Oak Ridge National Laboratory



Contract with the Department of Energy

DE-AC05-00OR22725

Modification No. 1150

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
	1 | 1

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*
1150	See Block 16C	Not Applicable	

6. ISSUED BY CODE 892431

U.S. Department of Energy
Office of Science
ORNL Site Office
P.O. Box 2008
Oak Ridge TN 37831

7. ADMINISTERED BY *(If other than Item 6)* CODE 00516

Same as Block 6

8. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State and ZIP Code)*

UT-BATTELLE, LLC
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1 BETHEL VALLEY ROAD
ATTN: NICOLE E. PORTER MS 6231
OAK RIDGE TN 37831

CODE 099114287 FACILITY CODE

(x) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED *(SEE ITEM 11)*

x 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC05-00OR22725

10B. DATED *(SEE ITEM 13)* 10/18/1999

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended , by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted ; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted , such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation data, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: 48 CFR 6.302-3 & 17.605
	D. OTHER *(Specify type of modification and authority)*

E. IMPORTANT: Contractor ☐ is not ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*

By mutual agreement of the parties, this modification extends the end date of the contract to March 31, 2025, and replaces Sections B, C, F, H, and I of the contract with those attached. No other changes are made with this modification.

Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER *(Type or print)*		16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)*	
Thomas Zacharia Laboratory Director		Judson A. Kingman	
15B. CONTRACTOR/OFFEROR Thomas Zach *(Signature of person authorized to sign)*	15C. DATE SIGNED 3/20/2020	16B. UNITED STATES OF AMERICA Jud Kingman *(Signature of Contracting Officer)*	16C. DATE SIGNED 03/20/2020

Previous edition unusable

STANDARD FORM 30 (REV. 11/2016)
Prescribed by GSA FAR (48 CFR) 53.243

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SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 Services Being Acquired

The Contractor shall manage and operate the Oak Ridge National Laboratory (ORNL or Laboratory), a Federally Funded Research and Development Center (FFRDC). The Contractor shall use its best efforts to provide the necessary personnel, equipment, materials, supplies, and services (except as may be provided by the Government) and otherwise do all things necessary for, or incidental to, performing the Statement of Work set forth in Section C as directed by the Contracting Officer within the scope of this contract, or as may be agreed upon by the Contractor and the Contracting Officer.

B-2 Fixed Fee

A fixed fee of $3,500,000 shall be paid to the Contractor for performance of the work under the contract for the period February 1, 2000, through September 30, 2000, in accordance with the provisions of the clause in Section I entitled, "Payments and Advances." There shall be no adjustment in the amount of the fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work. Fee is subject to adjustment only under the provisions of the clause in Section I entitled, "Changes." The fixed fee shall be applicable to the prime Contractor and its members in a joint venture or limited liability company, teaming partner, and subcontractors identified and considered a part of the selection and award of this contract, if any.

No fixed fee deemed applicable to work performed under the American Recovery and Reinvestment Act (Recovery Act) of 2009 shall be paid to the Contractor prior to definitization of contract modification(s) reflecting negotiated results of said Recovery Act work. After execution of the definitization contract modification(s), fixed fee provided under Recovery Act work shall be paid in accordance with the "Payments and Advances" clause in Section I of the contract.

The fixed fee amounts agreed to by DOE and the Contractor determined to be subject to the "Changes" clause in Section I are as follows: 1) $400,000 for Work Authorization No. FD/04019/OR/41, and 2) $378,000 for Work Authorization No. FE/01019/OR/41.

B-3 Performance Fee

In implementation of the clause in Section I entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," the following shall apply:

(a) There is no base fee for the period October 1, 2000, through March 31, 2005. During the period October 1, 2000, through September 30, 2004, annual total available performance fee shall be $7,000,000 less a fee discount factor of 2%. During the period October 1, 2004, through March 31, 2005, total available performance fee shall be $3,500,000 less the fee discount factor stated above.

(b) There will be no annual negotiation of total available performance fee since the total available performance fee for the base period of the contract has been established. There shall be no adjustment in the amount of the total available performance fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work. Total available performance fee is subject to adjustment only under the provisions of the clause in Section I entitled, "Changes." The total available performance fee shall be applicable to the prime Contractor and its members in a joint venture or limited liability company, teaming partner, and subcontractors identified and considered a part of the selection and award of this contract, if any.

(c) Based on the annual evaluation of the Contractor's overall performance, the total performance fee earned for each evaluation period shall be as defined in the Section H clause entitled "Performance Expectations" and further defined in the annual Performance Evaluation and Measurement Plan.

Performance fee earned shall be available for payment in accordance with the provisions of this clause and the clause in Section I entitled, "Payments and Advances."

(d) Performance expectations, including relative weights, and performance objectives upon which the Contractor will be evaluated annually will be contained in a Performance Evaluation and Measurement Plan consistent with the clause in Section H entitled, "Performance Expectations," and the clause in Section I entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount."

(e) The Contractor may be paid provisional performance fee payments consistent with the provisions of the clause in Section I entitled, "Payments and Advances." The Contractor shall promptly refund to the Government any amount of performance fee paid that exceeds the amount of performance fee earned.

B-4 Fee During Option Period

(a) The fee shall not exceed that allowed by DEAR 970.1504-1-3, "Special considerations: Laboratory management and operation" and shall not include the application of classification factors in DEAR 970.1504-1-9, "Special

considerations: Cost-plus award-fee."

(b) The fee shall be consistent with the approach used in the base term of the contract.

(c) A fee discount factor of 2% shall be applied to the fee resulting from (a) and (b) above to produce the total available performance fee applicable to the option period.

(d) During the period April 1, 2005 and September 30, 2005, total available performance fee shall be $5,459,184 less the 2% fee discount factor stated above. During the period October 1, 2005 and September 30, 2009, total available annual performance fee shall be $10,918,368 less the 2% fee discount factor stated above. During the period October 1, 2009 and March 31, 2010, total available performance fee shall be $5,459,184 less the 2% fee discount factor stated above.

B-5 Fee During Five-Year Extension Period

(a) The fee shall not exceed that allowed by DEAR 970.1504-1-3, "Special considerations: Laboratory management and operation" and shall not include the application of classification factors in DEAR 970.1504-1-9, "Special considerations: Cost-plus award-fee."

(b) The fee shall be consistent with the approach used in the base and option terms of the contract.

(c) A fee discount factor of 2% shall be applied to the fee resulting from (a) and (b) above to produce the total available performance fee applicable to the extension period.

(d) During the period April 1, 2010 and September 30, 2010, total available performance fee shall be $5,459,184 less the 2% fee discount factor stated above. During the period October 1, 2010 and September 30, 2014, total available annual performance fee shall be $11,428,572 less the 2% fee discount factor stated above. During the period October 1, 2014 and March 31, 2015, total available performance fee shall be $5,714,286 less the 2% fee discount factor stated above.

B-6 Fee During Second Five-Year Extension Period

(a) The fee shall not exceed that allowed by DEAR 970.1504, "Contract Pricing."

(b) During the period April 1, 2015 and September 30, 2015, total available performance fee shall be $5,750,000. During the period October 1, 2015 and

September 30, 2019, total available annual performance fee shall be $11,500,000. During the period October 1, 2019 and March 31, 2020, total available performance fee shall be $5,750,000.

B-7 Fee During Third Five-Year Extension Period

(a) The fee shall not exceed that allowed by DEAR 970.1504, "Contract Pricing."

(b) During the period April 1, 2020 and September 30, 2020, total available performance fee shall be $7,450,000. During the period October 1, 2020 and September 30, 2024, total available annual performance fee shall be $14,900,000. During the period October 1, 2024 and March 31, 2025, total available performance fee shall be $7,450,000.

PART I—THE SCHEDULE

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SECTION C—DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C-1 Introduction

(a) The mission for Oak Ridge National Laboratory is to deliver scientific discoveries and technical breakthroughs that will accelerate the deployment of solutions in clean energy and global security, and in doing so create economic opportunity for the nation. The Oak Ridge National Laboratory supports the Department of Energy's mission to ensure America's security and prosperity by addressing energy, environmental, and nuclear challenges through transformative science and technology solutions. Oak Ridge National Laboratory, subsequently referred to as the Laboratory, is a multi-program Department of Energy (DOE) National Laboratory and a Federally Funded Research and Development Center (FFRDC) established in accordance with the Federal Acquisition Regulation Subpart 35 under the cognizance of the Office of Science (SC). The Laboratory, as established by DOE, maintains a wide variety of highly specialized capabilities and technical expertise in materials science, neutron science, and computational science, among other disciplines. The Laboratory performs work for all DOE programs including Science, Electrical Delivery and Energy Reliability, Energy Efficiency and Renewable Energy, Nuclear Energy, Fossil Energy, Environmental Management, Advanced Research Projects Agency – Energy, and the National Nuclear Security Administration. DOE programs are carried out in partnership with academia, the private sector, other DOE National Laboratories, the international scientific community, and other government agencies.

(b) The Contractor is responsible for accomplishing the mission of the Laboratory. Under this performance-based management contract, the Contractor is responsible to develop and implement innovative approaches and adopt practices that foster continuous improvement while accomplishing the Laboratory mission.

Effective partnering with industry in the ultimate application of scientific information and technology to solve DOE or broad public issues is essential to mission success. The Contractor will provide integrated line management of this diverse research institution, aligning multiple program scientific and technical assignments with the appropriate resources and support to deliver world-class science in a cost effective manner. Integrated line management incorporates integrated safety management, integrated safeguards and security management, cross-organizational teamwork recognizing matrix management, and efficient work practices and applies them to programmatic and operational efforts. Core capabilities maintained by the Laboratory may be changed during the annual laboratory planning process discussed below.

C-2 The Laboratory Vision

In collaboration with the Office of Science and via such annual processes as are established by the Office of Science, the contractor shall develop and maintain a compelling long range vision and supporting strategic and business plans for the Laboratory. This vision represents a shared understanding of how those goals fit with DOE missions and result in a written ten-year plan that reflects the Office of Science's view of the future of the laboratory consistent with the Department's, Office of Science's, and other applicable program offices' strategic plans. This process occurs in the context of a complete scientific, technical, operational, and managerial vision for a healthy, world-class laboratory and the resource needs and risks associated with accomplishing that vision.

C-3 Performance Goals, Objectives, and Notable Outcomes

The Performance Evaluation and Measurement Plan is provided in Section J, Appendix G of the contract; this process is also referenced in the Section H clause titled "Standards of Contractor Performance Evaluation."

C-4 Statement of Work (SOW)

(a) Research and Development (R&D)

(1) Mission. The Contractor shall maintain and advance the Laboratory R&D capabilities to accomplish the DOE mission to ensure America's security and prosperity by addressing its energy, environmental, and nuclear challenges through transformative science and technology solutions. DOE expects the Contractor to make the best use of the highly specialized Laboratory R&D capabilities in materials science, neutron science, and computational science, among other specialties, to accomplish the mission.

Science and Energy—The Department's goal is to advance foundational science, innovate energy technologies, and inform data driven policies that enhance U.S. economic growth and job creation, energy security, and environmental quality, with emphasis on mitigating the risks of and enhancing resilience against climate change. Relative to and in support of this goal, the Contractor shall maintain and advance Laboratory capabilities in: climate change science; assessing national energy use and projections of future energy supply and demand, as well as supporting efforts in energy assurance and preparedness; biomass renewable energy feedstock and conversion technologies and other technologies to diversify fuel sources; energy efficient technologies for buildings, industry, transportation, and utility end-use;

applied materials in support of energy efficient technologies, electrical transmission and distribution, energy storage, renewables, vehicle technologies, and fossil fuel use; and nuclear technology and safety. To further the Department's strategic intent, the contractor is also expected to emphasize transformative energy technologies in its promotion of mission-related partnerships as well as technology transfer efforts.

One of DOE's Strategic Objectives is to deliver the scientific discoveries and major scientific tools that transform our understanding of nature and strengthen the connection between advances in fundamental science to technology innovation. To further the conduct of discovery-focused research to increase our understanding of matter, materials, and their properties, the Contractor shall maintain and enhance critical Laboratory capabilities detailed in the Office of Science Laboratory Plan including nuclear and condensed matter physics, materials, chemical, and computational, science, materials, chemical, and systems engineering disciplines, as well as neutron science, including accelerator science and technology. Also, the Contractor shall maintain and improve Laboratory capabilities in analytical and separations chemistry, computational sciences and high-performance computing, environmental science (including field experimental facilities) and social science, fusion science and technology, genetics, genomics, and biotechnology. The Contractor shall maintain, improve, and effectively employ the instrumentation and assets of the Laboratory.

National Security—The Department's goal is to enhance national security by maintaining and modernizing the nuclear deterrent, reducing global nuclear and cyber security threats, providing for nuclear propulsion, and stewarding key science, technology, and engineering capabilities and supporting infrastructure. The Contractor shall maintain existing nuclear materials storage and processing facilities and develop related technologies. The Contractor shall support DOE in the development of technologies that promote non-proliferation, international nuclear safety, enhanced national security, and safe stockpile stewardship. The Contractor shall maintain and improve capabilities in science and technology related to nuclear nonproliferation and national security as well as in cyber security.

Management and Performance– The Department's goal is to position itself to meet the challenges of the 21st century and the nation's Manhattan Project and Cold War legacy responsibilities by employing effective management and refining operational and support capabilities to pursue departmental missions. To that end, the Contractor shall continue initiatives to improve efficiencies; reduce the cost of doing business; and, in the laboratory planning process, focus on these initiatives to ensure highly efficient and effective business, technical, and facility operations are achieved. The Contractor shall examine

Laboratory operations to consolidate work efforts, eliminate duplication of scientific effort, identify underutilized facilities, and reduce operational costs.

In addition, the contractor shall maintain and improve capabilities in environmental technology development to support environmental management. Waste minimization, pollution prevention, and energy demand reduction through green or renewable resources are a challenge and require further Contractor initiatives to support greenhouse gas reduction efforts and environmental sustainability. The Contractor shall effectively and efficiently manage the minimization, characterization, and certification of Laboratory generated wastes and other materials, and optimize the treatment, storage and disposal of newly generated Laboratory waste as directed by DOE.

As the operator of a Federally Funded Research and Development Center, the Contractor is charged with using best business practices and bringing the best science and technology to bear on the Department's mission; the Contractor may be called upon to support or lead various initiatives either alone or in concert with other Departmental entities, make recommendations, and disseminate results of activities the Laboratory supports on behalf of the Department. This requires the Contractor to conduct the business of the Laboratory in a manner befitting its special relationship with the Government, to operate in the public interest with objectivity and independence, to be free of organizational conflicts of interest, and to have full disclosure of the Laboratory's affairs to DOE consistent with the terms of this contract.

(2) Core Capabilities. The Contractor shall effectively and efficiently manage and direct research in all of the Laboratories' core capabilities as assigned during the annual Laboratory Planning process with the Office of Science. In 2020, these consist of the following:

Accelerator Science and Technology	Advanced Computer Science, Visualization, and Data
Applied Materials Science and Engineering	Applied Mathematics
Biological and Bioprocess Engineering	Biological Systems Science
Chemical and Molecular Science	Chemical Engineering
Climate Change Science and Atmospheric Science	Computational Science
Condensed Matter Physics and Materials Science	Cyber and Information Sciences
Decision Science and Analysis	Earth Systems Science and Engineering

Environmental Subsurface Science	Large Scale User Facilities/R&D Facilities/Advanced Instrumentation
Mechanical Design and Engineering	Nuclear Engineering
Nuclear Physics	Nuclear and Radio Chemistry
Plasma and Fusion Energy Sciences	Power Systems and Electrical Engineering
Systems Engineering and Integration	

The Contractor shall ensure the Laboratory conducts basic and applied research, development, and demonstration activities facilitating deployment of technologies. The Contractor will direct these core capabilities into creative research projects for DOE in partnerships with universities, other federal laboratories and agencies, and the private sector. Opportunities to transfer technology into useful products and processes should be conducted in close cooperation with private sector sponsors. The Contractor shall make it possible for the private sector to join in development/operation activities with the Laboratory to enhance teamwork and technology transfer.

(3) User Facilities. The Contractor is responsible for operating User Facilities supporting diverse DOE mission areas. These are large-scale ORNL facilities which house critical instrumentation and are available for external use to advance scientific or technical knowledge. The User Facilities which the Office of Science has designated are: the Spallation Neutron Source; the High Flux Isotope Reactor; the Oak Ridge Leadership Computing Facility; and the Center for Nanophase Materials Sciences/Shull-Wollan Center. Others include the Building Technologies Research and Integration Center; the Center for Structural Molecular Biology; the National Transportation Research Center, including the Manufacturing Demonstration Facility; and the Carbon Fiber Technology Facility.

The Contractor shall maintain efficient, effective, and safe operations of existing and planned user facilities, and other ORNL facilities utilized by visiting scientists, as well as provide effective customer service to user clients. The Contractor shall implement DOE mission objectives to ensure user facilities are user friendly, readily available, and can operate within conditions requested by user clients. The number and purpose of user facilities at the Laboratory may vary during the term of this contract. Two areas of particular importance during this extension are efforts related to neutron-enabled research and high performance computing. Also important is maintaining and advancing special capabilities of the High Flux Isotope Reactor and Radiochemical Engineering Development Center, including R&D, continued

custom materials and chemical processing for myriad applications, and expanding stable isotope separation capabilities.

The Contractor is responsible for planning and scheduling user facilities experiments, and maintaining agreements to engage user facilities. Agreements are in place with other government agencies, industries, universities, and international participants. As an example of the scale of the interest in the Laboratory's capabilities, in Fiscal Year 2018, over 3,000 Users came to the Laboratory to take advantage of a wide variety of capabilities in the Laboratory facilities. The Contractor is responsible for attracting and accommodating visiting scientists and students that are guests of the Laboratory.

(4) Management. The Contractor shall manage the resources and capabilities of the Laboratory and provide leadership for this scientific institution. The Contractor will effectively and efficiently direct the day-to-day management of the Laboratory, proficiently linking scientific/engineering capabilities to accomplish DOE's objectives and providing leadership in methods of integrated line management that ensure inter-laboratory team building and intra-laboratory cooperation while supplying a safe and secure working environment. The Contractor is charged with maintaining and enhancing the intellectual resource base in order to avoid erosion of the scientific and engineering foundations at the Laboratory and to promote world leadership and prominence in areas as mandated by the Office of Science. The Contractor shall attract, develop, and retain an outstanding work force, with the skills and capabilities to meet DOE's evolving mission needs. The Contractor is also responsible for the employment of all personnel engaged in the SOW efforts and for the readiness and training of its personnel.

(b) Protection of Workers, the Public and the Environment

(1) Operational Expectations. Protection of workers, the public, and the environment are fundamental responsibilities of the Contractor and a critically important performance expectation. The Contractor's Environment, Safety, and Health (ES&H) program shall be operated as an integral, but visible, part of how the organization conducts business. A key element is continued implementation of the ORNL Integrated Safety Management System (ISMS), including prioritizing work planning and execution; establishing clear ES&H priorities; allocating the appropriate level of trained and qualified resources to address programmatic and operational considerations; and continued implementation of integrated safeguards and security management systems and policies to provide a safe and healthful work environment. The Contractor shall ensure that cost reduction and efficiency efforts are fully compatible with ES&H performance.

(2) Compliance Expectations. The Contractor shall perform all activities in compliance with applicable health, safety, and environmental laws, orders, regulations, and national consensus standards (contained in ORNL Work Smart Standards); and governing agreements and permits executed with regulatory and oversight government organizations. The Contractor shall take necessary actions to preclude serious injuries and/or fatalities, keep worker exposures and environmental releases as low as reasonably achievable below established limits, minimize the generation of waste, and maintain or increase protection to the environment, public and worker safety and health.

(3) Line Management Expectations. Incorporating integrated line management, the Contractor shall put in place a system that clearly communicates the roles, responsibilities, and authorities of line managers. The Contractor shall hold line managers, including direct reports, accountable for implementing necessary controls for safe performance of work in their respective area of responsibility. The Contractor shall establish effective management systems to identify deficiencies, resolve them in a timely manner, ensure that corrective actions are implemented, (addressing the extent of conditions, root causes, and measures to prevent recurrence) and prioritize and track commitments and actions. The Contractor shall, as appropriate, consider ES&H performance in selection of its subcontractors and incorporate ES&H requirements into subcontracts.

