This plan must also include a resource list of local disaster recovery firms that can assist in restoration, along with employee contact lists and vital records inventories, must be maintained at multiple off-site locations to facilitate their use.

2. STORAGE CONSIDERATIONS

- a. A contractor must establish locations where vital records will be stored, such as alternate emergency operations centers (EOCs), command centers, and relocation sites that will provide adequate protection and accessibility and meet the improved fire protection risk level required by the CRD for DOE O 420.1B, *Facility Safety*, dated 12-22-05. Before classified documents can be stored at these locations, the contractor must obtain approval in accordance with the CRD for DOE O 470.4, *Safeguards and Security Program*, dated 8-26-05.
- b. Manner of Storage. Contractor records will be stored in a manner that ensures ease of access, retrieval, and control. Storage systems must allow for access per the prioritized schedule. Classified and unclassified records must be handled in accordance with the CRD for DOE O 471.1A, Identification and Protection of Unclassified Controlled Nuclear Information, dated 6-30-00, and the CRD for DOE O 471.3, Identifying and Protecting Official Use Only Information, dated 4-9-03.

3. **DISPOSITION OF RECORDS.** Original vital records must be maintained for the period of time specified in the DOE records disposition schedules. The duplicate copy of vital records that is stored in the separate location should be deleted when obsolete or superseded and replaced with the updated revision.

DOE O 350.1 Chg 3, Chapter VIII, **Substance Abuse Program**, Effective Date: 02/23/2010

2. Comply with the requirements 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites. DOE contractors that have positions that fall within the scope of other agency requirements shall, in addition, comply with the substance abuse programs requirements of those agencies. These include the Department of Transportation (DOT), the Nuclear Regulatory Commission (NRC), and the Department of Defense (DOD).
3. Submit to the Contracting Officer for approval:
 - a. A written Workplace Substance Abuse Program consistent with the minimum requirements of 10 CFR Part 707, Workplace Substance Programs at DOE Sites, and provides for baseline services including education awareness programs on the hazards of using substances in the DOE workplace; supervisory training on their responsibilities with impaired employees; and Employee Assistance Program services. Where testing designated positions have been identified, contractors must include a testing program that meets the requirements of the Department of Health and Human Services Mandatory guidelines and 10 CFR part 707.
 - d. Ensure that all service providers are qualified and perform according to the requirements of 10 CFR part 707, Department of Health and Human Services, and Department of Transportation regulations.
4. Submit reports and maintain records as follows:
 - a. Submit the Contracting Officer reports consistent with 10 CFR 707 on program results and separate reports on each of the lower tier subcontractors including testing results where there are testing designated positions and for positions subject to requirements of other Federal agencies.
 - b. Maintain records in such a manner that permits preparation of a semiannual report, covering the periods January 1 to June 30 and July 1 to December 31, to provided within 30 days of the close each period.

DOE O 350.1 Chg 3, Chapter IX, **Employee Assistance Programs**, Effective Date: 02/23/2010

1. Provide a program of preventative services, education, short-term counseling, coordination with and referrals to outside agencies, and follow-up on return to work that conforms to the requirements 10 CFR 707.6, Employee Assistance, Education, and Training. A description of the Employee Assistance Program services must be included in contractor Substance Abuse Plans. In addition, the Employee Assistance Programs shall provide services for other medical behavioral, mental, emotional or personal problems of employees and dependents.
2. Contractors not covered by the provisions of Workplace Substance Abuse Programs at DOE Sites, 10 CFR part 707, shall provide a program of consultation services, assessment, referral for treatment and/or rehabilitation, and educational services concerning illegal drug use or other medial-behavioral, mental, emotional or personal problems of employees and dependents.
3. Submit for approval by the Contracting Officer an employee assistance program implementation plan.
4. Implement an Employee Assistance Program.
 - e. (2) (d) For employees with Access Authorizations who are in the Personnel Assurance Program (PAP) or the Personnel Security Assurance Program (PSAP), communications from Employee Assistance Program staff are not permitted, except as provided in paragraph (e) below, without the employees written consent unless a waiver has been signed as part of the employee's entry into PAP or PSAP.