(c) Facilities and Infrastructure.

The Contractor shall efficiently manage and maintain government-owned and leased buildings and facilities at the Laboratory site or used in the performance of the contract, together with the utilities and appurtenances thereto. The Contractor shall manage facilities and resources to optimize the effectiveness of operations in support of the DOE mission. The Contractor is expected to be an active partner with DOE in assuring that the Laboratory is renewed and enhanced to meet future mission needs. Within the constraints of available resources and other Contract requirements, the Contractor, in partnership with DOE, shall renew and enhance research facilities and equipment so that the Laboratory remains at the state-of-the-art and is well positioned to meet future DOE needs. The Contractor is also responsible for certain buildings at the Y-12 Plant. Other DOE prime contractors manage some of the facilities at the Laboratory; DOE expects the M&O contractor to integrate and interface with these other contractors to facilitate accomplishment of the larger mission. The Contractor's responsibilities are land and facility planning for the Laboratory site, and coordinating and conducting research, and its associated operational and maintenance activities, within the reservation. Site planning activities shall be conducted by the Contractor proactively addressing concerns of DOE, regulatory agencies, and stakeholder groups.

(d) Project Management

The Contractor shall manage all project, engineering, design, fabrication, and construction efforts in a manner that allows completion of project objectives in a safe and environmentally sound manner within the planned schedule, cost, and technical baselines. Specifically, the Contractor is expected to achieve all project deliverables associated with upgrades involving R&D facilities, infrastructure modernization projects, and the demonstration and deployment activities associated with both the Exascale Computing and the United States contributions to ITER Projects in accordance with DOE directives and requirements. The Contractor shall ensure that variance from established cost and schedule baselines for major construction, upgrade, or equipment procurement projects are kept to less than 10%.

(e) University and Science Education Program

In order to advance and enable science workforce development opportunities and to improve, directly or indirectly, the quality of science, mathematics, computing, and technology workforce education, training, and development in the United States, the contractor shall develop and implement innovative programs that utilize laboratory resources in collaboration and cooperation with other academic and research institutions.

(f) Mission-Related Partnerships

In order to maximize the mission impact on science and energy, national security, and economic competitiveness goals and objectives, the Contractor shall maintain and improve appropriate existing partnerships and develop new technology partnership activities. Efforts to develop broad based partnerships with academic research institutions, other agencies, other DOE laboratories, the international scientific community, and with the private sector are essential both to the long-term viability of the Laboratory and to DOE mission success. Mechanisms for partnerships include cooperative research and development agreements, direct assistance programs, employee loan programs, user facility agreements, memoranda of cooperation, memoranda of understanding, memoranda of agreement, license agreements, agreements for commercializing technology, and other arrangements being tested and considered by DOE in which research and development resources are leveraged with private sector partners for demonstration and deployment. DOE expects the contractor to provide widespread notice of availability of promising technology, and fairness of opportunity to potential partners in moving technology to market. The contractor shall prioritize activities that maximize mission impact; Laboratory capabilities in neutrons for science, biological systems science, isotope production, advanced computational systems, and advanced energy and materials

are just a few areas that provide opportunity for partnerships to have a meaningful mission impact.

The Contractor shall ensure the Laboratory contributes to U.S. technological competitiveness by conducting basic and applied research, and through development and demonstration activities facilitating transfer and deployment of technologies into useful products and processes through partnerships with the private sector. The Contractor shall make it possible for the private sector to join in development/operation activities with the Laboratory to enhance teamwork and technology transfer. Cooperation with industrial partners may include long-term strategic partnerships aimed at commercialization of Laboratory inventions or the improvement of industrial products. The Contractor shall respond to specific near-term technological needs of industrial companies with special emphasis given to working with the types of businesses identified in the Small Business Subcontracting Plan clause of this contract. The Contractor may also capitalize on its location in the Southeast by developing productive relationships with regional and local companies and through forums such as conferences, workshops, and traveling presentations. It is anticipated that these organizations will be particularly effective participants in the Laboratory's technology transfer activities in promoting a mutually beneficial relationship between DOE and the communities surrounding the Laboratory.

(g) Security

The Contractor is responsible for the security posture that fully supports safe and secure accomplishment of the Laboratory’s mission. This includes, but is not limited to, information and cyber security, nuclear materials control and accountability, personnel security, physical protection, and operational planning and management. DOE expects an integrated, cooperative, proactive approach to security at the Laboratory. DOE’s expectation is that the contractor has overall responsibility for security posture at the site, incorporating threat analysis, risk assessment, and cost/benefit analysis to ensure effective and efficient material and information protection.

(h) Other Activities

(1) The Contractor shall establish a formal make or buy program to optimize performance.

(2) The Contractor shall assist DOE through direct participation and other support in achieving DOE's energy efficiency goals and objectives in electricity, water, and thermal consumption, conservation, and savings, including goals and objectives.

(3) In addition to the services specifically described in other provisions of this SOW, the Contractor shall perform services as DOE and the Contractor shall agree in writing that will be performed from time to time under this contract at Oak Ridge or elsewhere, as follows:

a. Services incidental or related to the services described in other provisions of this SOW.

b. Services, using existing facilities and capabilities, for other federal agencies and nonfederal entities in accordance with policies and procedures established by DOE.

c. Services in support of DOE programs when the work involved has been determined by DOE to be within the unique capabilities of the contractor or when the work involved has been determined by DOE to be within the special scientific and technical capabilities of the contractor's workforce and the urgent need for the services precludes acquiring them from another source.

PART I—THE SCHEDULE

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SECTION D - PACKAGING AND MARKING

D-1 Packaging

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rates.

D-2 Marking

Each package, report or other deliverable shall be accompanied by a letter or other document which:

(a) Identifies the contract number under which the item is being delivered.

(b) Identifies the contract requirement or other instruction, which requires the delivered item(s).

PART I—THE SCHEDULE

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SECTION E—INSPECTION AND ACCEPTANCE

E-1 52.246-9 Inspection of Research and Development (Short Form) (Apr 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

E-2 Inspection and Acceptance of Recovery Act Project Work (Apr 2009)

(a) Access –

i. The Comptroller General and his representatives are authorized to examine any records of the Contractor or any of its subcontractors that involve transactions relating to the Contract or subcontract and to interview any officer or employee of the Contractor or any of its subcontractors, regarding such transactions.

ii. Any representative of an appropriate inspector general is authorized to examine any records of the Contractor or any of its subcontractors that involves transactions relating to the contract or subcontract and to interview any officer or employee of the Contractor or subcontractor regarding such transactions.

iii. The Recovery Accountability and Transparency Board (The Board) and its representatives are authorized to conduct audits and reviews of contracts that use Recovery Act funds. In addition to having access to records of the Contractor and any of its subcontractors, and the right to interview any officer or employee of the Contractor or subcontractor, the Board is also authorized to issue and enforce subpoenas to compel the testimony at public hearings, or otherwise, of persons who are not Federal officers or employees.

(b) Certification –

In order for the Contracting Officer to accept any products or services funded by the Recovery Act, the Contractor shall certify that the items were delivered and/or work was performed for a purpose authorized under the Recovery Act.

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SECTION F—DELIVERIES OR PERFORMANCE

F-1 TERM OF CONTRACT

The effective date of the contract is January 18, 2000. The term of the transition period is from January 18, 2000 through March 31, 2000. The term of the base contract is from April 1, 2000 through March 31, 2005. The Government has extended the term of the contract from April 1, 2005 to March 31, 2010, pursuant to the clause in Section I entitled, "Option to Extend the Term of the Contract," for a period of five (5) years. In accordance with Federal Acquisition Regulation 17.605, the Government extended the term of the contract from April 1, 2010 to March 31, 2015, for an additional period of five (5) years. Subsequently, also in accordance with Federal Acquisition Regulation 17.605 and implementing DOE policy, the Government has twice extended the term of the contract, for two additional five (5) year periods, from April 1, 2015 to March 31, 2020, and from April 1, 2020 to March 31, 2025. The total duration of this contract under this clause shall not exceed 302 months.

F-2 PRINCIPAL PLACE OF PERFORMANCE

The principal place of performance for the contract is Oak Ridge, Tennessee.

F-3 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 up to 30 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 up to 30 days after a stop-work order 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 a proposal 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-4 STOP WORK AND SHUTDOWN AUTHORITY

Section F Clause, FAR 52.242-15, "Stop Work Order," allows only the Contracting Officer to stop work or shut down facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

Due to the immediate need to stop work due to situations where the Contractor's acts or failures to act present an imminent danger to the environment or health and safety of employees or the public, any DOE employee may exercise the stop work authority contemplated in Section I Clause, DEAR 970.5223-1, "Integration of Environment, Safety, and Health Into Work Planning and Execution."

In addition to the authorities enumerated in the Section I Clause, DEAR 952.242-70, "Technical Direction," the contracting officer's representative (COR) may direct the Contractor to suspend work when clear and present danger exists to workers or members of the public. Clear and present danger is a condition which could be expected to cause death or serious harm to workers, members of the public, or the environment, immediately or before such condition or hazard can be eliminated through normal procedures. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this paragraph.

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SECTION G—CONTRACT ADMINISTRATION DATA

G-1 DOE Contracting Officer

For the definition of Contracting Officer see FAR 2.101 – Definitions. The Contracting Officer is the only individual who has the authority on behalf of DOE to take the following actions under the contract:

(a) Assign additional work within the general scope of the Statement of Work of the contract;
(b) Issue a change as defined in the "Changes" clause of the contract;
(c) Change any of the expressed terms, conditions or specifications of the contract;
(d) Accept non-conforming work; or
(e) Waive any requirement of this contract.

G-2 Contracting Officer's Representative(s) (COR)

The Contracting Officer's Representative(s) will be designated by separate letter and will represent the Contracting Officer in the technical phases of the work. A copy of this designation letter shall be furnished to the Contractor. The COR is not authorized to change any of the terms and conditions of this contract. Changes in the Scope of Work will be made only by the Contracting Officer by properly written modification(s) to the contract. Additional Contracting Officer's Representative(s) for other purposes as required may be designated in writing by the Contracting Officer.

G-3 Contract Administration

The contract will be administered by:

U.S. Department of Energy
ORNL Site Office
Attention: Contracting Officer
Post Office Box 2008
Oak Ridge, Tennessee 37831-6269

Written communication shall make reference to the contract number and shall be mailed to the Contracting Officer designated via separate correspondence to the above address.

G-4 Cost Reporting Requirements Involving Recovery Act Project Work (Apr 2009)

The following reporting procedure will apply to submission of monthly cost reports for Recovery Act work specified in the work scope baseline.

(a) The Contractor will separately identify costs that pertain to the Recovery Act work. The Contractor will provide a monthly report that identifies the total amount drawn on the letter of credit. This monthly report shall separate and identify Recovery Act costs associated with each appropriation at the Recovery Act program and project levels.

(b) The Contractor shall certify in each monthly report that the costs included in the report for Recovery Act work were incurred only to accomplish the Recovery Act work in accordance with the work scope.

G-5 Indirect Charges Involving Recovery Act Project Work (Apr 2009)

In accordance with the general principles of the Recovery Act the Contractor must take the following steps to minimize the impacts of indirect costs and enhance transparency and accountability of project:

(a) Clearly identify the estimated full cost of projects to include total direct and indirect costs, indirect costs rates, and adjust existing indirect cost rate to account for the material infusion of funds provided in the Recovery Act;

(b) Exempt funds from contract cost base for distributing Laboratory Directed Research and Development or similar funds taxing programs;

(c) Ensure all funds transferred by UT-Battelle, LLC are completed using the Approved Funding Program process described in Chapter 12 of the Accounting Handbook; and

(d) The Federal Administrative Charge (FAC) of three percent is waived on reimbursable work funded by the Recovery Act and performed by Departmental Federal offices or UT-Battelle, LLC.

(e) In all cases listed above and otherwise, the Contractor shall develop and maintain prudent management and good business practices regarding their indirect rate structure as it applies to Recovery Act funding.

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SECTION H—SPECIAL CONTRACT REQUIREMENTS

H-1 Reserved

H-2 Reserved

H-3 Confidentiality of Information (Rev. March 2020)

(a) 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;
(4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

(b) The Contractor shall obtain the written agreement, in a form that is consistent with ***52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements*** and satisfactory to the Contracting Officer of each employee permitted access, whereby the employee agrees that he or she 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 provisions 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 it will execute a DOE-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, such an agreement shall also be signed by Contractor personnel.

(e) This clause shall flow down to all appropriate subcontracts.

H-4 Service Contract Act of 1965 (41 USC 351)

The Service Contract Act of 1965 is not applicable to this contract. However, in accordance with Section I Clause entitled "DEAR 970.5244-1 – Contractor Purchasing System", subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Act, the Contractor shall prepare SF-98 and 98A "Notice of Intention to Make a Service Contract" (or documentation considered equivalent by the Contracting Officer) and forward it to the Contracting Officer or his designee to obtain a wage determination.

H-5 Reserved (March 2020)

H-6 Assignment and Administration of Subcontracts

(a) Assignment of DOE Prime Contracts. During the period of performance of this Contract, it may become necessary for the U.S. Department of Energy (DOE) to transfer and assign work scope from existing or future DOE prime contracts that specifically supports ORNL site work to this contract. The Contractor shall accept the transfers and assignments of work that is within the general scope of the contract. Any concerns, recommendations and/or suggestions regarding individual transfers or assignments directed by DOE shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.

(b) Administration of Subcontracts. The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor. Subcontracts and purchase orders shall be made in the name of the Contractor, shall not bind nor purport to bind the Government, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors), and shall be in such form and contain such provisions as are required by this contract or as the Contracting Officer may prescribe. Any consent by the Contracting Officer to the placement of subcontracts shall not be construed to create subcontractor privity of contract with the Government.

H-7 DOE-H-1062 Separate Corporate Entity (July 2011)

The Contractor under this Contract shall be a separate corporate entity from its parent company(s). The separate corporate entity may be a partnership or joint venture. The separate corporate entity must be set up solely to perform this Contract, and shall be totally responsible for all Contract activities. The separate corporate entity shall perform no other commercial work or work for other Government agencies except as may be authorized under the terms of this contract. The Contractor shall not utilize or otherwise divert contract employees to other corporate work except as may be authorized under the terms of the contract or as otherwise authorized by the Contracting Officer.

H-8 DOE-H-1063 Performance Guarantee Agreement (July 2011)

The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in the contract in Section J, Attachment C. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and severable liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H-9 Responsible Corporate Official

Notwithstanding the provisions of the clause in Section H entitled, *Performance Guarantee Agreement*, 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, regarding Contractor performance issues. 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.

Organization	The University of Tennessee	Battelle Memorial Institute
Name	Dr. Stacey S. Patterson	Dr. Mark Peters
Position	Vice President for Research, Outreach and Economic Development	Executive Vice President, Laboratory Operations
Address	800 Andy Holt Tower 1331 Circle Park Knoxville, TN 37996	505 King Avenue Columbus, Ohio 43201

H-10 Permits, Applications, Licenses, and Other Regulatory Documents

(a) Unless otherwise directed by the Contracting Officer, the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting all activities under the contract. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for operations under this contract (hereinafter referred to collectively as 'permits'). Except as specifically provided in the section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole applicant for any such permits required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing permits, and DOE will use all reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit applications, DOE may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subcontractors) must also

sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.

(b) Unless otherwise authorized by the Contracting Officer, the Contractor must submit to DOE for DOE's review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such document with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE 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.

(c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.

(d) DOE agrees that 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 DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

(e) In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor, or DOE will accept responsibility for such permits and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor Contractor or DOE.

H-11 Contractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties

(a) The Contractor shall accept, in its own name, services 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 the other provisions of this Contract.

(b) With advance notice given to DOE, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fines and penalties issued in its own name; however, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without receiving written concurrence from the Contracting Officer or his/her authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

(c) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

H-12 Allocation of Responsibilities for Contractor Environmental Compliance Activities

(a) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "parties" for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term "environmental requirements" means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.

(b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party that caused the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is

a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.

(c) Regardless of which party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse the DOE (if DOE pays the fine or penalty). The governing provisions of the contract include, without limitation, paragraph (a) of the clauses in Section I entitled *Pre-Existing Conditions*.

H-13 Reserved

H-14 Withdrawal of Work

(a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Descriptions/Specifications/Work Statement, of this contract performed by either another contractor or to have the work performed by Government employees.

(b) Work may be withdrawn: (1) in order for the Government to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the Contractor; or, (4) for any other reason deemed by the Contracting Officer to be in the best interests of the Government.

(c) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

H-15 Contractor Assurance System (Sep 2009)

(a) The Contractor shall develop a contractor assurance system that is executed by the Contractor's Board of Directors (or equivalent corporate oversight entity) and implemented throughout the Contractor's organization. This system provides reasonable assurance that the objectives of the Contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The contractor assurance system, at a minimum, shall include the following key attributes:

(1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.
(2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.
(3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.
(4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve the Contractor's work process and to carry out independent risk and vulnerability studies.
(5) Identification and correction of negative performance/compliance trends before they become significant issues.
(6) Integration of the assurance system with other management systems including Integrated Safety Management.
(7) Metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.
(8) Continuous feedback and performance improvement.
(9) An implementation plan (if needed) that considers and mitigates risks.
(10) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

The initial contractor assurance system description shall be approved by the Contracting Officer.

(b) The Government may revise its level and/or mix of oversight of this contract

when the Contracting Officer determines that the assurance system is or is not operating effectively**.**

H-16 Implementation of FAR Subpart 39.1

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at http://checklists.nist.gov commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory CIO shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions.

H-17 Reserved (March 2020)

H-18 Privacy Act System of Records (Revised March 2020)

In accordance with the Privacy Act of 1974, 5 U.S.C. §552a (Public Law 93-579) and implementing DOE Regulations (10 CFR Part 1008), the Contractor shall maintain the "Systems of Records" on the covered individuals listed below in order to accomplish DOE functions. The parenthetical DOE number designations for each system of records refer to the official "System of Record" number published by the DOE in the Federal Register pursuant to the Privacy Act.

- Personnel Records of Former Contractor Employees (DOE-5);
- Personnel Medical Records (DOE-33) with the exception of current contractor employees;
- Personnel Radiation Exposure Records (DOE-35);
- Occupational and Industrial Accident Records (DOE-38);
- Employee and Visitor Access Control Records (DOE-51);
- Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites (DOE-52); and
- Physical Fitness Test Records (DOE-77)

H-19 Determination of Appropriate Labor Standards

DOE shall determine the appropriate labor standards, in accordance with the Service Contract Act, the Davis-Bacon Act, or other applicable labor laws which shall apply to work performed under this contract. The Contractor shall provide such information in the form and time frame required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts, and for obtaining and applying the appropriate wage determinations.

H-20 Reserved (March 2020)

H-21 Reserved (March 2020)

H-22 Reserved (March 2020)

H-23 Reserved (March 2020)

H-24 Additional Labor Requirements

The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by DOE on all Davis-Bacon Act activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Laboratory shall report them to DOE Contracting Officer. The Contracting Officer may require that the Contractor assist in the determination of the amount of restitution and withholding of funds from a subcontractor so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.

H-25 Real Property Asset Management

(a) The Contractor shall comply with Departmental requirements and guidance involving the acquisition, management, maintenance, disposition, or disposal of real property assets to ensure that real property assets are available, utilized, and in a suitable condition to accomplish DOE's missions in a safe, secure, sustainable, and cost-effective manner. Contractors shall meet these functional requirements through tailoring of their business processes and management practices, and use of standard industry practices and standards as applicable. The contractor shall flow down these requirements to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(b) Contractor shall:

(1) Submit all real estate actions to acquire, utilize, and dispose of real property assets to DOE for review and approval and maintain complete and current real estate records

(2) Perform physical condition and functional utilization assessments on each real property assets at least once every five-year period or at another risk-based interval as approved by SC-1 based on industry leading practices, voluntary consensus standards, and customary commercial practices.

(3) Establish a maintenance management program including: a computerized maintenance management system (CMMS); a condition assessment system; a master equipment list; maintenance service levels; a method to determine for each asset the minimum acceptable level of condition; methods for categorizing deficiencies as either deferred maintenance and repair (DM) or repair needs; management of the DM backlog; a method to prioritize maintenance work; and a mechanism to track direct and indirect funded expenditures for maintenance, repair, and renovation at the asset level.

(4) Maintain Facilities Information Management System (FIMS) data and records for all lands, buildings, trailers, and other structures and facilities. FIMS data must be current and verified annually.

H-26 Reserved (March 2020)

H-27 Labor Relations (March 2020)

(a) Removed and Reserved.

(b) Labor Relations

(1) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.

(2) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing and obtaining approval of the Contractor's bargaining parameters prior to negotiations of any collective bargaining agreement or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which is outside of the agreed upon bargaining parameters and can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or retirement income plans or to any welfare benefit plans if these changes are outside of the agreed upon bargaining parameters.

(3) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, any charges or petitions filed or proposed to be filed, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

(4) Provide the Contracting Officer with a "Report of Settlement" after ratification of a collective bargaining agreement by accessing the Labor Relations Module in iBenefits, or its successor system, during the next open quarter.

(5) The Contractor agrees to conduct its labor relations program in accordance with DOE's intent that labor policies and practices reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the successful accomplishment of DOE's

programs at reasonable cost. Collective bargaining will be left to the orderly processes of negotiation and agreement between Contractor management and certified employee representatives with maximum possible freedom from Government involvement consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws. For working on DOE facilities and programs critical to the National interest, Contractor management's responsibility includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships.

H-28 Reserved (March 2020)

H-29 Reserved (March 2020)

H-30 Service Agreements with Other DOE Prime Contractors

In order to provide a net benefit to the government, the Contractor may elect to provide services to and/or obtain services from other DOE prime contractors in the performance of their respective responsibilities. When services are obtained under this article, the contractor shall maintain accountability and control of the work and shall execute agreements for the conduct of work with other prime contractors, as appropriate.

H-31 ORNL Advisory Board

In collaboration with DOE, the Contractor shall establish and maintain a high-level, broadly based Advisory Board to ensure that it receives independent scientific, technical, and management guidance and overview on the performance of the Contractor. The Contractor shall consult with DOE on the development or modification of a charter for the Board and report to the COR results from Advisory Board meetings. The Board shall include nationally prominent representatives from the academic community and from industry chosen for their diverse scientific and management skills and broad perspectives. Consistent with the provisions of the contract, the Board shall be responsible to the Contractor and shall provide overview and guidance concerning the performance of the

Contractor relating to organization, planning, and program evaluation. In addition, the Board shall review and provide guidance to cooperative programs with universities, industry and other agencies, R&D emphasis and priority, and other appropriate issues to help ensure that ORNL continues to be a leading national R&D center of the highest quality.

H-32 Reserved

H-33 Prohibition of Funding for Certain Nondisclosure Agreements

The Contractor agrees that:

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

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

(c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms

shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

H-34 Lobbying Restriction

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

H-35 Standards of Contractor Performance Evaluation

Performance expectations encompassing Section C-4, Statement of Work (SOW), are mutually defined on an annual basis in the *Performance Evaluation and Measurement Plan* consistent with Section C-3, Performance Goals, Objectives, and Notable Outcomes.

(a) Use of objective standards of performance, self-assessment and performance evaluation:

(1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of objective performance goals and indicators, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the scientific and technical mission obligations under this Contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management of the Laboratory.

(2) The Parties agree to utilize the process described within Part III, Section J, Appendix G - “Performance Evaluation and Measurement Plan" (PEMP) to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Appendix G will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.

(3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the Contract Statement of Work and performance indicators identified within Part III, Section J, Appendix G. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.

(4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Appendix G. The Contractor shall provide a formal status briefing at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings shall be agreed to by the Laboratory Director and the DOE Oak Ridge National Laboratory Site Office Manager.

(5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract. The Office of Science, through the DOE Oak Ridge National Laboratory Site Office Manager, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.

(6) The Contracting Officer shall annually provide a written assessment of the Laboratory’s performance to the Contractor, which shall be based upon the process described in Appendix G. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor’s final performance evaluation and rating. The Contractor’s self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor’s performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix G that is deemed to have an impact (either positive or negative) on the Contractor’s performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer

reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General (OIG), Government Accountability Office (GAO), Defense Contract Audit Agency (DCAA), etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may be rewarded with less frequent – or no – review of the functional area. Conversely, marginal performance or "for cause" situations may result in more frequent reviews.

(b) Standards of performance measure review:

(1) The Parties agree to review the PEMP elements (goals, objectives, performance indicators, and expected levels of performance) contained in Appendix G annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, performance indicators, and expected levels of performance for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, performance indicators and expected levels of performance and/or to modify and/or delete existing goals, objectives, performance indicators, and expected levels of performance. It is expected that the goals, objectives, performance indicators, and expected levels of performance will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.

(2) Failure to include an objective or performance indicator in the contract Appendix G does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.

(c) DOE Quality Assurance Surveillance Plan

DOE's Quality Assurance Surveillance Plan (QASP) for evaluating the Contractor's performance under the contract shall consist primarily of the PEMP as called for within the Part II, Section I (I.120 DEAR 970.5203-1). The QASP establishes the process DOE shall use to ensure that the Contractor has performed in accordance with the performance standards and expectations and acceptable quality levels for each task, describes how performance will be monitored and measured; describes how the results will be evaluated; and states how the results will affect contract payment.

H-36 Limitation on Liability

As the Contractor is a non-profit organization, the following provision shall apply:

(a) The Contractor's liability for certain obligations, which it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations shall apply only to obligations the Contractor has assumed pursuant to the following provisions:

(1) Section I, Clause 970.5228 entitled, *Insurance-Litigation and Claims* (Jul 2013), paragraphs (f)(1)((iii)(C) and (g)(2), except for punitive damages resulting from the Contractor managerial personnel's willful misconduct or lack of good faith.

(2) Section I, Clause 970.5245-1 entitled, *Property* (Aug 2016) Alternate I (Aug 2016), paragraph (f)(1)(i)(C).

(b) The Contractor shall be liable for an amount not to exceed 1.25 times the maximum fee available for each fiscal year in accordance with the provisions of the clauses in Section B which reflect the parties' agreement as to available fee. The amount of the Contractor's liability shall be calculated on a cumulative, per fiscal year basis. The annual cap that will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor pursuant to the provisions of the Clauses identified above. In the event the Contractor's act or failure to act overlaps more than one period, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed pursuant to (a)(1) through (3) above; and all costs in excess of the limitation of liability shall be borne by the Government.

H-37 Agreements for Commercializing Technology (Acquisition Letter 2018-06)

This H-clause authorizes the use of the mechanism: Agreements for Commercializing Technology (ACT). In accordance with the requirements specified in this H-clause, the M&O Contractor may conduct third party-sponsored research at the M&O Contractor's risk. While the Department believes ACT has the potential to greatly assist in the commercialization of technologies, it also specifically recognizes that ACT can be used for other engagements with outside entities that are not necessary aimed at

commercialization (e.g., technical assistance, training, studies), but which facilitate access to DOE facilities. In performing ACT work, the M&O Contractor may use staff and other resources associated with this M&O contract for the purposes of conducting technical services (technical services are services that are routinely performed for DOE and multiple sponsors with little.to no variance in the scope of work e.g., calibration services), training, studies, performing research and development, and/or furthering the technology transfer mission of the Department, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in the M&O Contractor's custody or available to the M&O Contractor under this M&O contract (unless specifically excluded by the Contracting Officer). For M&O Contractor activities conducted under authority of this H-clause, the M&O Contractor shall provide full-cost recovery, assume indemnification and liability as provided in paragraph 9 below, and may assume other risks normally borne by private parties sponsoring research at the DOE national laboratories and production plants. In exchange for accepting such risks, or for other private consideration provided by the M&O Contractor, the. M&O Contractor is authorized to negotiate separate ACT agreements with the sponsoring third parties. Under ACT agreements, the M&O Contractor may charge those parties additional compensation beyond the full costs of the work at the facility.

The following applies to all work conducted under the ACT mechanism regardless of the source of funding:

(1) *Authority to Perform Work Under This H-Clause.* Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) and other applicable authorities, the M&O Contractor may perform work for nonFederal entities, in accordance with the requirements of this H-clause.

(2) *M&O Contractor's Implementation.* For ACT work conducted under the contract, the M&O Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this H-clause, which must be approved by the Contracting Officer, and such approval shall not be unreasonably withheld.

(3) *Conditions for Participation in ACT*. The M&O Contractor:

(a) Must not perform ACT activities that would place it in direct competition with the private sector;

(b) May only conduct work under this H-clause if the work does not interfere with or adversely affect projects and programs the M&O Contractor conducts on behalf of the DOE under this contract, and complies with the terms and conditions of the prime contract. If the Government determines that an activity conducted under this H-clause interferes with the Department's work under the M&O contract, or that termination/stay/suspension of work under an ACT agreement is in the best interest of the Government, the M&O Contractor must stop the interfering ACT work immediately to the extent necessary to resolve the interference. At any time, the Contracting Officer may require the use of specified Government-owned or leased property and facilities for the exclusive use of the DOE mission by providing a written notice excluding said property from the M&O Contractor's activities under this H-clause. Any cost incurred as a result of Contracting Officer decisions identified in this subparagraph shall be borne by the M&O Contractor. The Contracting Officer shall provide to the M&O Contractor in writing its decision, identifying the issues and reasons for the decisions. The M&O Contractor shall be provided with a reasonable opportunity to address and resolve the issues identified by the Contracting Officer;

(c) Except as otherwise excluded in this H-clause, must perform all ACT activities in accordance with the standards, policies, and procedures that apply to performance under this M&O contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(d) Must maintain and provide when requested by the DOE Contracting Officer, a summary of project information for each active ACT project, consisting of: sponsor name; total estimated costs; project title and description; project point of contact; and estimated start and completion dates;

(e) Is responsible for addressing the following items in ACT agreements as appropriate: disposition of property acquired under the agreement; export control; notice of intellectual property infringement; and a statement that the Government and/or the M&O Contractor shall have the right to perform similar services in the Statement of Work for other Parties as otherwise authorized by this M&O contract subject to applicable data restrictions;

(f) Must include a standard legal disclaimer notice on all publications generated under ACT activities. Each DOE M&O Contractor has its own pre-approved publications statement, and this should be included; and

(g) Must insert the following disclaimer in each agreement under ACT, which must be conspicuous (e.g. bold type, all capital letters, or large font) in all Agreements under ACT so as to meet the standards of due notice.

DISCLAIMER

THIS AGREEMENT IS SOLELY BETWEEN [INSERT NAME OF THE M&O CONTRACTOR] AND [THE OTHER IDENTIFIED PARTY]. THE UNITED .STATES GOVERNMENT IS NOT A PARTY TO THIS AGREEMENT, THIS AGREEMENT DOES NOT CREATE ANY OBLIGATIONS OR LIABILITY ON BEHALF OF THE GOVERNMENT AND THE GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; ORTHAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT. THIS DISCLAIMER DOES NOT AFFECT ANY RIGHTS THE GOVERNMENT MAY HAVE AGAINST THIRD PARTIES ARISING FROM WORK CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

(4) *Contracting Authority.*

(a) Subject to DOE approval as described in this paragraph, the M&O Contractor is hereby authorized to negotiate terms and conditions between the M&O Contractor and third parties when entering into ACT

agreements. The M&O Contractor will have no authority to bind the Government in any way with such terms and conditions. The Government will have no obligation to the M&O Contractor due to such terms and conditions.

(b) The M&O Contractor shall submit an ACT proposal package (Package) to the Contracting Officer for approval prior to beginning work under an ACT agreement.

i. A complete Package will include at a minimum: the identity of the parties to the ACT agreement; the principal place of performance; any foreign ownership or control of the ACT agreement parties; a Statement of Work; an estimate of costs incurred under the M&O contract; an anticipated schedule; identification of key Government equipment and facilities that will be used under the ACT agreement; a list of expected deliverables; identification of the Intellectual Property (IP) lead and proposed selection of IP rights, as defined in DOE Class Waiver W(C)-2011-013; a signed certification by the private party(ies) that the M&O Contractor offered the option to use CRADA and SPP alternatives (see paragraph 7a) sufficiently such that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and SPP alternatives; source of funds, including a statement that no Federal funds, including pass-through funds received as a subcontractor or partner, are being utilized to fund the agreement except as authorized under the FedACT pilot (see paragraph 14 below); applicable ES&H and NEPA documentation; a statement of consideration, summarizing the risk and/or consideration offered the ACT participants in exchange for charging beyond full cost recovery or for other compensation provided by the participants; and when multiple third parties are parties to the ACT agreement, or as otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.

ii. If the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member or subsidiary has an equity interest, is

a party to the ACT agreement, the M&O Contractor shall include as necessary a project-specific addendum to the Master OCI Plan in the Package to address special circumstances not fully anticipated in the prior approved Master OCI Plan (see paragraph 7).

iii. If the ACT agreement includes a foreign entity as a party or the statement of work includes the use of human subjects, animal subjects, classified or sensitive subject matter or describes a work scope involving high risks or hazards including environmental issues, the M&O Contractor shall include additional information as necessary or as requested by the Contracting Officer.

(c) The Contracting Officer shall use reasonable best efforts to review each complete Package submitted by the M&O Contractor under subparagraph 4.b. of this H-clause within ten (10) business days of receiving the Package and provide the M&O Contractor with approval or non-approval of the Package. The review of the complete Package by the Contracting Officer shall include a determination that the proposed work: (1) is consistent with or complementary to DOE missions and the contract statement of work; (2) will not adversely impact programs under the contract scope of work; (3) will not place the contractor in direct competition with the domestic private sector; and (4) will not create a detrimental future burden on DOE resources.

(d) Except as conditionally allowed under subparagraph i. below, the Contracting Officer must approve the Package before the M&O Contractor may begin work under the proposed ACT agreement. If the Contracting Officer rejects the Package then the Contracting Officer must provide said rejection to the M&O Contractor in writing including the reasons for the rejection. Upon receipt of the Contracting Officer's written rejection, the M&O Contractor agrees to not further pursue the work described in the package or incur additional costs under the M&O contract for the work described in the Package.

i. The M&O Contractor may request a preliminary determination that the proposed scope of work is consistent with the contract statement of work and the Contracting Officer will use his/her best efforts to provide such a determination within three (3) business days. Upon such a determination from the Contracting Officer, the

M&O Contractor may begin work under the ACT agreement at the M&O Contractor's risk pending final approval of the complete Package. The M&O Contractor must submit a complete Package, as identified in subparagraph 4.b. above, within (10) business days of the preliminary determination. All costs associated with the performance of work under a preliminary determination are the responsibility of the M&O Contractor, as no Federal funds will be used to fund any work conducted under this H-clause.

ii. If the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member or subsidiary has an equity interest, is a party sponsoring work in connection with the ACT agreement, work may not commence until approval of the complete Package by the Contracting Officer.

(5) *Advance Payment for ACT Projects*. The M&O Contractor shall be responsible for providing adequate advance payment for ACT work conducted under this H clause consistent with procedures defined in the Department's Financial Management Handbook. The M&O Contractor shall be solely responsible for collecting payments from third parties for any work conducted under this H clause and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to the M&O Contractor's work under this H-clause, the M&O Contractor is entirely at risk and the Government shall have no risk.

(6) *Costs*. All direct costs associated with the M&O Contractor's work conducted under this H-clause shall be directly charged to separate and identifiable accounts in accordance with the requirements of the Department's Financial Management Handbook. An allocable portion of indirect costs normally applied to equivalent work under this M&O contract shall also be applied to work conducted under this H-clause in accordance with the requirements of the Financial Management Handbook. As required by the Financial Management Handbook, changes to the Handbook will be incorporated into this H-clause by a unilateral administrative modification to the contract. In addition, all work must be performed at full costs which would include Federal Administrative Charge (FAC).

(a) Work conducted under this H-clause shall be excluded from the M&O contract award fee calculations and such fee shall not be allocable to work conducted under this H-clause.

(b) Federal funds will not be used to fund work conducted under this H-clause except as authorized under the FedACT pilot (see paragraph 14 below).

(7) *Organizational Conflict of Interest*. The M&O Contractor shall conduct work under this H-clause in a manner that minimizes the appearance of conflicts of interest and avoids or mitigates actual conflicts of interest with the M&O Contractor's functions under this M&O contract. Accordingly, the M&O Contractor shall develop an Organizational Conflict of Interest Mitigation Plan (OCI Plan). The OCI Plan should address OCI issues that arise as a result of the M&O Contractor taking a financial interest in ACT projects, especially in those cases where the M&O Contractor retains rights in ACT IP. Said OCI Plan shall be provided to the Contracting Officer for review and approval as soon as practicable after execution of the M&O contract modification incorporating this H- clause into the M&O contract. Unless provided otherwise by the Contracting Officer, no work on ACT agreements may commence before Contracting Officer approval of the OCI Plan. In addition to those elements expressly stated in the OCI Plan, the Department may condition any ACT transaction on such other mitigating conditions it determines are appropriate. The OCI Plan shall, at a minimum, include elements that address the following:

(a) *Full Disclosure*. Before work can begin under an ACT transaction, all parties to ACT agreements must sign a DOE-approved certification that they have been fully informed about the availability of SPP agreements and CRADAs in addition to ACT. The certification at a minimum shall briefly describe SPP agreements, CRADAs and ACT, and will include the relative disposition of IP rights and the costs (including identification of any additional costs e.g. insurance, and other compensation to the M&O Contractor under ACT) for each type of agreement for the scope of work being proposed.

(b) *Priority of Work*. The M&O Contractor shall not give work under ACT any special attention or priority over other work under the DOE M&O contract. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work under the DOE M&O contract that it would normally have if performed under a non-Federal

SPP agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the M&O Contractor's input.

(c) *Participation by Contractor-related Entity*: Where the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT agreement, the M&O Contractor shall include as necessary an addendum to the OCI Plan to address special circumstances not fully anticipated in the OCI Plan.

(d) *Right of Inquiry for ACT IP Designation*. DOE Patent Counsel may inquire into the M&O Contractor's designation of any invention or data as arising under an ACT transaction. The M&O Contractor is responsible for curing any defect identified in such inquiry, and if the M&O Contractor cannot adequately justify the designation or cure the defect, then the parties to the ACT agreement may receive modified rights in the IP to the degree necessary to resolve the issues identified by the inquiry.

(8) Intellectual Property. Disposition of intellectual property (IP) arising from work conducted under this H-clause shall be governed by Class Waiver W(C)-2011- 013 (ACT Class Waiver) which is incorporated herein by reference.

(a) All Contractor ACT inventions shall be reported to DOE pursuant to the requirements of the [cite Patent Rights-M&O contract, Nonprofit Organization or Small Business Firm Contractor] clause of this M&O contract.

(b) In reporting ACT inventions, the M&O Contractor shall identify the ACT agreement under which the invention was made and specify the rights reserved by the Government pursuant to the ACT Class Waiver.

(c) All technical data identified by the ACT client as Protected ACT Information shall also be marked to identify the ACT agreement under which the data was generated.

(d) The M&O Contractor shall ensure that all rights and obligations concerning ACT IP, including the appropriate IP provisions authorized in the ACT Class Waiver, are clearly provided in ACT agreements, and that all parties granted any rights-in ACT IP are informed of the terms of the waived rights, including the rights reserved by the Government.

(e) Where the M&O Contractor receives ownership or license rights to ACT IP, the· M&O Contractor may elect to commercialize the ACT IP consistent with the Technology Transfer Mission clause of this M&O contract.

(f) As an alternative to subparagraph e., if the M&O Contractor has an authorized Private Funded Technology Transfer (PFTT) program, the M&O Contractor may elect to retain private ownership of the ACT IP and commercialize the IP under its applicable PFTT clause, using its private funds, where no costs for developing, patenting, and marketing will be allowable under this M&O contract. The M&O Contractor will share royalties collected on ACT IP with inventors in accordance with paragraph (h) of the Technology Transfer Mission clause of this M&O contract.

(g) For ACT projects in which the terms of the Agreement provide that the Government reserves the right to use generated data after the particular project expires, the M&O Contractor must provide to OSTI computer software produced under the Agreement in both source and executable object code format.