(e) If, in the opinion of the Employee Assistance Program staff, allowing the employee to continue in a work assignment would create a threat to health, safety, or the national security, the Employee Assistance Program staff will notify contractor staff if the employee is unwilling to do so. If the threat is based on national security concerns, the contractor shall notify the cognizant DOE security official.
6. Prepare and submit information to DOE concerning Employee Assistance Program services as requested by the Contracting Officer. Such reports shall not include individual identifiers.

DOE O 442.1A, **Department of Energy Employee Concerns Program**, Effective Date: 06/06/2001

Assist DOE in the resolution of employee concerns.

Ensure that contractor and subcontractor employees are advised that they have the right and responsibility to report concerns relating the environment, safety, health, or management of DOE-related activities; and

Cooperate with assessments used to verify that they have acted to minimize, correct, or prevent recurrence of the situation that precipitated a valid concern.

DOE O 482.1, **DOE Facilities Technology Partnering Programs**, Effective Date: 01/12/2001

1. Establish and maintain a management system, including policy and procedures that satisfies Department of Energy (DOE) technology partnering activities requirements of DOE O 482.1, DOE FACILITIES TECHNOLOGY PARTNERING PROGRAMS.
2. Assist heads of field elements in developing appropriate performance measures for technology partnering activities and participate in DOE's Performance-Based Business Management Process (DOE O 224.1, CONTRACTOR PERFORMANCE-BASED BUSINESS MANAGEMENT PROCESS) or other appraisals in accordance with the facility contract.
3. Submit to DOE, as appropriate, technology partnering agreements for review and approval, as required by the facility contract.
4. Review proposed work involving human and/or animal subjects for compliance with established regulations for protection of these subjects.
5. Review projects for compliance with DOE environmental, safety, and health requirements, including the National Environmental Protection Act.
6. Ensure projects are protected in accordance with applicable security, safeguards, and classification policies and procedures, including the site security plan or supplemental security plan specific to a project.
7. Request DOE approval for non-DOE-funded construction at a DOE site when that construction exceeds the general plant project threshold;
8. Submit annual Technology Partnering Report.

9. Establish an ombuds capability to assist industry with issue resolution. Responsibilities of this position are to—
 - (a) serve as a focal point to industry and the public to help resolve technology partnering complaints and disputes;
 - (b) promote the use of collaborative alternative dispute resolution techniques to facilitate resolution of complaints and disputes; and
 - (c) report to the department annually on the number and nature of complaints and disputes raised and resolved, while protecting confidentiality. Maintain a project summary listing of information on each active CRADA project

DOE O 483.1, **DOE Cooperative Research and Development Agreements**, Effective Date: 01/12/2001

1. Establish and maintain a management system, including policy and procedures, that ensures Cooperative Research and Development Agreement (CRADA) activities requirements of DOE M 483.1-1, COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT MANUAL are satisfied.
2. Develop in conjunction with the heads of field elements appropriate performance measures for CRADA activities and participate in DOE's Performance-Based Business Management Process (DOE O 224.1, CONTRACTOR PERFORMANCE-BASED BUSINESS MANAGEMENT PROCESS) or other appraisals in accordance with the facility contract.
3. Submit to DOE, CRADAs and JWSs for review and approval unless the DOE Contracting Officer has the statutory authority to delegate these functions to the contractor and the DOE Contracting Officer elects to make the delegation in accordance with DOE policy.
4. Review proposed work involving human and/or animal subjects for compliance with established regulations for protection of these subjects.
5. Review projects for compliance with DOE environmental, safety, and health requirements, including the National Environmental Protection Act.
6. Ensure projects are protected in accordance with applicable security, safeguards, and classification policies and procedures, including the site security plan or supplemental security plan specific to a project.
7. Ensure contractor employees protect proprietary information and data provided by private sector collaborators and sponsors in the conduct of CRADA activities.
8. Request DOE Approval for construction at a DOE site when that construction exceeds the general plant project threshold. Approval by the cognizant Secretarial Officer and the Chief Financial Officer is required prior to initiation of work which exceeds the threshold.