(h) Where terms and conditions governing Data and Subject Inventions under this Contract are inconsistent with the terms of the ACT Class Waiver, the ACT Class Waiver will control.

(9) Contractor Liability and Indemnification.

(a) General Indemnity.

i. The M&O Contractor agrees to indemnify and hold harmless the Government, the Department, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the ACT participants, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of an ACT transaction by the Government, the Department, the M&O Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the M&O Contractor, and not directly resulting from the fault or negligence of the Government, the

Department, or persons (other than the M&O Contractor) acting on their behalf.

ii. Subject to Contracting Officer approval, the General Indemnity set forth in (i) above may be modified or waived where: (1) ACT participants are not providing material or equipment to the M&O Contractor to be used in the performance of the Statement of Work under the ACT transaction; and (2) ACT participants are not sending their employees to the M&O facilities as part of the Statement of Work; and (3) the specific activities performed under the ACT transaction are normally performed by the DOE M&O Contractor under the DOE contract.

iii. Notwithstanding the provisions in a (i) and a (ii) above, the M&O Contractor shall indemnify and hold harmless the Government, the Department, and persons acting on their behalf for loss, damage, or destruction of Government prope1ty resulting from the fault or negligence of the M&O Contractor. Such indemnification shall be subject to a liability limit of $2,000,000 (two million dollars) per year, or such greater liability limit approved by the cognizant DOE/NNSA Contracting Officer under the DOE contract. Above the applicable liability limit, the M&Q Contractor's responsibility to the Government for such loss, damage or destruction, shall be as set forth in the "Property" clause of this contract.

(b) *Intellectual Property Indemnity.* The M&O Contractor shall indemnify the Government, its agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed to be performed under the Statement of Work under an ACT transaction to the extent such acts are not already performed at the M&O contract facilities. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the M&O Contractor unless required by a court of competent jurisdiction.

(c) *Product Liability Indemnity.*

i. Except for any liability resulting from any negligent acts or omissions of the Government, the M&O Contractor agrees to indemnify the Government for all damages, costs, and expenses, including attorney's 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 ACT participants or the M&O Contractor, their assignees, or licensees, which was derived from the work performed under ACT transactions. With respect to this H-clause, neither the Government nor the M&O Contractor shall be considered assignees or licensees as a result of reserved Government rights in ACT IP. The indemnity set forth in this paragraph shall apply only if the M&O Contractor shall have been informed as soon and as completely as practical by the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Government shall have provided all reasonably available information and reasonable assistance requested by the M&O Contractor. No settlement for which the M&O Contractor would be responsible shall be made without the M&O Contractor's consent, unless required by final decree of a court of competent jurisdiction.

ii. Where the M&O Contractor assigns the responsibility for indemnifying the Government under subparagraph c(i) above to other ACT participants, the M&O Contractor agrees to seek such indemnification from the other ACT participants.

(d) *Claims and Liabilities*. Claims and liabilities resulting from the M&O Contractor's performance of work under an ACT transaction authorized pursuant to this H-clause shall not be subject to the M&O contract clause entitled "Insurance - Litigation and Claims." In no event shall the M&O Contractor be reimbursed under the M&O contract for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, and judgment and settlements) incurred as a result of third party claims related to the M&O Contractor's performance under this H-clause.

(e) *Government Obligations*. The M&O Contractor shall not include any guarantee or requirement that will obligate the Government to pay or incur any costs or create any liability on behalf of the Government in any ACT agreement or commitment. the M&O Contractor executes under authority of this H-clause. The M&O Contractor agrees if the Contractor does include such a guarantee or requirement, it will have no effect on the

Government, such that, the M&O Contractor will be responsible for any costs or liability due to such a guarantee or requirement.

(f) *Insurance*. Any cost of insurance to cover risks of the M&O Contractor associated with ACT agreements is unallowable under this contract.

(10) *ACT Records*. All records associated with the M&O Contractor's activities conducted under the authority of this H-clause, with the exception of information required under paragraphs 3e, 4.b.i, and 13 shall be treated as Contractor-owned records under the provisions of the Access to and Ownership of Records clause of this M&O contract. The Government or its designees shall use such records in accordance with applicable Federal laws (including the Privacy Act), as appropriate.

(11) *Termination*. The Government or the M&O Contractor may terminate ACT authority under this contract by providing written notification of termination to the other party (Contracting Officer or the M&O Contractor) as appropriate, no less than 60 days prior to the requested termination date. In such cases, the M&O Contractor shall provide DOE a comprehensive list of active ACT projects. DOE anticipates work commitments under these agreements will be completed regardless of termination. All costs associated with early termination of any ACT agreements prior to the completion shall be the responsibility of the M&O Contractor.

(12) *Successor M&O Contractor*. To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor M&O Contractor, ACT agreement(s) executed under this H-clause and any contractual instruments associated therewith may be novated to the successor M&O Contractor with the mutual consent of the M&O Contractor, the successor M&O Contractor, and the parties to the affected ACT agreement(s). If the ACT agreement(s) cannot be novated, then the M&O Contractor as a private sponsor shall be permitted to enter into a Non- Federal SPP agreement with the successor M&O Contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE SPP policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT agreement.

(13) *Minimum Reporting Requirements*. The M&O Contractor shall maintain records of its activities related to ACT in a manner and to the extent satisfactory to DOE and specifically including, but not limited to the number

of ACT agreements, the amount of funds reimbursed to DOE for work under ACT and aggregate funding received beyond costs in the performance of ACT, the number of third party entities engaged through ACT that had not previously sponsored projects under the M&O contract and the number that had not previously sponsored projects under any DOE/NNSA M&O contract, the amount of funds reimbursed to DOE by newly engaged entities, the number of parties and types of entities engaged in each individual ACT agreement, and the number of invention disclosures, licenses and start-ups arising from ACT. The M&O Contractor shall establish performance metric(s) to measure the time required to negotiate ACT agreements in a manner consistent with the time required to negotiate CRADAs and SPPs. The M&O Contractor shall obtain from each entity engaged in ACT the entity's reason(s) for selecting ACT for performance of work under the M&O contract. Also, the M&O Contractor shall report the above identified data annually to the DOE Contracting Officer and in such a format which will serve to adequately inform DOE of the Contractor's activities under ACT while protecting any data not subject to disclosure under this M&O contract. Such records shall be made available in accordance with the clauses of this M&O contract pertaining to inspection, audit and examination of records.

(14) *FedACT Pilot*. Under this paragraph the DOE is authorizing a 3-year pilot program for Federally funded ACT (FedACT). FedACT contracts are ACT agreements between the M&O Contractor and a non-Federal third party partner, where a portion of the project funding originates from a Federal agency (i.e., Federal appropriations). In most cases, the industry partner's original source of funds will have been as a result of a contract or financial assistance award from the Federal agency. Any agreement that includes Federal funds must be performed under the FedACT pilot. Federal funds used to support a FedACT project must solely be used to carry out the purposes of the Federal award. FedACT does not include agreements directly funded from another Federal agency. DOE and the M&O Contractor recognize that FedACT is a new mechanism and subject to modifications as more data and experience are realized. During the FedACT pilot either patty may suggest changes to the program based on the experiences gained. Furthermore, the M&O Contractor recognizes that the Department may decide to end the FedACT pilot at any time and that termination of the FedACT pilot by the Department will be in accordance with this paragraph. During the FedACT pilot the M&O Contractor is permitted to negotiate and

execute such agreements, subject to DOE approval, as described in paragraph 4 above and as set forth herein. The following additional requirements apply:

(a) The M&O Contractor agrees, prior to executing such agreements, to submit to DOE for approval a modified ACT procedure for implementing the execution of FedACT.

(b) If the M&O Contractor is charging the third party additional compensation beyond the full costs of the work performed under the M&O contract, the ACT agreement will not be approved unless DOE or the M&O Contractor obtains a written certification from the Federal agency funding the third party that such additional compensation using Federal funds is permissible under the Federal award. In order to maximize the transparency of the transaction to the funding agency, the written certification shall be in the form of a standard template approved by DOE. Such template shall include at a minimum:

i. The amount of and explanation for the cost difference between performing the work as an ACT agreement as compared with an SPP or CRADA; and
ii. A detailed description of the risk and/or consideration offered the participant by the M&O Contractor in exchange for charging beyond full cost recovery. This information shall also be included in the statement of consideration contained in the ACT proposal package submitted to the Contracting Officer.

(c) The M&O Contractor may not agree to any terms and conditions of the Federal award that conflict with this M&O contract.

(d) Notwithstanding any other provision in this H-clause, rights to ACT inventions and copyrights arising from work conducted under this paragraph made by the M&O Contractor shall be governed by the terms of the Patent and Data Rights clauses of this M&O Contract, as well as any applicable PFTT clause. The ACT Class Waiver does not apply to any ACT agreement funded with Federal funds.

(e) DOE's approval to negotiate and execute a FedACT agreement under this paragraph is for the sole purpose of evaluating and considering the M&O Contractor and DOE's processes and procedures for implementing such

FedACT agreements and does not in any way provide the Contractor authority beyond the scope of this paragraph or imply that permanent authority shall be forthcoming.

(f) Advance payment requirements in Section 5 equally apply to FedACT agreements.

(g) All work must be performed at full costs which includes a Federal Administrative Charge (FAC).

(h) Termination. The FedACT Pilot implemented by this H-clause will terminate three years from the date AL 2018-06 is issued [*April 6, 2021*], unless renewed by the Contracting Officer. The Government may provide the M&O Contractor with written notice to terminate the M&O Contractor's authority to conduct FedACT work under this H-clause at any time. If the Contractor's authority to conduct FedACT work under this H-clause has expired or been terminated, the M&O Contractor will be permitted, subject to any other provisions of this H-clause, to complete any FedACT work that had been approved by DOE prior to this H-clause being terminated by the Government.

H-38 Management and Operating (M&O) Subcontract Reporting (Nov 2017)

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

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

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

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

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

H-39 Definitions (Jan 2000)

"Contractor" as used in Section I Clause entitled, *Indemnification Under Public Law 85-804,* shall be defined as follows:

(a) In all subsections of said clause except as set forth in (b) below, as:

(i) UT-Battelle, LLC, a Tennessee nonprofit limited liability company, and

(ii) The members of UT-Battelle, LLC, which are, inclusive, the University of Tennessee, a state university, and Battelle Memorial Institute, an Ohio nonprofit corporation.

(b) As to subsections (a) and (e) of said clause, Contractor shall be defined as UT-Battelle, LLC, a Tennessee nonprofit limited liability company.

H-40 Advance Understandings Regarding Additional Matters of Cost Allowability (Revised March 2020)

Allowable costs under this contract shall be determined according to the requirements of Section I clause entitled "DEAR 970.5232-2, Payment and Advances." For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable and/or unallowable under this contract to the extent indicated:

(a) Imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted accounted principles (GAAP) are allowable, provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved in writing by the DOE Contracting Officer in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose.

(b) Training and Education costs described in subparagraphs (b)(1) and (b)(2) below that the Contractor incurs in complying with the requirements of Section C, paragraphs C-4 (e), University and Science Education Program, and (f), Mission-Related Partnerships, of the contract will not be unallowable due solely to non-compliance with the FAR cost principle at FAR 31.205-44 titled "Training and education costs." In order to be allowable, however, such Training and Education costs must comply with all other contract terms and conditions, including reasonableness, allocability, and the limitations of FAR Subpart 31.2.

(1) Notwithstanding the provisions of FAR cost principle 31.205-44(e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.

(2) Notwithstanding the provisions of FAR cost principle 31.205-44(e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.

(c) Subject to approval by the Contracting Officer, costs of rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract are allowable.

(d) No corporate home office expense of the Contractor shall be allowable under this contract without the prior approval of the Contracting Officer and consistent with the requirements set forth in Acquisition Letter AL-2012-04, dated October 13, 2011.

H-41 Reserved (March 2020)

H-42 Contractor's Obligations Regarding Data First Produced Under DOE Funding Opportunity Announcement DE-FOA-0000977: Clean Energy Manufacturing Innovation Institute for Composite Materials and Structures

(a) Rights to Protected Data

(1) The Contractor may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of a DOE Work Proposal (FWP) or Inter-entity Work Order (IWO), issued pursuant to the identified Clean Energy Manufacturing Innovation Institute for Composite Materials and Structures FOA (identified FOA) that would have been treated as a trade secret if developed at private expense. Any such claimed "protected data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraph (b) of this clause.

PROTECTED RIGHTS NOTICE

These protected data were produced under a Field Work Proposal and/or Inter-entity Work Order issued pursuant to Department of Energy funding Opportunity Announcement DE-FOA-0000977: Clean Energy Manufacturing Innovation Institute for Composite Materials and

Structures and may not be published, disseminated, or disclosed to others outside the Government until 5 years after the data is produced, without the express written authorization from the Contractor. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part. "Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so. (End of notice)

(2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:

i. For evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or
ii. To subcontractors or other team members performing work under the Government's program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data.

i. At the end of the protected period;
ii. If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;
iii. If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or
iv. If the Contractor disseminates or authorizes another to disseminate such data without obligations of confidentiality.

(4) However, the Contractor agrees that the following types of data are not considered to be protected and shall be provided to the Government without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with the

identified FOA, or from making publicly available additional nonprotected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data.

i. Composite component physical dimensions size, weight, and performance characteristics of the composite component(s), including strength, modulus, elongation, electrical conductivity, thermal conductivity, and results of final demonstration(s);
ii. Operating and performance characteristics of manufacturing processes for composite production, including cycle time, temperatures, and results of final demonstration;
iii. (iii) Composite constituent material parameters from intermediate and final stages of development and product datasheet: including measured component parameters, parameter ranges (typical and/or minimum and maximum values) and measurement test conditions used to characterize datasheet parameters. Examples of measurement test conditions include applied forces and temperatures during parameter testing;
iv. (iv) Modeling and simulation results and performance characteristics, verification and validation results and uncertainty quantification; and
v. (v) General (non-enabling) illustrations and photographs of the finished manufacturing process equipment, analytical equipment, constituent materials, intermediate material forms and final composite components and assemblies.

(5) The Contractor may include this Rights to Protected Data clause, suitably modified to identify the parties, in all subcontracts to any Field Work Proposal and/or Inter-entity Work Order issued pursuant to Department of Energy Funding Opportunity Announcement DE-FOA0000977: Clean Energy Manufacturing Innovation Institute for Composite Materials and Structures.

(6) The Government's sole obligation with respect to any protected data developed under an FWP or IWO issued pursuant to the identified FOA shall be as set forth in this clause.

b) Unauthorized Marking of Data Notwithstanding any other provisions concerning inspection or acceptance, if any data developed under an FWP or IWO issued pursuant to the identified FOA bears any restrictive or limiting markings not authorized by this clause, the Contracting Officer has the right to remove, cancel,

correct, or ignore any markings not authorized by this clause on any data furnished hereunder if, in response to a written inquiry by DOE 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 will notify the Contractor of the action taken.

H-43 Conference Management (SEP 2015)

The Contractor agrees that:

(a) The Contractor shall ensure that contractor-sponsored conferences reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the Contractor will ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.

(b) Determination of a Conference

(1) General Definition. "Conference" is defined in the Federal Travel Regulation as, "[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 C.F.R 410.404." However, this definition is only a starting point. What constitutes a conference for the purpose of this guidance is a fact-based determination based on an evaluation of the criteria established in this section (b).

(2) Additional Indicia of Conferences. Conferences subject to this guidance are also often referred to by names other than "conference." Other common terms used include conventions, expositions, symposiums, seminars, workshops, or exhibitions. They typically involve topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participations. Indicia of a formal conference often include but are not limited to registration, registration fees, a published substantive agenda, and scheduled speakers, or discussion panels. Individual events may qualify as conferences without meeting all of the indicia listed above, but will generally meet some of them. Please note that some training events may qualify as conferences for the purposes of this guidance, particularly if they take place in a hotel or conference center.

(3) Local Conferences. Events within the local duty location that do not require advance travel authorization may also qualify as a conference for the purposes of this guidance if the event exhibits other key indicia of a conference, especially the payment of a registration, exhibitor, sponsor, or conference fee.

(4) Exemptions. For the purposes of this guidance, the exemptions below apply and these types of activities should not be considered to be conferences even if the event meets the general definition of conference in subsection 1 above. Even where an event is considered exempt from this guidance, organizations are expected to continue to apply strict scrutiny to DOE's participation to ensure the best use of government funds and adherence with not only all applicable laws and policy, but the underlying spirit or principles, including ensuring that only personnel attend events that have a mission-essential need to do so, that expenses be kept to a minimum, and that participation in any associated social events be limited and restrained to the greatest degree practicable to avoid the appearance of impropriety. Exemptions from this guidance should be granted sparingly and only when events fully meet the definition and intent of the criteria below:

i. Meetings necessary to carry out statutory oversight functions. This exemption would include activities such as investigations, inspections, audits, or non-conference planning site visits.
ii. Meetings to consider internal agency business matters held in Federal facilities. This exemption would include activities such as meetings that take place as part of an organization's regular course of business, do not exhibit indicia of a formal conference as outlined above, and take place in a Federal facility.
iii. Bi-lateral and multi-lateral international cooperation engagements that do not exhibit indicia of a formal conference as outlined above that are focused on diplomatic relations.
iv. Formal classroom training which does not exhibit indicia of a formal conference as outlined above.
v. Meetings such as Advisory Committee and Federal Advisory Committee meetings, Solicitation/Funding Opportunity Announcement Review Board meetings, peer review/objective review panel meetings, evaluation panel/board meetings, and program kick-off and review meetings (including those for grants and contracts).

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

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

i. covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference) or
ii. purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).

(2) The Contractor authorizes use of its official seal, or other seals/logos/ trademarks to promote a conference. Exceptions include non-M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).

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

(e) (e)The contactor will provide information on conferences they plan to sponsor with expected costs exceeding $100,000 in the Department's Conference Management Tool, including:

(1) Conference title, description, and date

(2) Location and venue

(3) Description of any unusual expenses (e.g., promotional items)

(4) Description of contracting procedures used (e.g., competition for space/support)

(5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees)

(6) Number of attendees.

(f) The Contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed $100,000 until notified of approval by the contracting officer.

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

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

i. covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference) or
ii. purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.

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

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

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

(1) Track all conference expenses.

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

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

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

H-44 Contractor's Obligations Regarding Data First Produced Under DOE Funding Opportunity Announcement DE-FOA-0000687: Critical Materials Hub

(a) Rights to Protected Data

(1) The Contractor may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of a DOE Work Proposal (FWP) or Inter-entity Work Order (IWO), issued pursuant to the identified Critical Materials Hub FOA (identified FOA) that would have been treated as a trade secret if developed at private expense. Any such claimed "protected data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (b) of this clause.

PROTECTED RIGHTS NOTICE

These protected data were produced under a Field Work Proposal and/or Inter-entity Work Order issued pursuant to Department of Energy Funding Opportunity Announcement DE-FOA-0000687: Critical Materials Hub and may not be published, disseminated, or disclosed to others outside the Government until 5 years after the data is produced, without the express written authorization from the Contractor. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part. "Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so. (End of notice)

(2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:

i. For evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or
ii. To subcontractors or other team members performing work under the Government's program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data.

i. At the end of the protected period;
ii. If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;
iii. If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or
iv. If the Contractor disseminates or authorizes another to disseminate such data without obligations of confidentiality.

(4) However, the Contractor agrees that the following types of data are not considered to be protected and shall be provided to the Government without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with the identified FOA, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data.

i. Fundamental knowledge of critical materials properties;
ii. General information regarding strategy and general overview of projects by or for the Hub directed to reducing or eliminating criticality for existing materials and preventing criticality of new materials that are essential to modern and advanced energy technologies;

iii. Identification of and potential function and use of critical materials essential to modern and advanced energy technologies.

(5) The Contractor may include this Rights to Protected Data clause, suitably modified to identify the parties, in all subcontracts to any Field Work Proposal and/or Inter-entity Work Order issued pursuant to Department of Energy Funding Opportunity Announcement DE-FOA-0000687: Critical Materials Hub

(6) The Government's sole obligation with respect to any protected data developed under an FWP or IWO issued pursuant to the identified FOA shall be as set forth in this clause.

(b) Unauthorized Marking of Data

Notwithstanding any other provisions concerning inspection or acceptance, if any data developed under an FWP or IWO issued pursuant to the identified FOA bears any restrictive or limiting markings not authorized by this clause, the Contracting Officer has the right to remove, cancel, correct, or ignore any markings not authorized by this clause on any data furnished hereunder if, in response to a written inquiry by DOE 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 will notify the Contractor of the action taken.

H-45 Advance Understanding Regarding Special Hazards Associated with Support of Nuclear and Other Threats Outside the United States

The parties recognize that the Contractor’s support of DOE and/or other federal agency efforts to reduce threats from nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices, or missile technology located outside the United States may prove hazardous to contractor employees who volunteer for these assignments. When performing this work, contractor employees may be subject to special hazards which are not part of the employee’s normal duties and for which workers’ compensation laws, other statutes, the Contractor’s welfare plan and policies, and other Contractor-provided insurance of the worker’s private insurance may not provide adequate financial protection to the work in the event of disability, or to the worker’s estate in the event of death.

(a) Definitions

(1) "Field Deployment Team" means that emergency-response team established by the Contractor at the request of DOE to be available, upon call by public authorities, through DOE, for immediate technical assistance and advice outside the United States involving detection, identification, assessment, characterization, packaging, control, containment, transport, dismantlement, movement or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices, or missile technology.

(2) "Covered Assignment" means work which requires the active deployment outside the United States of a Contractor employee as a member of the Field Deployment Roster.

(3) "Special Insurance Coverage" means Special (Additional) Travel Accident or similar special insurance coverage obtained by the Contractor, with the consent of DOE, to cover each Contractor employee member of the Field Deployment Roster for accidental death, dismemberment, and disability occurring directly or indirectly from said employee's participation in a covered Assignment, including but not limited to travel to and from the Covered Assignment.

(4) "Field Deployment Roster" means the list provided at the time of deployment by the Contractor of employees who have volunteered to serve on, and have been accepted for a Covered Assignment.

(5) "Contractor Benefit Plans Insurance" means insurance obtained and paid for by the Contractor for and on behalf of its employees. Such insurance includes Basic Life Insurance, Business Travel Accident Insurance, and, if applicable, the Special Insurance Coverage.

(b) Special Insurance Coverage

The Contractor may provide Field Deployment Roster employees with Special Insurance coverage, as an allowable cost under this Contract, in order to facilitate the provision of technical expertise to assist in the activities listed in (a)(1) above. The total amount of Contractor Benefit Plans Insurance (including Special Insurance Coverage under this clause) provided to any Field Deployment Roster employee shall not exceed that employee's annual salary multiplied by 10.

(c) In performing the work covered by this clause, the Contractor shall use only contractor employees who volunteer for this work assignment. The Contractor will

thoroughly explain the risks of this work assignment to potential Contractor employee volunteers prior to accepting these volunteers for this work.

(d) The Contractor will provide the Field Deployment Roster to the Contracting Officer in writing prior to beginning work which may be covered by this clause.

(e) The Contractor shall not include the provisions of this clause in its subcontracts without first consulting with and receiving advance written approval from the Contracting Officer.

(f) Special Incentives, Allowances and Payments

(1) Post Hardship Differential is authorized for Field Deployment Team members serving on such covered assignments in accordance with Department of State Standardized Regulations (DSSR), section 510. Post Hardship Differential is paid to Field Deployment Team members on temporary detail to one or more hardship posts after the forty-second calendar day of the Covered Assignment. Field Deployment Team members, who serve in Afghanistan, Iraq, or other countries if approved by the Contracting Officer, may be granted Post Hardship Differential at the prescribed rate beginning on the forty-third day back to day one.

(2) Danger Pay Allowance is authorized for Field Deployment Team members serving on such covered assignments in accordance with DSSR, section 650. Danger Pay Allowance is in addition to Post Hardship Differential.

(3) Post Hardship Differential and Danger Pay Allowances are limited to a maximum of seventy-two working days per individual, per deployment, unless the Contracting Officer or Contracting Officer's Representative authorizes an extension of these benefits on a case-by-case basis due to critical mission needs.

(4) Field Deployment Team members will not be eligible for additional incentive payments, such as an Incentivized Performance Award (IPA), Significant Event Award (SEA), or Supplemental Performance Award (SPA), for their participation or activities in a Covered Assignment for which special payments or incentives under this policy were paid.

(5) An exception to pertinent compensation policies is hereby granted to permit the payment of overtime to exempt employees. The payment will

be made at the Field Deployment Team member's straight-time rate for all working hours over forty in a workweek in a Covered Assignment up to a maximum of seventy-two days. The Contracting Officer or Contracting Officer's Representative may authorize an extension of overtime benefits in extenuating circumstances.

(6) The overtime payment will be authorized and paid following the Field Deployment Team member's return to ORNL.

(7) ORNL standard policy, such as Travel Pay and Work on a Holiday, shall govern the payment of all other benefits and compensation.

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H-47 Reserved

H-48 DOE ITER Project (Apr 2008)

(a) With respect to the DOE ITER Project, the Contractor will:

(1) Pursuant to direction from DOE in its role as the Domestic Agency head for the United States and in accordance with provisions of the Joint Implementation Agreement signed on November 21, 2006, as may be amended (hereinafter, "ITER Agreement") and related documents, manage the U.S. contributions to the international ITER Project by establishing and managing the U.S. ITER Project Office at the Oak Ridge National Laboratory.

(2) Receive funding from DOE for U.S. ITER Project costs and manage these funds to meet U.S. obligations to the international ITER Project in accordance with the U.S. ITER Project Execution Plan and related/supporting documents.

(3) Perform work required by the *U.S. ITER Project Execution Plan* and approved project baseline.

(4) Execute necessary documents on behalf of the Domestic Agency that are consistent with the approved project baseline and needed for the day-to-day management of the project.

(b) Reserved

(c) Intellectual Property - In order to implement the international ITER Agreement Annex on Information and Intellectual Property, Contractor agrees that:

(1) It is subject to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the ITER Agreement) with regard to work on the ITER project. Specifically, and without limitation, subject inventions and data produced in the performance of this contract and subcontracts related to the ITER Project are subject to the license rights and other obligations provided for in the ITER Agreement's Annex on Information and Intellectual Property (the Annex) attached as Appendix H of this contract.

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

(3) In accordance with the Annex, intellectual property generated by Contractor employees who are designated as seconded staff to the ITER Organization shall be owned by the ITER Organization and the Contractor gets no rights to such intellectual property except those rights provided the Contractor by the Government as a result of the Government being a member of the ITER Organization. Contractor agrees that Contractor employee agreements will be suitably modified as necessary to effectuate this provision and that employees will be required to execute a separate secondment agreement with the ITER Organization.

(4) The Government may provide to each ITER Member, as defined in the ITER Agreement, the right, for non-commercial uses, to translate, reproduce, and publicly distribute data produced in the performance of this contract.

Contractor will deliver to DOE, at a minimum, copies of all ITER-related peer-reviewed manuscripts provided to scientific and technical journal publishers, which may then be distributed to Members in accordance with the ITER Agreement. Contractor agrees that the ITER Organization may impose a different delivery requirement in order to be in compliance with this paragraph and that, if so, Contractor agrees that this paragraph may be suitably modified to be in accordance with the ITER Agreement.

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

(d) Foreign assignments, in support of the ITER Project, are governed by the U.S. ITER Long-Term Foreign Assignment Relocation Policy. The Policy was approved by DOE to provide an equitable and uniform approach to the long-term (greater than one year) foreign assignment of personnel in support of the ITER Project.

(e) DOE has developed a set of human resource tools (R&R Toolbox) to facilitate the recruitment and retention of critical skills for major projects. The ITER project has been approved to utilize this toolbox for the recruitment and retention of personnel. (See Appendix A)

H-49 Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification Under Public Law 85-804

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

(1) The high priority national security work provided by the Contractor involving highly specialized technical services on behalf of the Department of Energy in support of a joint U.S.-Russian plutonium disposition program. This work by the Contractor which may take place inside or outside the United States,

involves the development of safe facilities and processes for the formulation, fabrication, packaging and transportation, management, storage, use, and disposal of plutonium oxide and mixed plutonium oxide nuclear reactor fuel (hereinafter "MOX fuel" refers to both forms of fuel) and spent MOX fuel, in a nonproliferation effort on behalf of the United States.

(2) Activities on behalf of the Department of Energy involving weapons usable materials in a nonproliferation effort on behalf of the United States, outside the United States, as described in (i) and (ii):

(i) Inspection, packaging, transportation, and storage of weapons usable nuclear materials or radiological materials, provided that the work has been directed by the Secretary of Energy, the Deputy Secretary of Energy, an Under Secretary or Deputy Under Secretary;

(ii) Participation in the Department of Energy's international nuclear materials protection and accountability programs, including developing protection and accountability systems and consulting and training individuals, or international inspectors on such systems.

This work is conducted under the following existing agreements:

Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan concerning Control, Accounting, and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation dated 13 December 1993;

Agreement between the Department of Defense of the United States of America and the Ukrainian State Committee on Nuclear and Radiation Safety concerning Development of State Systems of Control, Accounting, and Physical Protection of Nuclear Materials to Promote the Prevention of Nuclear Weapons Proliferation from Ukraine dated 18 December 1993;

Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus concerning Control, Accounting, and Physical Protection

of Nuclear Materials to Promote the Prevention of Nuclear Weapons Proliferation dated 23 June 1995;

Agreement between the Government of the United States of America and the Government of the Russian Federation Regarding Cooperation under the Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation of May 21, 2003 dated 14 June 2013;

Protocol between the Government of the United States of America and the Government of the Russian Federation to the Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation of May 21, 2003 dated 14 June 2013.

(3) Providing assistance in reducing and protecting vulnerable nuclear and radiological materials under Department of Energy's (DOE) Global Threat Reduction Initiative (GTRI), International Material Protection and Cooperation (IMPC) or any successor programs to GTRI or IMPC. Supporting activities shall include vulnerability assessments; design and installation of physical security systems; material consolidation and removal; secure transportation; materials disposition and conversion to less attractive forms; implementation of detection and measurement technologies; security operations training; facility conversions, upgrades and renovations; and sustainability management.

(4) Other United States-sponsored activities outside the United States, as requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or an Under Secretary and provided that the request or approval specifically makes the indemnity provided by this clause applicable thereto, involving:

(i) Transparency monitoring activities;
(ii) Inspection, packaging, transportation, and storage of weapons-usable nuclear materials or radiological material;
(iii) Nuclear materials protection, control and accountability programs;
(iv) Other non-proliferation, emergency response, antiterrorism and similar critical national security activities involving the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical,

biological, or explosive materials, facilities and/or devices; provided that the activity relates to materials that are weapon usable or otherwise have the potential for mass destruction.

(5) Assistance to the Department of Energy's Global Threat Reduction Initiative (GTRI) and its successor fuel return programs to repatriate non-U.S.-origin highly enriched uranium (HEU) nuclear materials from research reactors outside of the United States. Assistance includes project planning, project management, technical support, and contracting for-

(i) the preparation, loading, and transportation of HEU nuclear materials and spent nuclear fuel from the host country to the country of origin;
(ii) the processing, conditioning, and storage of HEU nuclear materials, spent nuclear fuel, and associated waste streams within the country of origin;
(iii) the provision of alternate reactor fuel or technologies to the host country as directed by GTRI or its successor program.

(6) Participation in tasks or activities by UT-Battelle or its subcontractors on or after March 11, 2011 that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration as an element of activities taken in response to the Japanese earthquake and tsunami, including efforts to address and assess damage to nuclear power plants and potential radioactive releases from these plants now and in the future.

(7) Participation in tasks or activities by the Contractor or its subcontractors on or after March 13, 2020 through June 30, 2020 that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration, including work for others, as an element of activities taken now and through June 30, 2020 in response to COVID-19, including but not limited to efforts to test for the presence of COVID-19, to provide equipment and resources to address COVID-19, and to develop treatments and vaccines for COVID-19, to the extent the task or activity is not exempt from liability under the Public Readiness and Emergency Preparedness Act (PREP Act) or other law, or the exemption under the PREP Act or other law is limited in scope or amount which is not sufficient to provide complete protection against the liability to which the contractor is exposed.

(8) Activities outside the United States on behalf of the Department of Defense and/or the Department of State in support of nonproliferation, counterproliferation, antiterrorism, and similar critical national security activities which relate to vulnerable nuclear and radiological materials or weapons usable nuclear materials-and materials of mass destruction and which involve the Contractor: procuring secure transport vehicles and related transport/storage equipment; conducting site evaluations and surveys; developing storage options for asset protection; conducting vulnerability assessments; procuring physical protection, monitoring, or testing equipment to enhance nuclear security capacity; modifying facilities to enhance physical security; performing assets and site analyses; developing integrated operational procedure analyses; or recovering, repackaging, processing, or safely and securely transporting nuclear and radiological materials in countries of interest to the United States.

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

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H-51 Fast Track CRADA Authority

This clause establishes the authority for the Contractor to enter into Fast Track Cooperative Research And Development Agreements (CRADAs) subject to the guidance set forth in Acquisition Letter no. AL 2012-09 for the implementation of Fast Track Option A ("Option A"). Option A provides for the streamlined approval of proposed CRADAs that use preapproved terms and conditions and also fall within the general scope of research areas set forth in an agency-approved annual strategic plan. For the sake of clarity, the approval process for CRADAs meeting the criteria of Option A shall be deemed to satisfy the obligations pertaining to the Contracting Officer's approval of

proposed CRADAs set forth at paragraph (n) of clause I.142 (Technology Transfer Mission) of this Contract.

H-52 DOE-H-1002 Employee Compensation: Pay and Benefits (Modified) [Modification 1022]

(a) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services" ("Total Compensation System"). DOE-approved standards, if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Periodic appraisals of contractor performance with respect to the Contractors' Total Compensation System will be conducted.

The description of the Contractor Employee Compensation Program should include the following components;

a. Philosophy and strategy for all pay delivery programs.
b. System for establishing a job worth hierarchy.
c. Method for relating internal job worth hierarchy to external market.
d. System that links individual and/or group performance to compensation decisions.
e. Method for planning and monitoring the expenditure of funds.
f. Method for ensuring compliance with applicable laws and regulations.
g. System for communicating the programs to employees.
h. System for internal controls and self-assessment.
i. System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Reports and Information

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

(1) 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.

(2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(4)(ii)(B) and their total cash compensation at the time of Contract award, and annually thereafter.

(3) The Compensation and Benefits Report no later than March 1 of each year.

(4) A report pursuant to DOE Acquisition Letter 2014-07 (or its successor requirement) of the types and amounts of compensation included in the calculation of the compensation cap discussed in paragraph (c) below.

(c) Pay and Benefit Programs

The Contractor shall maintain pay and benefit programs for its employees; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program. Reimbursement for individual compensation is subject to the limits established by 41 U.S.C. 4304(a)(16).

(1) Cash Compensation

(A) The Contractor shall submit the following, as applicable, to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

i. Any proposed major compensation program design changes prior to implementation.
ii. Variable pay programs/incentives. If not already authorized under Appendix A of the contract, a justification shall be provided with proposed costs and impacts to budget, if any.
iii. In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:
- The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance

providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed 1% percent in total.

- The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
- Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.
- Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories.

iv. If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability. The CIP for a Contractor that has received Contracting Officer approval for having an Employee Compensation Program with the components identified under (a)(1) above should include the following components and data:

(1) Market analysis summary, including a comparison of average pay to market average pay.
(2) Merit Fund requests for each Employee Group (i.e., S&E, Administrative, Technical, Exempt/Non-Exempt)
(3) Aging factors used for escalating survey data
(4) Projection of escalation in the market
(5) Information to support proposed structure adjustments, if any.
(6) Analysis to support special adjustments or promotions that exceed the 1% Promotion/Adjustment fund authorized under Section III. (b) of Appendix A.
(7) Discussion of recruitment/retention issues (e.g., turnover and hiring) relevant to the proposed increase amounts
(8) A discussion of the impact of budget and business constraints on the CIP amount.

v. Reimbursed salary levels are used to establish the annual CIP fund.

vi. 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.

vii. Specific Employee or Payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer.

viii. The Contracting Officer may 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).

ix. The Contractor may make minor shifts of merit funds between employment categories (e.g., Scientist/Engineer, Admin, Exempt, Non-Exempt) after approval of the CIP or if criteria under (c)(1)(A)(iii) was met, in order to meet the compensation requirements of its organization, subject to the following guidelines:

- Minor shift is defined as up to 10% of the approved merit funds from one employment category to another (e.g., 10% of Admin merit funds shifted to Technician employment category)
- Total merit increase expenditures will be limited to the total merit fund authorized.
- The Contractor will notify the Contracting Officer that funds have been shifted; it is recognized that a summary report is sufficient notice.

(B) Individual compensation actions for the top contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the initial contract award and when Key Personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).

(C) The Contracting Officer's approval of individual compensation actions will be required only for the top contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel as stated in (c)(1)(B) above. The contractor shall not be reimbursed

for the top contractor official's incentive compensation. The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the contract when compared to subordinate compensation, which would include base salary and any potential incentive compensation under an incentive compensation agreement. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.

(D) Severance Pay is not payable to an employee under this Contract if the employee:

(i) Voluntarily separates, resigns or retires from employment, (unless associated with a workforce restructuring action in accordance with Appendix A, Section XI, Reductions in Contractor Employment)
(ii) Is offered employment with a successor/replacement Contractor,
(iii) Is offered employment with a parent or affiliated company, or
(iv) Is discharged for cause.

(E) 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.

(d) Pension and Other Benefit Programs

(1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans that increase costs or are contrary to Departmental policy or written instruction or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans. Changes shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.

(2) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's

approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.

(3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey comparison Method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.

(A) The Ben-Val, every three years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do 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 and,

(B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.

(4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived in writing by the Contracting Officer.

(5) When the benefit costs as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer,

the Contractor shall submit an analysis of the specific plan costs that result in or contribute to the percent of payroll exceeding the costs of the comparator group and submit a corrective action plan if directed by the Contracting Officer.

(6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan.

(7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.

(8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

(9) Each Contractor sponsoring a Defined Benefit pension plan and/or postretirement benefit plan will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission (see (f)(6) below for Pension Management Plan requirements).

(10) Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.

(e) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

(1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.

(2) Except for Commingled Plans in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from

any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to separate plans at the time of new contract award or the extension of a contract.

(f) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.

(1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.

(2) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

While there is no requirement to submit a full scope audit for defined contribution plans, contractors are responsible for maintaining adequate controls for ensuring that defined contribution plan assets are correctly recorded and allocated to plan participants.

(3) For existing Commingled Plans, the Contractor shall maintain and provide annual separate accounting of DOE liabilities and assets as for a Separate Plan.

(4) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.

(5) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.

(6) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than January 31st of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.

(g) Reimbursement of Contractors for Contributions to Defined Benefit Pension Plans

(1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.

- Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year.

Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.

- Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(h) Reporting Requirements for Designated Contracts

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:

(1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.

(2) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.

(3) Forms 5300. 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.

(i) Changes to Pension Plans

At least sixty (60) days prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below to the Contracting Officer. The Contracting Officer must approve or disapprove plan changes that increase costs as part of a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

(1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:

(A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;

(B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;

(C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;

(D) the Summary Plan Description; and,

(E) any such additional information as requested by the Contracting Officer.

(2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, unless approval is not required by (d)(1) above The justification must:

(A) demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs,

(B) provide the dollar estimate of savings or costs, and

(C) provide the basis of determining the estimated savings or cost.

(j) Terminating Operations

When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply:

(1) No further benefits for service shall accrue.

(2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.

(3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.

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

(5) DOE and the Contractor(s) 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 plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(k) Terminating Plans

(1) DOE contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.

(2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.

(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) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.

(5) On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(6) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.

(7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE 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 DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the contractor may stipulate to a schedule of payments.

(l) Special Programs

Contractors must advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(m) Definitions

(1) Commingled Plans. Cover employees from the Contractor's private operations and its DOE contract work.

(2) Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.

(3) Defined Benefit Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.