9. Maintain a project summary listing of information on each active CRADA project.
10. Maintain project file information documenting policy compliance.
11. Submit information on CRADAs as part of the annual Technology Partnering Report.

DOE O 484.1, **Reimbursable Work for the Department of Homeland Security**, Effective Date: 12/23/2008

Contractors will perform and administer DHS reimbursable work in accordance with the “Memorandum of Agreement between Department of Energy and Department of Homeland Security,” dated 2-28-03 (Attachment 3) or amendments thereto and the following requirements.

As directed by the contracting officer, the contractor must meet the following requirements.

1. Establish and maintain a management system that ensures reimbursable work for DHS requirements are satisfied.
2. Prepare project proposals that clearly describe the agreed-to statement of work, work methodology resources, and schedule before DOE acceptance of funding.
3. Ensure the work is—
 - a. within the facility/site contract scope and
 - b. priced in accordance with DOE pricing policies and provisions applicable to DHS work, which include the following.
 - (1) Cost estimates will be based on charges consistent with the costs of similar work performed for DOE.
 - (2) Costs for the DOE Federal administrative charge will not be assessed for directly funded DHS work.
 - (3) Amounts charged for general site safeguard and security surcharges or personnel costs will not be in excess of the amounts that DOE programs incur for similar work.
 - (4) When DHS requirements for site safeguards, security, or personnel exceed those of DOE for similar work, the costs of those special DHS requirements that can be attributed directly to the DHS project may be charged to DHS. Such costs will be identified in proposals.
 - c. accepted by a DOE contracting officer or authorized designee
4. Equipment acquired as part of a project must be accounted for and maintained in the same manner as DOE property. Disposition of equipment must be as previously agreed or as instructed by DHS. Equipment shipping costs are the responsibility of DHS.

DOE O 522.1, **Pricing of Departmental Materials and Services**, Effective Date: 11/03/2004

1. When the site/facility management contractor conducts activities of providing non-DOE entities materials or services, which the Department is authorized by law to provide, the site/facility management contractor must charge the non-DOE entity the full cost of providing the materials or services. Full cost includes all site/facility management contractor direct costs incurred in performing work, all allocable costs incurred by the site/facility management contractor at any DOE/NNSA facility, and a Federal administrative charge of 3 percent of these costs. In no case will any depreciation or imputed interest charges be imposed on the non-DOE entity requesting the materials or services.
2. For cosponsored work, Cooperative Research and Development Agreements (CRADAs), and other technology transfer mechanisms, the site/facilities management contractor will assess a Federal administrative charge of 3 percent on all funds contributed by the sponsor, regardless of the level of Departmental participation in funding the work effort. In-kind contributions will not be subject to the Federal administrative charge.
3. The site/facility management contractor may provide an exception to the requirement to assess the 3 percent Federal administrative charge for reimbursable work performed for non-DOE entities as follows:
 - a. Funds-in agreements with domestic entities: small business concerns, institutions of higher education, nonprofit entities, and State and local governments.
 - b. Based on the current listing of blanket pricing exceptions provided by DOE to the contractor for work covering research, development, testing, evaluation, training, and exercises directly related to specified activities listed. If any of the blanket exceptions are canceled, DOE will provide the contractor with appropriate notification.
4. In the following situations, the Contractor may provide a pricing exception based on who the primary customer is regardless of the source of funds. The following situations provide illustrations for the contractor in making such determinations.
5. The following activities may become part of the contractor's responsibilities. These activities require special pricing consideration and, as applicable, DOE will provide the contractor with additional information for pricing the activity.
 - a. Information Dissemination Materials. DOE must comply with Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources. The contractor will assist DOE in complying with Circular A-130. Circular A-130 requires DOE to set charges at a level sufficient to recover the cost of dissemination but no higher. Charges must exclude the cost of the original collection and processing of the information. Should an exception to this policy be warranted, DOE will provide additional guidance.

- b. Byproduct Material. The contractor shall establish prices and charges for byproduct material sold, pursuant to Title 42 United States Code (U.S.C.) 2111 and 2112, at either the full cost recovery price or the commercial price, whichever is higher. Lower prices may be established if it is determined that such prices and charges will provide reasonable compensation to the Government, will not discourage the use of or the development of sources of supply independent of DOE, and will encourage research and development. Before establishing lower prices, the contractor shall obtain the approval of DOE.
- c. Other Materials and Services. The contractor shall establish prices and charges for materials and services sold, pursuant to 42 U.S.C. 2201(m), at either the full cost recovery price or the commercial price, whichever is higher. Lower prices and charges may be established if it is determined that such prices and charges would still provide reasonable compensation to the Government and would not discourage the development of supply sources independent of DOE. Before establishing lower prices, the contractor shall obtain the approval of DOE.
- d. Foreign Research Reactor Spent Nuclear Fuel Program. DOE will provide the contractor guidance on charging for this activity.
- e. Access Permits. The contractor shall not charge for access permits issued with the exception of those access permits which are charged in accordance with Title 10 Code of Federal Regulations (CFR) 725.
- f. Access Authorizations. The contractor shall not assess charges for access authorizations when authorization-
 - (1) is transferred from a study agreement to an access permit held by the same organization;
 - (2) is for an employee or staff member of an accredited, nonprofit educational institution having, at a minimum, a 2-year program of college level studies, and the work is related to the civilian application of nuclear energy;
 - (3) will not be considered one for which DOE has been paid, when the individual transfers to another organization; and
 - (4) is granted to obtain full and free competition.
- g. Use Permits. The contractor shall not assess a charge for preparing a permit which authorizes the use of DOE facilities or services. Charges for use of the facilities or services will be calculated separately.
- h. Assistance for the Protection of Health and Safety in the Event of Radiological Incidents. The contractor shall request guidance from DOE on charging for this activity.
- i. Museums and Exhibits. Unless there is specific authority to collect admission fees, the contractor will not charge visitors to DOE museums and exhibits for admission.
- j. Commercial Property Rental. DOE will provide the contractor guidance on charging for this activity.
- k. Use of Facilities. DOE will provide the contractor guidance on charging for this activity.

1. Office of Science User Facilities. The contractor may make the Office of Science User Facilities available for research by a broad community of qualified users on the basis of programmatic interest, feasibility, capability of the experimental group, and availability of the resources required. The contractor shall adhere to the following regarding charging users for use of the facilities.
 - (1) Use of user facilities will be authorized at no charge for research which is of DOE programmatic interest and which is approved by laboratory management, usually with the advice of program advisory committees. Use free of charge will apply to experiments approved for conduct during periods in which the facility operates in normal mode for its primary purpose. The facility manager will determine which requests meet those criteria and report periodically to the appropriate DOE program manager.
 - (2) When facilities are made available for proprietary research, the user will be charged a fee that realizes full cost recovery (see definition in item 9(b), below).
 - (3) When facilities are operated for special circumstances, such as running the facility outside the normal operating mode or schedule, the user will be charged the incremental costs.
- m. Hazardous Materials Spill Center. The contractor will charge users of the facility only for direct and indirect costs for their experiments.
 - (1) Invoices for materials and services will be prepared and issued promptly in accordance with the terms of the reimbursable work contracts or agreements.
 - (2) Work for others issues are covered in the work for others clause of this contract.
 - (3) Collections are covered under the payments and advances clause of this contract.