(4) Defined Contribution Pension Plan. Provides benefits to each participant based on the amount held in the participant’s account. Funds in the account may be comprised of employer contributions, employee contributions,

investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.

(5) Designated Contract. For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.

(6) Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.

(7) Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.

(8) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.

(9) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414 (l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

H-53 DOE-H-1005 Workers' Compensation Insurance

(a) Contractors, other than those whose 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 compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).

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

(c) Contractors approve all workers compensation settlement claims up to the threshold established by the Contracting Officer for DOE approval and submit all settlement claims above the threshold to DOE for approval.

(d) The Contractor shall obtain approval from the CO before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the CO.

H-54 Post Contract Responsibilities for Pension and Other Benefit Plans (Revised March 2020)

(a) If this Contract expires or terminates and DOE 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 at ORNL (collectively, the "Plans"), 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.

(b) If this Contract expires or terminates and DOE 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 clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:

(1) Subject to subparagraph (2) 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.

(2) 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.

H-55 Reserved (March 2020)

H-56 DOE-H-2073 Risk Management and Insurance Programs

Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement contracts for management and operation of DOE facilities and other designated long-lived onsite contracts for which the Contractor has established separate operating business units.

1. BASIC REQUIREMENTS

(a) Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the Contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.

(b) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and

DEAR 950.70, Nuclear Indemnification of DOE Contractors).

(c) Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19, Insurance and Indemnification, DEAR 952.231-71 Insurance-Litigation and Claims, and DEAR970.5228-1, Insurance-Litigation and Claims.

(d) Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.

(e) The Contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.

(f) When purchasing commercial insurance, the Contractor shall use a competitive process to ensure costs are reasonable.

(g) Ensure self-insurance programs include the following elements:

(1) Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.

(2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.

(3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.

(4) Accounting of self-insurance charges.

(5) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:

(a) The claims reserve shall be held in a special fund or interest bearing

account.

(b) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.

(c) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.

(d) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.

(h) Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.

(i) Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

2. PLAN EXPERIENCE REPORTING

The Contractor shall:

(a) provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:

(1) The amount paid for each claim.

(2) The amount reserved for each claim.

(3) The direct expenses related to each claim.

(4) A summary for the year showing total number of claims.

(5) A total amount for claims paid.

(6) A total amount reserved for claims.

(7) The total amount of direct expenses.

b. provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses

(e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at $100,000 or greater).

c. provide additional claim financial experience data as may be requested on a case-by-case basis.

3. TERMINATING OPERATIONS

The Contractor shall:

a. ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.

b. identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.

c. reach agreement with DOE on the handling and settlement of self insurance claims incurred but not reported at the time of contract termination; otherwise, the Contractor shall retain this liability.

4. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION

The Contractor shall:

a. obtain the written approval of the Contracting Officer for any change in program direction; and

b. ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

H-57 DOE-H-2002 No Third Party Beneficiaries (OCT 2014)

This contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, or conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

H-58 Defense and Indemnification of Employees (March 2020)

(a) The Parties recognize that, under applicable State law, the Contractor could be required to defend and indemnify its officers and employees from and against civil actions and other claims which arise out of the performance of work under this contract. Except for defense costs made unallowable by law, Section I Clause entitled "DEAR 970.5232-2 – Payments and Advances", or the Major Fraud Act (41 U.S.C. §256(k)), the costs and expenses, including judgments, resulting from the defense and indemnification of employees from and against such civil actions and claims shall be allowable costs under this contract if incurred pursuant to the terms of Section I Clause entitled "DEAR 970.5228-1 – Insurance--Litigation and Claims".

(b) Costs and expenses, including judgments, resulting from the defense and indemnification of employees from civil fraud actions filed in federal court by the Government will be unallowable where the employee pleads nolo contendere or the action results in a judgment against the defendant.

(c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.

(d) The Contractor shall immediately furnish the Contracting Officer written notice of any such claim or civil action filed against any employee of the Contractor arising out of the work under this contract together with copies of all pleadings filed. The Contractor shall furnish to the Contracting Officer a written determination by the Contractor's counsel that the defense or indemnity of the employee is required by the provisions of applicable State law, that the employee was acting within the course and scope of employment at the time of the acts or omissions which gave rise to the claim or civil action, and that any exclusions set forth under applicable State law for fraud, corruption, malice, willful misconduct, or lack of good faith on the part of the employee does not apply. A copy of any letter asserting a reservation of rights under applicable State law with respect to the defense or indemnification of such employee shall also be provided to the Contracting Officer. The costs associated with the settlement of any such claim or civil action shall not be treated as an allowable cost unless approved in writing by the Contracting Officer.

H-59 Walsh-Healey Public Contracts Act (March 2020)

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

H-60 Paid Leave Under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to Maintain Employees and Subcontractors in a Ready State (Revised March 2021, Policy Flashes 2020-22, 2020-53, 2021-15, and 2021-25)

(a) The Contractor may submit for reimbursement and the Government will treat as allowable (if otherwise allowable per federal regulations) the costs of paid leave (including sick leave) the Contractor or its subcontractors provide to keep employees in a ready state if--

(1) The employees: cannot perform work on a site approved by the Federal Government (including a federally-owned or leased facility or site) due to facilities closures or other restrictions; and cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID–19.

(2) The costs are incurred from January 31, 2020 through **September 30, 2021**.

(3) The costs do not reflect any amount exceeding an average of 40 hours per week for paid leave.

(b) Where other relief provided for by the CARES Act or any other Act would benefit the contractor or the contractor’s subcontractors, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act, the contractor should evaluate the applicability of such benefits in seeking reimbursement under the contract.

(c) The Contractor must represent in any request for reimbursement--

(1) Either it: has not received, has not claimed, and will not claim any other reimbursement, including claims for reimbursement via letter of credit, for federal funds available under the CARES Act for the same purpose, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act; or if it has received, claimed, or will claim other reimbursement, that reimbursement has been reflected, or will be reflected when known, in requests for reimbursement but in no case reflected later than in its final proposal to determine allowable incurred costs.

(2) Its request reflects or will reflect as soon as known all applicable credits, including

(i) Tax credits, including credits allowed pursuant to division G of Public Law 116-127; and
(ii) Applicable credits allowed under the CARES Act, including applicable credits for loan guarantees.

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SECTION I - CONTRACT CLAUSES

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

Special Note: The FAR clause 52.202-1 has been updated effective November 2013; however, the DEAR has not been updated. Due to the FAR changes, the paragraph (c) referenced in the DEAR clause is now paragraph (e), and the paragraph (a) referenced is now paragraphs (a), (b), (c), or (d).

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

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

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

(c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or

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

(e) 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.2 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative -

(1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled -

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

1.3 52.203-5 COVENANT AGAINST CONTINGENT FEES (MAY 2014)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) *Bona fide agency,* as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

Bona fide employee, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

Contingent fee, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

Improper influence, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

I.4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this Clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

I.5 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)

(a) *Definitions*.

Kickback, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Person, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

Prime contract, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

Prime Contractor, as used in this clause, means a person who has entered into a prime contract with the United States.

Prime Contractor employee, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

Subcontract, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

Subcontractor, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

Subcontractor employee, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from-

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)

(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may

(i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or

(ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback.

The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed $150,000.

I.6 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)

(a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102-2104, Restrictions on Obtaining and Disclosing Certain Information, the Government may-

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which-

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either-

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

I.7 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (MAY 2014)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be -

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) For cost-plus-award-fee contracts -

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may -

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

I.8 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

(a) Definitions. As used in this clause-

"Agency" means "executive agency" as defined in Federal Acquisition Regulation (FAR) 2.101.

"Covered Federal action" means any of the following actions:

(1) Awarding any Federal contract.

(2) Making any Federal grant.

(3) Making any Federal loan.

(4) Entering into any cooperative agreement.

(5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term appropriated funds does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) Agency and legislative liaison by Contractor employees.

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern-

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

(2) Professional and technical services.

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure.

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically

unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) Subcontracts.

(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding $150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding $150,000.

I.9 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015) (PREV. I.9, REPLACED APR 2020 BY LATER VERSION)

(a) Definitions. As used in this clause-

"Agent" means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

"Full cooperation"

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require-

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from-

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

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

(b) Code of business ethics and conduct.

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall-

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall-

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible

evidence that a principal, employee, agent, or subcontractor of the Contractor has committed-

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall-

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including-

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report

suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of $5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

I.10 52.203-14 – DISPLAY OF HOTLINE POSTER(S) (OCT 2015) MODIFIED BY DEAR 903.1004(B)(2)(II) (PREV. I.10, REPLACED APR 2020 BY LATER VERSION)

(a) *Definition.*

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display *of fraud hotline poster(s)*. Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s)	***Obtain from***
DOE Hotline Poster	https://energy.gov/ig/ig-hotline

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed $5.5 million, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

I.11 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLERBLOWER RIGHTS (APR 2014) (PREV. I.12)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

I.12 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENT (JAN 2017) (PREV. I.164, REPLACED APR 2020 BY LATER VERSION)

(a) *Internal confidentiality agreement or statement* means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

Subcontract means any contract as defined in subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm (including a consultant) that

furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) The contractor shall not require its employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(c) The contractor shall notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the contractor is not in compliance with the provisions of this clause.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts under such contracts.

I.13 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)

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

"Postconsumer fiber" means-

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

I.14 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

(1) When no longer needed for contract performance.

(2) Upon completion of the Contractor employee's employment.

(3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

I.15 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2018) (PREV. I.15, REPLACED APR 2020 BY LATER VERSION)

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

Executive means officers, managing partners, or any other employees in management positions.

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

Month of award means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus*.

(2) *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified*.

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information.

(d) (1) *Executive compensation of the prime contractor*. As a part of its annual registration requirement in the System for Award Management (SAM) database (FAR provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if-

(i) In the Contractor's preceding fiscal year, the Contractor received-

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm*.).

(2) *First-tier subcontract information*. Unless otherwise directed by the contracting officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of $30,000 or more, the Contractor shall report the following information at *http://www.fsrs.gov* for that first-tier subcontract. (The Contractor shall follow the instructions at *http://www.fsrs.gov* to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(3) *Executive compensation of the first-tier subcontractor*. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of $30,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the

first-tier subcontractor's preceding completed fiscal year at *http://www.fsrs.gov*, if-

(i) In the subcontractor's preceding fiscal year, the subcontractor received-

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm*.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than $30,000 to avoid the reporting requirements in paragraph (d).

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g) (1) If the Contractor in the previous tax year had gross income, from all sources, under $300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under $300,000, the Contractor does not need to report awards for that subcontractor.

(h) The FSRS database at *http://www.fsrs.gov* will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM database information is incorrect, the contractor is responsible for correcting this information.

I.16 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018) (PREV. I.16, REPLACED APR 2020 BY LATER VERSION)

(a) Definition. As used in this clause--

"Electronic Funds Transfer (EFT) indicator" means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

"Registered in the System for Award Management (SAM)" means that—

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

"Unique entity identifier" means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d)(1)(i) If a Contractor has legally changed its business name or ``doing business as'' name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to--

(A) Change the name in the SAM;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in SAM. Information provided to the Contractor’s SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that

Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at www.sam.gov for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at https://www.sam.gov.

I.17 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)

(a) Definitions. As used in this clause–

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

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

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

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

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

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and

procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I.18 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)

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

Covered article means any hardware, software, or service that--

(1) Is developed or provided by a covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means--

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab;

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from--

(1) Providing any covered article that the Government will use on or after October 1, 2018; and

(2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) Reporting requirement. (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at https://dibnet.dod.mil/. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil/.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

I.19 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)

(a) Definitions. As used in this clause—

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement. (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this

contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

I.20 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (AUG 2018) (SC ALTERNATE APR 2018) (PREV. I.17, REPLACED APR 2020 BY LATER VERSION)

(a) *Definitions.*

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

Federal helium supplier means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office's Authorized List of Federal Helium Suppliers available via the Internet at

https://www.blm.gov/programs/energy-and-minerals/helium/partners.
Major helium requirement means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) *Requirements*-

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

(2) The Contractor shall provide to the Contracting Officer the following data within 45 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier-

(i) The name of the supplier;

(ii) The amount of helium purchased;

(iii) The delivery date(s); and

(iv) The location where the helium was used.

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

I.21 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015) (PREV. I.18, REPLACED APR 2020 BY LATER VERSION)

(a) Definition. Commercially available off-the-shelf (COTS) item, as used in this clause-

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

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

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

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

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

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of $35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed $35,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that-

(1) Exceeds $35,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

I.22 52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2015)

(a) Definitions. As used in this clause-

"Inverted domestic corporation" means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

"Subsidiary" means an entity in which more than 50 percent of the entity is owned-

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at 9.108-2.

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

I.23 52.210-1 MARKET RESEARCH (APR 2011)

(a) Definition. As used in this clause-

"Commercial item" and "nondevelopmental item" have the meaning contained in Federal Acquisition Regulation 2.101.

(b) Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to-

(1) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that-

(i) Meet the agency's requirements;

(ii) Could be modified to meet the agency's requirements; or

(iii) Could meet the agency's requirements if those requirements were modified to a reasonable extent; and

(2) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level.

I.24 52.211-5 MATERIAL REQUIREMENTS (AUG 2000)

(a) *Definitions*.

As used in this clause-
"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"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.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means-
(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

I.25 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997) (PREV. I.19)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

I.26 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010) (PREV. I.20)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted

under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either -

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data - Modifications.

Special Note: The class deviation found in Policy Flash 2018-30 is applicable to clause 52.215-12.

I.27 52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA - MODIFICATIONS (OCT 2010) (PREV. I.21)

(a) The requirements of paragraphs (b) and (c) of this clause shall -

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

Special Note: The class deviation found in Policy Flash 2018-30 is applicable to clause 52.215-13.

I.28 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)

(a) Definitions. As used in this clause-

"Added value" means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

"Excessive pass-through charge", with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

"No or negligible value" means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

"Subcontract" means any contract, as defined in FAR 2.101, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor", as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) General. The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) Reporting. Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if-

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order,

or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) Recovery of excessive pass-through charges. If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and

(2) For applicable DoD fixed-price contracts, as identified in 15.408(n)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) Access to records.

(1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) Flowdown. The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

I.29 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018) (PREV. I.22, REPLACED APR 2020 BY LATER VERSION)

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

"HUBZone small business concern" means a small business concern, certified by the Small Business Administration, that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) “Service-disabled veteran” means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern, consistent with 13 CFR 124.1002,” means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women**.**

(b) It is the policy of the United States that 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 shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with 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.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d)

(1) The Contractor may accept a subcontractor’s written representations of its size and socioeconomic status as a small business, small disadvantaged, business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if--

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application Web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm ; or http://www.sba.gov/hubzone ;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov .

I.30 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (AUG 2018) (PREV. I.23, REPLACED APR 2020 BY LATER VERSION)

(a) This clause does not apply to small business concerns.

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

"Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626 (e)(2).

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's

fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

"Electronic Subcontracting Reporting System (eSRS)" means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at http://www.esrs.gov.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

"Individual subcontracting plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master subcontracting plan" means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

"Reduced payment" means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

"Subcontract" 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.

"Total contract dollars" means the final anticipated dollar value, including the dollar value of all options.

"Untimely payment" means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c)

(1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned

small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if--

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(c) The Offeror’s subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals

expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626--

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to --

(i) Small business concerns,

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;
(v) Small disadvantaged business concerns, and
(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with --

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $700,000 ($1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will --

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified

by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its unique entity identifier, and the email address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the email address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, indicating—

(A) Whether small business concerns were solicited and if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns

were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and if not, why not;

(F) Whether women-owned small business concerns were solicited and if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact --

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through --

(A) Workshops, seminars, training, etc., and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if--

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small

business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern in accordance with 52.219-8(d)(2).

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided --

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A contractor with a commercial plan shall comply with the reporting

requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a modification exceeds the subcontracting plan threshold in 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at http://www.esrs.gov. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR.* This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any

subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702(a)(3) or 19.301-2(e), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans.

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over $700,000 (over $1.5 million for

construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan.

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

I.31 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999) (PREV. I.24)

(a) "Failure to make a good faith effort to comply with the subcontracting plan", as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual

subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

I.32 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) (PREV. I.26)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

I.33 52.222-3 CONVICT LABOR (JUN 2003) (PREV. I.27)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

I.34 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS - OVERTIME COMPENSATION (MAY 2018) (PREV. I.28, REPLACED APR 2020 BY LATER VERSION)

(a) *Overtime requirements*. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages*. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages

payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(c) *Withholding for unpaid wages and liquidated damages*. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) *Payrolls and basic records.*

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts*. The Contractor shall insert the provisions set forth in paragraphs (a) through (d)of this clause in subcontracts may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

I.35 52.222-6 CONSTRUCTION WAGE RATE REQUIREMENTS (AUG 2018) (PREV. I.29, REPLACED APR 2020 BY LATER VERSION)

(a) *Definition.*—"Site of the work"—

(1) Means--

(i) The *primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that

site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c)

(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

I.36 52.222-7 WITHHOLDING OF FUNDS (MAY 2014) (PREV. I.30)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

I.37 52.222-8 PAYROLLS AND BASIC RECORDS (AUG 2018) (PREV. I.31, REPLACED APR 2020 BY LATER VERSION)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)

(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set

out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at http://www.dol.gov/whd/forms/wh347.pdf . The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify --

> (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
>
> (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
>
> (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

I.38 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988) (PREV. I.33)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

I.39 52.222-12 CONTRACT TERMINATION - DEBARMENT (MAY 2014) (PREV. I.35)

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

I.40 52.222-13 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014) (PREV. I.36)

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

I.41 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988) (PREV. I.37)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.42 52.222-15 CERTIFICATION OF ELIGIBILITY (MAY 2014) (PREV. I.38)

(a) By entering into this contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

I.43 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (PREV. I.41, REPLACED APR 2020 BY LATER VERSION)

(a) Definitions. As used in this clause—

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

"Segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between sexes.
"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in the contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

I.44 52.222-26 EQUAL OPPORTUNITY (SEP 2016) (PREV. I.42, REPLACED APR 2020 BY LATER VERSION)

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

"Compensation" means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

"Compensation information" means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

"Essential job functions" means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if-

(1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or

(2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

"United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with this clause, except for work performed outside

the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to—

(i) Employment;

(ii) Upgrading;

(iii) Demotion;

(iv) Transfer;

(v) Recruitment or recruitment advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive

consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(5)

(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by-

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award,

the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCCP may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.1.

The following clause is applicable only as a flowdown to covered subcontracts.

I.45 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 2015) (PREV. I.43, REPLACED APR 2020 BY LATER VERSION)

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

"Covered area" means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary" means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number" means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941.

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html .

"Minority" means --

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html .

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of $10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are

aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by --

> (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
>
> (ii) Including the policy in any policy manual and in collective bargaining agreements;
>
> (iii) Publicizing the policy in the company newspaper, annual report, etc.;
>
> (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary changing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor --

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to --

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (*e.g*., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (*e.g.,* those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

I.46 52.222-29 NOTIFICATION OF VISA DENIAL (APR 2015) (PREV. I.44, REPLACED APR 2020 BY LATER VERSION)

(a) *Definitions.* As used in this clause--
"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html .

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html .

(b) *Requirement to notify.*

(1) It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, sexual orientation, gender identity, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10).

(2) The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, sexual orientation, gender identity, or national origin of the employee or potential employee.

I.47 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) (PREV. I.45, REPLACED APR 2020 BY LATER VERSION)

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

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran,' and "recently separated veteran" have the meanings given at FAR 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

I.48 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014) (PREV. I.46)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

I.49 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (PREV. I.47, REPLACED APR 2020 BY LATER VERSION)

(a) *Definitions*. As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at http://www.dol.gov/vets/vets4212.htm)."

(d) The Contractor shall file VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12–month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

I.50 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (PREV. I.48)

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is

customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be -

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards Web site at *http://www.dol.gov/olms/regs/compliance/EO13496.htm*; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds $10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

I.51 52.222-50 COMBATING TRAFFICKING IN PERSONS (JAN 2019) (PREV. I.49, REPLACED APR 2020 BY LATER VERSION)

(a) *Definitions.* As used in this clause—
"Agent" means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.
"Coercion" means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.
"Commercially available off-the-shelf (COTS) item" means--
(1) Any item of supply (including construction material) that is—
(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied

toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced Labor” means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.
“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.
“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy.* The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract.

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)

(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees recruitment fees;

(7)

(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements*. The Contractor shall—

(1) Notify its employees of—

(i) The United States Government’s policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.*

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h) or (i) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) *Mitigating and aggravating factors*. When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors*. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation.*

(1) The Contractor shall, at a minimum—

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not—

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from—

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan.*

(1) This paragraph (h) applies to any portion of the contract that—

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate—

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting*.

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification*. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts*.

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds $500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

I.52 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (PREV. I.50)

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

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

(1) Means any item of supply that is—

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

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

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4) such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

"Employee assigned to the contract" means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to

be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

"Subcontract" means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

"United States," as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees*. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees*.

(A) *Enrolled 90 calendar days or more*. The Contractor shall initiate

verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days*. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract*. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees*. The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security

Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site*. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/E-Verify .

(d) *Individuals previously verified*. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts*. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that-

(1) *Is for—*

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than $3,500; and

(3) Includes work performed in the United States.

I.53 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013) (PREV. I.52)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless-

(1) The product cannot be acquired-

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at http://www.biopreferred.gov.

(c) In the performance of this contract, the Contractor shall-

(1) Report to *http://www.sam.gov*, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than-

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

I.54 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) - ALTERNATE I (JUL 1995) (PREV. I.53)

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

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

MATERIAL (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I.55 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011) - ALTERNATE I (MAY 2011) (PREV. I.54)

(a) Definitions. As used in this clause-

"Toxic chemical" means a chemical or chemical category listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050), and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of section 302 of EPCRA.

(2) The emergency notice requirements of section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.

(5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.

(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

(7) The environmental management system as described in section 3(b) of E.O. 13423 and 2(j) of E.O. 13514.

I.56 52.223-10 WASTE REDUCTION PROGRAM (MAY 2011) (PREV. I.53)

(a) *Definition*s. As used in this clause-

"Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

"Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

"Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract.

I.57 52.223-11 OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016) (PREV. I.54, REPLACED APR 2020 BY LATER VERSION)

(a) Definitions. As used in this clause—
"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon Dioxide's global warming potential is defined as 1.0.
"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (http://www.epa.gov/snap/).
"Hydrofluorocarbons" means compounds that only contain hydrogen, fluorine, and carbon.
"Ozone-depleting substance" means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as--

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

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

(b) The Contractor shall label products 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), (d), and (e) and 40 CFR Part 82, Subpart E, as follows:

Warning

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

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

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

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

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

etc.);
(ii) Contract number; and
(iii) Equipment/appliance;
(2) Report that information to the Contracting Officer for FY16 and to www.sam.gov, for FY17 and after--
(i) Annually by November 30 of each year during contract performance; and
(ii) At the end of contract performance.

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

I.58 52.223-12 MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION AND AIR CONDITIONERS (JUN 2016) (PREV. I.57, REPLACED APR 2020 BY LATER VERSION)

(a) *Definitions.* As used in this clause--
"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.
"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (http://www.epa.gov/snap/).
"Hydrofluorocarbons" means compounds that contain only hydrogen, fluorine, and carbon.

(b) The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.
(c) Unless otherwise specified in the contract, the Contractor shall reduce the use, release, or emissions of high global warming potential hydrofluorocarbons under this contract by—
(1) Transitioning over time to the use of another acceptable alternative in lieu of high global warming potential hydrofluorocarbons in a particular end use for which EPA's SNAP program has identified other acceptable alternatives that have lower global warming potential.
(2) Preventing and repairing refrigerant leaks through service and maintenance during contract performance;
(3) Implementing recovery, recycling, and responsible disposal programs that avoid release or emissions during equipment service as the equipment reaches the end of its useful life; and
(4) Using reclaimed hydrofluorocarbons, where feasible.
(d) For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, that will be

maintained, serviced, repaired, or disposed under this contract, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons added or taken out of equipment or appliances under this contract by—
  (i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);
  (ii) Contract number;
  (iii) Equipment/appliance; and

(2) Report that information to the Contracting Officer for FY16 and to www.sam.gov, for FY17 and after--
  (i) No later than November 30 of each year during contract performance; and
  (ii) At the end of contract performance.

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

I.59 52.223-13 ACQUISITION OF EPEAT(R)-REGISTERED IMAGING EQUIPMENT (JUN 2014) (PREV. I.58)

(a) Definitions. As used in this clause-

Imaging equipment means the following products:

(1) Copier-A commercially available imaging product with a sole function of the production of hard copy duplicates from graphic hard-copy originals. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as copiers or upgradeable digital copiers (UDCs).

(2) Digital duplicator-A commercially available imaging product that is sold in the market as a fully automated duplicator system through the method of stencil duplicating with digital reproduction functionality. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as digital duplicators.

(3) Facsimile machine (fax machine)-A commercially available imaging product whose primary functions are scanning hard-copy originals for electronic transmission to remote units and receiving similar electronic transmissions to produce hard-copy output. Electronic transmission is primarily over a public telephone system but also may be via computer network or the Internet. The product also may be capable of producing hard copy duplicates. The unit is

capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as fax machines.

(4) Mailing machine-A commercially available imaging product that serves to print postage onto mail pieces. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as mailing machines.

(5) Multifunction device (MFD)-A commercially available imaging product, which is a physically integrated device or a combination of functionally integrated components, that performs two or more of the core functions of copying, printing, scanning, or faxing. The copy functionality as addressed in this definition is considered to be distinct from single-sheet convenience copying offered by fax machines. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as MFDs or multifunction products.

(6) Printer-A commercially available imaging product that serves as a hard-copy output device and is capable of receiving information from single-user or networked computers, or other input devices (e.g., digital cameras). The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as printers, including printers that can be upgraded into MFDs in the field.

(7) Scanner-A commercially available imaging product that functions as an electro-optical device for converting information into electronic images that can be stored, edited, converted, or transmitted, primarily in a personal computing environment. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as scanners.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only imaging equipment that, at the time of submission of proposals and at the time of award, was EPEAT(R) bronze-registered or higher.

(c) For information about EPEAT(R), see www.epa.gov/epeat.

I.60 52.223-14 ACQUISITION OF EPEAT(R)-REGISTERED TELEVISIONS (JUN 2014) (PREV. I.59)

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

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

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

(c) For information about EPEAT(R), see *www.epa.gov/epeat*.

I.61 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007) (PREV. I.60)

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

"Energy-efficient product"—

(1) Means a product that—

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for—

(1) ENERGY STAR® at http://www.energystar.gov/products; and

(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

I.62 52.223-16 ACQUISITION OF EPEAT(R)-REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015) (PREV. I.61, REPLACED APR 2020 BY LATER VERSION)

(a) Definitions. As used in this clause-

Computer means - a device that performs logical operations and processes data. Computers are composed of, at a minimum:

(1) A central processing unit (CPU) to perform operations;

(2) User input devices such as a keyboard, mouse, digitizer, or game controller; and

(3) A computer display screen to output information. Computers include both stationary and portable units, including desktop computers, integrated desktop computers, notebook computers, thin clients, and workstations. Although computers must be capable of using input devices and computer displays, as noted in (2) and (3) above, computer systems do not need to include these devices on shipment to meet this definition. This definition does not include server computers, gaming consoles, mobile telephones, portable hand-held calculators, portable digital assistants (PDAs), MP3 players, or any other mobile computing device with displays less than 4 inches, measured diagonally.

Computer display - means a display screen and its associated electronics encased in a single housing or within the computer housing (e.g., notebook or integrated desktop computer) that is capable of displaying output information from a computer via one or more inputs such as a VGA, DVI, USB, DisplayPort, and/or IEEE 1394-2008(TM), Standard for High Performance Serial Bus. Examples of computer display technologies are the cathode-ray tube (CRT) and liquid crystal display (LCD).

Desktop computer - means a computer where the main unit is intended to be located in a permanent location, often on a desk or on the floor. Desktops are not designed for portability and utilize an external computer display, keyboard, and mouse. Desktops are designed for a broad range of home and office applications.

Integrated desktop computer - means a desktop system in which the computer and computer display function as a single unit that receives its AC power through a single cable. Integrated desktop computers come in one of two possible forms:

(1) A system where the computer display and computer are physically combined into a single unit; or

(2) A system packaged as a single system where the computer display is separate but is connected to the main chassis by a DC power cord and both the computer and computer display are powered from a single power supply. As a subset of desktop computers, integrated desktop computers are typically designed to provide similar functionality as desktop systems.

Notebook computer - means a computer designed specifically for portability and to be operated for extended periods of time either with or without a direct connection to an AC power source. Notebooks must utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source. In addition, most notebooks use an external power supply and have an integrated keyboard and pointing device. Notebook computers are typically designed to provide similar functionality to desktops, including operation of software similar in functionality to that used in desktops. Docking stations are considered accessories for notebook computers, not notebook computers. Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices, are considered notebook computers.

Personal computer product - means a computer, computer display, desktop computer, integrated desktop computer, or notebook computer.

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

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

I.63 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018) (PREV. I.62, REPLACED APR 2020 BY LATER VERSION)

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site. The list of EPA-designate items is available at https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program .

I.64 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011) (PREV. I.63)

(a) Definitions. As used in this clause—

"Driving"—

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"Text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or

while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

I.65 52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011) (PREV. I.64)

The Contractor's work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.

I.66 52.223-20 AEROSOLS (JUN 2016)

(a) Definitions. As used in this clause–

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

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

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

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, or emissions of high global warming potential hydrofluorocarbons, when feasible, from aerosol propellants or solvents under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as–

(1) In-use emission rates, energy efficiency;

(2) Safety, such as flammability or toxicity;

(3) Ability to meet technical performance requirements; and

(4) Commercial availability at a reasonable cost.

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

I.67 52.223-21 FOAMS (JUN 2016)

(a) Definitions. As used in this clause–

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

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

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

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, and emissions of high global warming potential hydrofluorocarbons and refrigerant blends containing

hydrofluorocarbons, when feasible, from foam blowing agents, under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as–

(1) In-use emission rates, energy efficiency, and safety;

(2) Ability to meet performance requirements; and

(3) Commercial availability at a reasonable cost.

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

I.68 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984) (PREV. I.65)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

I.69 52.224-2 PRIVACY ACT (APR 1984) (PREV. I.66)

(a) The Contractor agrees to -

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies -

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

I.70 52.225-1 BUY AMERICAN ACT - SUPPLIES. (MAY 2014) (MODIFIED BY DEAR 970.2570 [NOV 2010]) (PREV. I.67)

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

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

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

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

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

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

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

Component means an article, material, or supply incorporated directly into an end product.

Cost of components means-

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (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 end product.

Domestic end product means-

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product 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 as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under the contract for public use.

Foreign end product means an end product other than a domestic end product.

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

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)).

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall *use* only domestic end products except to the extent that it specified *use* of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

I.71 52.225-8 DUTY-FREE ENTRY (OCT 2010) (PREV. I.68)

(a) *Definition.* "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $15,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the -

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if -

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the -

(1) Delivery address of the Contractor (or contracting agency, if appropriate);

(2) Government prime contract number;

(3) Identification of carrier;

(4) Notation "UNITED STATES GOVERNMENT, [agency], Duty-free entry to be claimed pursuant to Item No(s) [from Tariff Schedules], Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to-

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the-

(1) Foreign supplies;

(2) Country of origin;

(3) Contract number; and

(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if-

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of $15,000 may be imported into the customs territory of the United States.

I.72 52.225-9 BUY AMERICAN - CONSTRUCTION MATERIALS (MAY 2014) (PREV. I.69)

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

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

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

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

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

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

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

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

Cost of components means-

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

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

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 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute 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 statute 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 statute to a particular construction material would be impracticable or inconsistent with the public interest; or

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

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

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

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

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

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

Foreign and Domestic Construction Materials Price Comparison

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

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

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

Include other applicable supporting information.

I.73 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008) (PREV. I.70)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn/. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's website at http://www.treas.gov/offices/enforcement/ofac.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

I.74 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000) (PREV. I.72)

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

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the -

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and
Grants Administration
1849 C Street, NW,
MS-2626-MIB
Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

I.75 52.227-10 FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER. (DEC 2007) (PREV. I.73)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified “Secret” or higher, the Contractor shall, citing the

30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential,'' the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that cover or are likely to cover classified subject matter.

I.76 52.229-8 TAXES - FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990) (PREV. I.74)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of [*insert name of the foreign government*], or from which the Contractor or any subcontractor under this contract is exempt under the laws of [*insert name of country*], shall not constitute an allowable cost under this contract.

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S.

Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

I.77 52.230-2 COST ACCOUNTING STANDARDS (DEVIATION POLICY PLASH 2018-30) (OCT 2015) (PREV. I.75)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered Contracts Only*) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions

under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under 41 U.S.C. chapter 71, Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of ***$2 million***, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

I.78 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010) (PREV. I.76)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

(a) Definitions. As used in this clause-

"Affected CAS-covered contract or subcontract" means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor-

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

"Cognizant Federal agency official (CFAO)" means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

"Desirable change" means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

"Fixed-price contracts and subcontracts" means--

(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

"Flexibly-priced contracts and subcontracts" means--

(1) Fixed-price contracts and subcontracts described at FAR 16.203-1(a)(2), 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

"Noncompliance" means a failure in estimating, accumulating, or reporting costs to-

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

"Required change" means-

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

"Unilateral change" means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the

notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; paragraph (a)(4) of the clause at FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices--Foreign Concerns; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards--Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clauses at FAR 52.230-3 and FAR 52.230-4, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clauses at FAR 52.230-3 and FAR 52.230-4)--

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO--

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall-

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups;

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall--

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred (i.e., whether or not the final indirect rates have been established).

(2) For unilateral changes-

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to-

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs are incurred (i.e., whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or

with paragraph (a)(3)(i) or (a)(4) of the clauses at FAR 52.230-3 and FAR 52.230-4; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, 52.230-4, or 52.230-5—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall-

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, FAR 52.230-4, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

I.79 52.232-17 INTEREST (MAY 2014) (PREV. I.77)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due.

The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if-

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I.80 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS. (MAY 2014) (PREV. I.78)

The assignment of claims under the Assignment of Claims Act of 1940 "(31 U.S.C. 3727, 41 U.S.C. 6305)" is prohibited for this contract.

I.81 52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013) (PREV. I.79)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

I.82 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (PREV. I.80)

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the

maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

I.83 52.233-1 DISPUTES (MAY 2014) - ALTERNATE I (DEC 1991) (PREV. I.81)

(a) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)

(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)

(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

I.84 52.233-3 PROTEST AFTER AWARD (AUG 1996) - ALTERNATE I (JUN 1985)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this

contract. 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. Upon receipt of the final decision in the protest, 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 either before or after a final decision in the protest, 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 an 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 a proposal 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.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.85 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004) (PREV. I.83)

United States law will apply to resolve any claim of breach of this contract.

I.86 52.236-8 OTHER CONTRACTS (APR 1984) (PREV. I.84)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

I.87 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984) (PREV. I.85)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

I.88 52.237-3 CONTINUITY OF SERVICES (JAN 1991) (PREV. I.86)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to-

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.89 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984) (PREV. I.87)

(a) Notwithstanding any other clause of this contract -

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

I.90 52.242-5 PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017)

(a) Definitions. As used in this clause-

"Reduced payment" means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

"Untimely payment" means a payment that is more than 90 days past due under the terms and conditions of a subcontract, for supplies and services for which the Government has paid the prime contractor.

(b) Notice. The Contractor shall notify the Contracting Officer, in writing, not later than 14 days after-

(1) A small business subcontractor was entitled to payment under the terms and conditions of the subcontract; and

(2) The Contractor-

(i) Made a reduced or untimely payment to the small business subcontractor; or

(ii) Failed to make a payment, which is now untimely.

(c) Content of notice. The Contractor shall include the reason(s) for making the reduced or untimely payment in any notice required under paragraph (b) of this clause.

I.91 52.242-13 BANKRUPTCY (JUL 1995) (PREV. I.88)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

I.92 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996) (PREV. I.89)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

I.93 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2019) (PREV. I.90, REPLACED APR 2020 BY LATER VERSION)

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

"Commercial item and commercially available off-the-shelf item" have the meanings contained Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or

affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds $5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (JUN 2016) other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).

(vi) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vii) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(viii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(ix) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(x) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));

(xi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(xii) 52.222-37, Employments Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(xiii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiv)

(A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xv) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xvi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvii)

(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (JAN 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable.

(xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xx) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels

(Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.94 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006) (PREV. I.91)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement Contract No. DE-AC05-00OR22725. This may be confirmed by contacting the US Department of Energy, Oak Ridge National Laboratory Site Office, MS 6262, Post Office Box 2008, Oak Ridge, Tennessee, 37831.

I.95 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (PREV. I.92)

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

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

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

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [*State reasons*]:

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

I.96 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006) (PREV. I.93)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are --

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both --

(i) The Contracting Officer, and

(ii) The:

Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies

(i) within 20 working days of the date of loading for shipments originating in the United States, or

(ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.

(C) Vessel flag of registry.

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

(H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to --

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial items unless –

(i) This contract is –

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are –

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add

value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military –

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: 202-366-2324

I.97 52.249-6 TERMINATION (COST-REIMBURSEMENT) (MAY 2004); MODIFIED BY DEAR 970.4905-1 (DEC 2000) (PREV. I.95)

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

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

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

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

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

(1) Stop work as specified in the notice.

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

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

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

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

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

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

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

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

(7) Complete performance of the work not terminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The amount finally determined on an appeal.

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

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

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

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

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

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

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together

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

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

I.98 52.249-14 EXCUSABLE DELAYS (APR 1984) (PREV. I.96)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

I.99 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984) ALTERNATE I (APR 1984) (PREV. I.97)

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

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

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

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

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

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

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

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

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

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

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

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

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

(f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall -

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

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

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

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

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

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

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

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

I.100 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012) (SC ALTERNATE APR 2018) (PREV. I.98, AS A PRIOR DEVIATION)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. The provisions of the Section I Clause DEAR 970.5245-1 entitled "*Property* " apply to all property acquired under such authorization.

I.101 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991) (PREV. I.99)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

I.102 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984) (PREV. I.100)

(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.103 52.253-1 COMPUTER GENERATED FORMS (JAN 1991) (PREV. I.101)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content,

or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

I.104 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000) (PREV. I.102)

(a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.

(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

I.105 952.204-2 SECURITY (AUG 2016) (PREV. I.103)

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

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

(c) *Definition of Classified Information*. The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized

disclosure under Executive Order 12958, *Classified National Security Information,* as amended, or prior executive orders, which is identified as *National Security Information* .

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

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

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

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

(h) *Access authorizations of personnel*.

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

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

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

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

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

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

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

access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

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

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

(B) Each entity that provided information concerning the individual;

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

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

(E) The results of the test for illegal drugs. .

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

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

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

notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

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

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

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

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

(l) *Flow down to subcontracts*. The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior

to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term “Contracting Officer” means the DOE Contracting Officer. When this clause is included in a subcontract, the term “Contractor” shall mean subcontractor and the term “contract” shall mean subcontract.

I.106 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997) (PREV. I.104)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made

available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

I.107 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011) (PREV. I.105)

(a) In connection with any activities in the performance of this contract, the Contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the Contractor by written notice as sensitive foreign nations. The Contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the Contracting Officer if the Contractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the Contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

I.108 952.204-75 PUBLIC AFFAIRS (DEC 2000) (PREV. I.106)

(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.

(b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

(d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.

(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

I.109 952.204-77 COMPUTER SECURITY (AUG 2006) (PREV. I.107)

(a) Definitions.

(1) Computer means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.

(2) Individual means a DOE Contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) Access to DOE computers. A Contractor shall not allow an individual to have access to information on a DOE computer unless-

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and

(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that

individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) Written records. The Contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

(e) Subcontracts. The Contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

I.110 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984) (PREV. I.108)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the contractor shall furnish the DOE the documentation required by the State to acquire such tags.

I.111 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (AUG 2009) (PREV. I.109)

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of (Contracting Officer see 48 CFR 909.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not-

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and

the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

(f) Subcontracts.