- *End of Appendix* -

SECTION J

APPENDIX O

PROGRAM MANAGEMENT AND COST REPORTS

The Contractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the Contracting Officer. Reference Section J, Appendix A, Statement of Work, Chapter I, 3.3. Cost reports shall include at a minimum:

1. Monthly submissions for:
 - a. Specified cost elements including labor, material, other procurements, and travel.
 - b. Indirect or overhead costs
 - c. Schedule status information at the specified activity level
 - d. Performance measurement information when relevant

This data shall initially be submitted by the Contractor to NNSA as a supplemental report, but will become integrated into the DOE/NNSA Uniform Program Cost Reporting Structure (UPCRS). The UPCRCS will transition the data from supplemental monthly reports to a submission to a Departmental system.

The report shall be submitted at a level designated by the Contracting Officer. Initially the report shall be consistent with the guidance provided for Institutional Cost Reporting in Section J Appendix M. The Contractor shall have in place systems to expand the information provided to a designated level of a Program's Work Breakdown Structure (WBS).

Monthly performance measurement provides information regarding budgeted cost versus actual cost, schedule performance against milestones and estimated cost at completion.

2. Annual submissions for:
 - a. Spend plans
 - b. Schedule plans
 - c. Specifications of work scope activity

This data shall initially be submitted by the Contractor to NNSA as a supplemental report, but will become integrated into designated reporting and budgeting systems. the DOE/NNSA UPCRCS. The UPCRCS will transition the data from supplemental monthly reports to a submission to a Departmental system.

The report shall be submitted at a level designated by the Contracting Officer. Initially the report shall be consistent with the Funding Program by Subprogram tables of President's budget submission or the accounting cost reporting level. The Contractor shall have in place systems to expand the information provided to a designated level of a Program's WBS.

While identified as annual submissions, to remain relevant, the Contractor shall update these plans based on changes to budget, work scope and schedule. The Contracting Officer, or designated authorized representatives, will provide the specific direction relevant to a Program's management strategy.

3. Ad-hoc submissions for:

- a. Program evaluation
- b. Cost estimating
- c. Budget validation

The Contractor shall support these ad-hoc submissions by providing NNSA access to systems and personnel necessary to analyze and evaluate plans, programs, and budgets. NNSA will work with the Contractor to ensure that the costs of programs are presented accurately and completely. The Contractor shall support NNSA's evaluation of alternative technical strategies to ensure that programs and projects can be efficiently implemented.

The Contractor shall provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's reporting system.

The Contractor shall include these reporting requirements in all subcontracts that are cost-reimbursement type of contracts 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 Contract/subcontract effort is, or involves, a critical task related to the Contract.

SECTION J

APPENDIX P

**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 this Contract's Transition Term, utilizing the format contained in this Appendix P 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 _____, 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 Agreement No. [insert Contract number] 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 I TFM 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 Financial Institution.
3. The special financial institution account shall be designated “ _____ [name of Contractor], _____ [account title] Account.”

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:–

1. The Government shall have a title to the credit balance in said account to secure the repayment of all funds transferred to the Contractor, and said title shall be superior to any lien, title or claim of the 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 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:

Contracting Officer
TBD

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 Q

**MINIMUM STANDARDS FOR CONTRACTORS' CONFLICT OF INTEREST (COI)
PLANS**

A. Corporate Structure

The COI Plan shall describe any parent relationship and list all affiliates, subsidiaries, and sister companies, etc. Generally, this need not exceed three corporate tiers, unless a relationship exists beyond three tiers that would potentially create a conflict. In such a case, relationships beyond three tiers should also be included in the COI Plan. Contractors should report changes in its corporate structure to DOE/NNSA throughout Contract performance. Contractors are invited to include under this section, a company profile. The profile should discuss all pertinent information relevant to COI including a summary of a Contractor's primary business functions and activities. This background information will potentially be very useful to Contracting Officers and the Agency when evaluating whether or not a Contractor has a COI.

B. Search and Identification of COI

The COI Plan shall include a requirement describing when a COI search must be performed by company personnel and clearly identify the procedures to be followed. The searching requirement shall encompass all work related to all clients for whom work was performed over the past three years, all current work, all sites (if applicable), and any future work reflected in marketing proposals. Contractors must search their records over the past 36 months from time of receipt of the work from DOE/NNSA. However, DOE/NNSA encourages Contractors to search back as far as a company's records cover.

C. Data Base

The COI Plan shall require a database that includes all necessary information for a Contractor to review its past work (at a minimum over the past 36 months), work in progress, and work the company may be pursuing under any marketing proposals. This requirement does not establish any particular type or kind of retrieval system, however, the database shall contain, at a minimum, the following information and capabilities. (1) a list of the company's past and public clients; (2) a description of the type(s) of work that was performed and any other pertinent information; (3) a list of the past sites (when applicable) a Contractor has worked on; (4) a list of site name(s) (when applicable) related to any work performed; and (5) the ability to search and retrieve the information in the database. If applicable, the COI Plan shall include terms for supplemental searches of a parents, affiliates, subsidiaries, or sister company's records. The COI Plan shall also describe any cross-checks used by the company when searching COI issues.

D. Personal Certification

At a minimum, the COI Plan shall require ALL employees of the company performing work under a DOE/NNSA Contract, to sign a personal certification. The certification shall require at a minimum that the individual agrees to report to the proper company authority any personal COI the individual may have on any work that may result in an actual or potential COI. The certification shall also state the individual has read and understands the company's COI Plan and procedures. The employee certifications shall be retained by the company.

E. Annual Certification

The COI Plan shall describe the process the company requires for submission of its annual certification. NOTE: Annual certification is NOT required if the Contract contains a WA/TDD/DO certification requirement. Nevertheless, the Contractor's COI Plan should address the procedures to be followed for annual certifications.

F. Notification and Documentation

The COI Plan shall clearly delineate who is the responsible official for making COI determinations within the company. Generally, this would be someone at the middle to upper level of management. The responsible official shall be free of any personal conflicts for the purpose of making COI determinations, e.g., a program manager who receives bonuses based on the total amount of sales may not be free of conflicts.

In addition, a Contractor shall document all COI searches related to DOE/NNSA work, whether or NOT an actual or potential COI has been identified.

G. Training

The COI Plan shall require all employees of the company to receive basic COI training and COI awareness training, at least, on an annual basis. The company's COI Plan shall be available for all employees to review. Annual awareness training shall include, at a minimum, a review of the certification language and any changes that may have occurred in the company's COI Plan. In addition, companies are encouraged to routinely disseminate current COI information to their employees.

H. Subcontractor's COI Plans

The COI Plan shall describe the process and mechanism by which the company will monitor its subcontractors to ensure all subcontractors are complying with the COI clauses in their Contracts. It is important that subcontractors identify and report COI as well as submit Limitation of Future Contracting (LOFC) requests for approval.

I. Other Activities

The COI Plan shall provide relevant information about the Contractor's on-going or past performance of activities related to the Contract and the impact that those activities could have on the firm's judgment and objectivity in performing the Contract. Accordingly, the Contractor shall submit to DOE/NNSA an analysis of the potential for any organizational conflict of interest (OCOI) that may occur during performance of the Contract as a result of your firm's past or on-going performance of other activities. Should any such OCIs be identified, the Contractor shall provide a plan to effectively avoid, neutralize, or mitigate the conflict.

SECTION J

APPENDIX R

LIST OF CONTRACTING OFFICER'S REPRESENTATIVES

[Note: To be inserted by the Contracting Officer after contract award.]