(1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms "contract, " "Contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

I.112 952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (APR 2008) (PREV. I.110)

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed to fill this contract.

I.113 952.215-70 KEY PERSONNEL (DEC 2000) (PREV. I.111)

(a) The personnel listed below or elsewhere in this contract (Section J, Appendix B), if applicable are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once,

although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

[See Section J, Appendix B]

I.114 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984) (PREV. I.113)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be generated and maintained by the contractor in accordance with 36 CFR Chapter XII, Subchapter B, "Records Management," the National Archives and Records Administration (NARA) - approved DOE Records Disposition Schedules, and shall be operated as a DOE Privacy Act system of records, in accordance with the Privacy Act.

I.115 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997) (PREV. I.114)

(a) Definition. Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

I.116 952.235-71 RESEARCH MISCONDUCT (JUL 2005) (PREV. I.115)

(a) The Contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and

adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) Unless otherwise instructed by the Contracting Officer, the Contractor must conduct an initial inquiry into any allegation of research misconduct. If the Contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer and, unless otherwise instructed, the Contractor must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

(2) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(3) Inform the Contracting Officer if an initial inquiry supports a formal investigation and, if requested by the Contracting Officer thereafter, keep the Contracting Officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the Contractor will forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor's adjudicating official, and the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(c) The Department of Energy (DOE) may elect to act in lieu of the Contractor in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that—

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or

(4) The allegation involves possible criminal misconduct.

(d) In conducting the activities under paragraphs (b) and (c) of this clause, the Contractor and the Department, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) Safeguards for information and subjects of allegations. The Contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the Contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The Contractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) Objectivity and Expertise. The Contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) Timeliness. The Contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) Confidentiality. To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) Remediation and Sanction. If the Contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The Contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The Contractor must coordinate remedial actions with the Contracting

Officer. The Contractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the Contractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) Definitions.

Adjudication means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

Fabrication means making up data or results and recording or reporting them.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of Research Misconduct means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Investigation means the formal examination and evaluation of the relevant facts.

Plagiarism means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

Research record means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(g) By executing this contract, the Contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

(h) The Contractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

I.117 952.242-70 TECHNICAL DIRECTION (DEC 2000) (PREV. I.116)

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

(2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.

(b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the contractor's right to perform the terms and conditions of the contract.

(d) All technical direction shall be issued in writing by the COR.

(e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:

(1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;

(2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or

(3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

(f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

I.118 952.250-70 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.

Effective date

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

Relationship to general indemnity

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

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

(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;

(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory:

(5) Princeton University (and any subcontractor or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

(End of note)

NOTE II: Contracts with an effective date after the date of (June 12, 1996), do not require the effective date provision in this clause. Delete the title.

Use the EFFECTIVE DATE title and the following language, for those contracts:

"( ) This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after .."

(1) Those that contained an indemnity pursuant to Public Law 85-840 prior to August 20, 1988, include the effective date provision above, inserting the effective date of the contract modification that replaced the Public Law 85-804 indemnity with an interim Price-Anderson based indemnity. Pursuant to the Price-Anderson Amendments Act, this substitution must have taken place by February 20, 1989.

(2) Those that contained, and continue to contain, either of the previous Nuclear Hazards Indemnity clauses, include the effective date provision above, inserting "August 20, 1988."

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

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

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

I.119 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (AUG 2016) (ACQUISITION LETTER 2012-10)

(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 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

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

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

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

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

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

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

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

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

(1) Negligence;

(2) Contributory negligence;

(3) Assumption of risk; or

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

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

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

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

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

(3) The waivers set forth above:

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

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

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

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

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

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

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

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

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

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

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

(i) *Civil penalties.* The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.

(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 section 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.

(l) ***Effective date.*** This contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

Note II

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

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

(End of note)

I.120 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)

(a) The Contractor shall take advantage of travel discounts offered to Federal Contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the Contractor employee to furnish them a letter of identification signed by the authorized Contracting Officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. Surface Deployment and Distribution Command (SDDC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the Contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The Contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the Contracting Officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

I.121 970.5203-1 MANAGEMENT CONTROLS (JUN 2007)

(a) (1) The Contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted including consideration of outsourcing of functions by management to reasonably ensure that: the mission and functions assigned to the Contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the Contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

(2) The systems of controls employed by the Contractor shall be documented and satisfactory to DOE.

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

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

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

I.122 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)

(a) The Contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, outsourcing decisions, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

(b) The Contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

(c) The Contractor may consult with the Contracting Officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The Contractor may request the assistance of the Contracting Officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.

(d) The Contractor shall notify the Contracting Officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

I.123 970.5203-3 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 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.

(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.

(c) *(DEVIATION)* 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.

(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.

I.124 970.5204-1 COUNTERINTELLIGENCE (MODIFIED) (PREV. I.124)

(a) The Contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475.1, Counterintelligence Program, or its successor; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The Contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer *to support all facilities for which the Oak Ridge Office has cognizance for the Counterintelligence function*. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

I.125 970.5204-2 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. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the

obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

(b) *(Deviation)* In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, *or through the process described in Appendix D,* the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B 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 List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. 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 List B 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 List B 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 List B. 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.126 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION PF 2015-23)

(a) *Government-owned records.* Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 CFR, Chapter XII, Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "Privacy Act."

(b) *Contractor-owned records.* The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, excluding records operated and maintained by the Contractor in Privacy Act system of records.

(2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) *Contract completion or termination.* Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(d) *Inspection, copying, and audit of records.* All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) *Applicability.* This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) *Records maintenance and retention.* Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 CFR Chapter XII, Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition

Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) (*Deviation*) *Subcontracts.*

(1) The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223-72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.

I.127 970.5211-1 WORK AUTHORIZATION (MAY 2007) (PREV. I.128)

(a) Work authorization proposal. Prior to the start of each fiscal year, the Contracting Officer or designee shall provide the Contractor with program execution guidance in sufficient detail to enable the Contractor to develop an estimated cost, scope, and schedule. In addition, the Contracting Officer may unilaterally assign work. The Contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work it recommends be undertaken during that upcoming fiscal year.

(b) Cost estimates. The Contractor and the Contracting Officer shall establish a budget of estimated costs, description of work, and schedule of performance for each work assignment. If agreement cannot be reached as to scope, schedule, and estimated cost, the Contracting Officer may issue a unilateral work authorization, pursuant to this clause. The work authorization, whether issued bilaterally or unilaterally shall become part of the

contract. No activities shall be authorized or costs incurred prior to Contracting Officer issuance of a work authorization or direction concerning continuation of activities of the contract.

(c) Performance. The Contractor shall perform work as specified in the work authorization, consistent with the terms and conditions of this contract.

(d) Modification. The Contracting Officer may at any time, without notice, issue changes to work authorizations within the overall scope of the contract. A proposal for adjustment in estimated costs and schedule for performance of work, recognizing work made unnecessary as a result, along with new work, shall be submitted by the Contractor in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(e) Increase in estimated cost. The Contractor shall notify the Contracting Officer immediately whenever the cost incurred, plus the projected cost to complete work is projected to differ (plus or minus) from the estimate by 10 percent. The Contractor shall submit a proposal for modification in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(f) Expenditure of funds and incurrence of costs. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the ``Obligation of Funds" or equivalent clause of the contract.

(g) Responsibility to achieve environment, safety, health, and security compliance. Notwithstanding other provisions of the contract, the Contractor may, in the event of an emergency, take that corrective action necessary to sustain operations consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. If such action is taken, the Contractor shall notify the Contracting Officer within 24 hours of initiation and, within 30 days, submit a proposal for adjustment in estimated costs and schedule established in accordance with paragraphs (a) and (b) of this clause.

I.128 970.5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000) - ALTERNATE II AND ALTERNATE IV (DEC 2000) (PREV. I.129)

(a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."

(b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the contracting officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The contracting officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the contracting officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.

(c) Determination of Total Available Fee Amount Earned.

(1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

(2) The DOE Operations/Field Office Manager, or designee, will be (insert title of DOE Operations/Field Office Manager, or designee). The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Other Incentives - Facility Management Contracts" if contained in the contract.

(4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.

(d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:

(1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:

(i) prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or

(ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the contracting officer.

(2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

(3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The contracting officer shall notify the contractor:

(i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

(ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or

(iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.

(e) Schedule for total available fee amount earned determinations. The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with: the schedule set forth in the Performance Evaluation and Measurement Plan(s); or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the contracting officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, 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. If the contracting officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must 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 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.

(f) Contractor self-assessment. Following each evaluation period, the Contractor may submit a self-assessment provided such assessment is submitted within 45 calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

I.129 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES--FACILITY MANAGEMENT CONTRACTS (AUG 2009) – ALTERNATE II (AUG 2009) (PREV. I.130)

(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 entitled, ``Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise 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 Order 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.

(e) Minimum requirements for specified level of performance.

(1) At a minimum the Contractor must perform the following—

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(f) Minimum requirements for cost performance.

(1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The Contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

[68 FR 68771, Dec. 10, 2003; 74 FR 36358, Jul. 22, 2009]

I.130 970.5217-1 STRATEGIC PARTNERSHIP PROJECTS PROGRAM (NON-DOE FUNDED WORK) (APR 2015)

(a) Authority to Perform Work for Others. Pursuant to the Economy Act of 1932, as amended

(31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) or other applicable authority, the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause.

(b) Contractor's Implementation. The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.

(c) Conditions of Participation in Strategic Partnership Projects Program. The Contractor:

(1) Must not perform Strategic Partnership Projects activities that would place it in direct competition with the domestic private sector;

(2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;

(3) Must not commence work on any Strategic Partnership Projects activity until a Strategic Partnership Projects proposal package has been approved by the DOE Contracting Officer or designated representative;

(4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232-6;

(5) Must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Strategic Partnership Projects proposal;

(6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Strategic Partnership Projects activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;

(7) Must perform all Strategic Partnership Projects projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE contractor's performance as defined in the DOE approved Strategic Partnership Projects proposal package; and,

(9) Must maintain a summary listing of project information for each active Strategic Partnership Projects project, consisting of:

(i) Sponsoring agency;

(ii) Total estimated costs;

(iii) Project title and description;

(iv) Project point of contact; and,

(v) Estimated start and completion dates.

(d) Negotiation and Execution of Strategic Partnership Projects Agreement.

(1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Strategic Partnership Projects project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Strategic Partnership Projects agreement.

(2) The Contractor must submit all Strategic Partnership Projects agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

(e) Preparation of Project Proposals. When the Contractor proposes to perform Strategic Partnership Projects activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.

(f) Strategic Partnership Projects Appraisals. DOE may conduct periodic appraisals of the Contractor's compliance with its Strategic Partnership Projects Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) Annual Strategic Partnership Projects Report. The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Strategic Partnership Projects Activities under the contract.

I.131 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS MANAGEMENT AND OPERATING CONTRACTS (DEC 2000) (PREV. I.132)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

I.132 970.5222-2 OVERTIME MANAGEMENT (DEC 2000) (PREV. I.133)

(a) The contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.

(b) The contractor shall notify the contracting officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

(c) The contracting officer may require the submission, for approval, of a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the contracting officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:

(1) An overtime premium fund (maximum dollar amount);

(2) Specific controls for casual overtime for non-exempt employees;

(3) Specific parameters for allowability of exempt overtime;

(4) An evaluation of alternatives to the use of overtime; and

(5) Submission of a semi-annual report that includes for exempt and non-exempt employees:

(i) Total cost of overtime;

(ii) Total cost of straight time;

(iii) Overtime cost as a percentage of straight-time cost;

(iv) Total overtime hours;

(v) Total straight-time hours; and

(vi) Overtime hours as a percentage of straight-time hours.

I.133 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000) (PREV. I.134)

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

(b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work;

(3) Develop and implement hazard controls;

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

(e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may choose not to require the subcontractor to submit a Safety Management System for the contractor's review and approval.

I.134 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010) (PREV. I.135)

(a) Program Implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts.

(1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.

(2) The DOE Prime Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE Prime Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

I.135 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010) (PREV. I.137)

(a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well being of its Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall provide its services in a manner that promotes the natural

environment, reduces greenhouse gas emissions and protects the health and well being of Federal employees, contract service providers and visitors using the facility.

(b) Green purchasing or sustainable acquisition has several interacting initiatives. The Contractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Contractor may request an equitable adjustment to the terms of its contract using the procedures at 48 CFR 970.5243-1 Changes. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:

(1) Recycled Content Products are described at http://epa.gov/cpg.

(2) Biobased Products are described at http://www.biopreferred.gov/.

(3) Energy efficient products are at http://energystar.gov/products for Energy Star products.

(4) Energy efficient products are at http://www.femp.energy.gov/procurement for FEMP designated products.

(5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at http://www.epeat.net the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site.

(6) Greenhouse gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at http://www.archives.gov/federal-register/executive-orders/disposition.html.

(7) Non-Ozone Depleting Alternative Products are at http://www.epa.gov/ozone/strathome.html.

(8) Water efficient plumbing products are at http://epa.gov/watersense.

(c) The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product -

(1) Is not available;

(2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;

(3) Does not meet performance needs; or,

(4) Cannot be delivered in time to meet a critical need.

(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (http://www.epa.gov/greeningepa/practices/eo13423.htm) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (http://www.archives.gov/federal-register/executive-orders/disposition.html). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic performance. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf.

(e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor. This requirement should not be flowed down to subcontractors.

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.

(g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default (see FAR 52.249-6, Termination (Cost Reimbursement)).

(h) These provisions shall be flowed down only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer

significant subcontracting opportunities for energy efficient or environmentally sustainable products or services. The Subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Subcontractor will advise the Contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

I.136 970.5225-1 COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)

(a) The Contractor shall comply with all applicable U.S. export control laws and regulations.

(b) The Contractor's responsibility to comply with all applicable laws and regulations exists independent of, and is not established or limited by, the information provided by this clause.

(c) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to-

(1) The Atomic Energy Act of 1954, as amended;

(2) The Arms Export Control Act (22 U.S.C. 2751 et seq.);

(3) The Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 et seq.);

(4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);

(5) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);

(6) Export and Import of Nuclear Equipment and Material (10 CFR part 110);

(7) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);

(8) Export Administration Regulations (EAR) (15 CFR parts 730 through 774); and

(9) Regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598).

(d) In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled activities.

NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act; or the regulations that implement those statutes (e.g., the ITAR, the EAR, 10 CFR part 110 and 10 CFR part 810). Thus, if items (e.g., commodities, software or technologies) that are controlled by U.S. export control laws or regulations are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all solicitations and subcontracts.

I.137 970.5226-1 DIVERSITY PLAN (DEC 2000) (PREV. I.138)

The Contractor shall submit a Diversity Plan to the contracting officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in Appendix A. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer), and (6) the prevention of profiling based on race or national origin.

I.138 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000) (PREV. I.139)

(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

(b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

I.139 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER ALTERNATE I (DEC 2000) (SC ALTERNATE, CORRECTED OCT 2019) (PREV. I.141 REVISED APR 2020)

(a) *Definitions.*

Assistant General Counsel for Technology Transfer and Intellectual Property is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

Computer databases, 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.

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 databases.

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.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

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.

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.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity.

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 paragraph (i) of this clause.

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 database.

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.

(b) *Allocation of Rights.*

(1) 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 first produced or 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 Patent Counsel, appropriate instances of the DOE Strategic Partnership Projects (SPP) 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 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"). When delivering all contractor produced computer software to the DOE Office of Scientific and Technical Information (OSTI), the Contractor shall submit a complete package as prescribed in paragraph (e)(3) of this clause; 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 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 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 expect 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 works, and works produced by Contractor under DEAR 952.204-75, 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 works 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 or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(4) In the performance of DOE contracted obligations, the Contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office (OSTI) per DOE O 241.1B or its successor version.

(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), (e) or (f) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph paragraphs (d), (e) or (f) 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.

(3) If the Contractor has not been granted permission to assert copyright in data or computer software first produced under the contract where such permission is necessary and if the Government desires to obtain copyright in such data or computer software, the Contracting Officer may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

(d) *Copyrighted works (scientific and technical works).*

(1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical works composed under this contract or based on or containing data first produced by the Contractor in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, contributions to chapters of book compilations or similar means of dissemination to make broadly available to the public or scientific community for the purpose of scientific research, knowledge and education. Such scientific and technical works may be recorded or fixed in any medium including but not limited to print, online, web, audio, video or other medium, and released or disseminated through any communication or distribution channel including but not limited to articles, reports, books, non-architectural drawings, repositories, videos, websites, workshops, or social media. 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) For each scientific or technical work first produced or composed under this Contract and submitted for publication or similar means of dissemination, the contractor shall provide notice to the publisher of the Government's license in the copyright that is substantially similar to or otherwise references one of the notices below.

A suitable notice (long version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright follows:

> Notice: This work was produced by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the work for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the submitted manuscript version of this work, or allow others to do so, for United States Government purposes. The Department of Energy will provide public access to these results of federally sponsored research in accordance with the DOE Public Access Plan (http://energy.gov/downloads/doe-public-access-plan).
> (End of Notice)

A suitable notice (short version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright follows:

> Notice: This work was produced by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy.

Publisher acknowledges the U.S. Government license to provide public access under the DOE Public Access Plan (http://energy.gov/downloads/doe-public-access-plan). (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 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 works 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, when the Contractor needs to control distribution to advance the goals of the technology transfer mission and 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) Except for scientific and technical works under (d) above 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 software) 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 funding 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 dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE 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 exclusively by DOE will be expressly withheld. Such excepted categories include data whose release (a) would be detrimental to national security, i.e., classified by statute or executive order or controlled 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 from meeting its obligations under treaties and international agreements, or (e) would be detrimental to one or more of DOE's programs.

(iv) The Contractor will obtain the advanced written permission of the Patent Counsel to assert copyright where data are determined to be in the following excepted categories: (a) under export control restrictions, (b) developed with Naval Reactors' funding, and (c) subject to disposition of data rights under treaties and international agreements. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. 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 at DOE's Office of International Affairs (International Commitments—IEC) (http://energy.gov/ia/iec-documents).

(2) Patent Counsel – Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 60 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's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor. If Patent Counsel grants permission for the Contractor

to assert copyright in computer software, the permission automatically extends to subsequent minor versions (e.g., minor revisions, patches and bug fixes) having the same funding source, same name and substantially same functionality as the original computer software, and may be extended to subsequent major versions representing significant modifications of the program with the approval of Patent Counsel.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish, or make available, to OSTI in accordance with OSTI guidelines at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

(A) Announcement information/metadata contained in the Software Announcement Notice 241,

(B) The source code and executable file for each software program, and

(C) Documentation, if any, which may consist of a user manual, sample test cases, or similar information, needed by a technically competent user to understand and use the software (whether included on the software media itself or provided in a separate file or in paper format).

(ii) The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(iii) Unless otherwise directed by the Patent Counsel, 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, or make available, to OSTI in accordance with OSTI guidelines, 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, its contractors and to the public identifying its availability from the copyright holder.

(iv) Once the Contractor is given permission to assert copyright in data, the Contractor may begin to commercialize the copyrighted data by making copyrighted data available for licensing to third parties and by offering other types of distribution to third parties. During the period in which commercialization activities pertaining to the copyrighted data are continuing, or for a specified period of time prescribed by Patent Counsel in paragraph (e)(2) above, 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. For all previously

approved and current copyrighted data that the Contractor is actively commercializing, the Contractor may continue to commercialize in accordance with this paragraph.

(v) When the Contractor abandons commercialization activities pertaining to the copyrighted data or at the end of the specified periods as prescribed by Patent Counsel in paragraph (e)(2) above, 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.

(vi) If at any time the Contractor abandons commercialization activities for copyrighted data, it shall notify OSTI and Patent Counsel, and upon request assign the copyright to the Government, so that the Government can distribute the data to the public. When the Contractor abandons commercialization activities, the Contractor will provide to OSTI the latest version of the copyrighted data (for example, source code, object code, minimal support documentation, drawings or updated manuals). In addition, the Contractor will provide annually to Patent Counsel, if requested, a list of all copyrighted data that the Contractor has abandoned commercial licensing activity during that year.

(vii) 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)(iv) and (v) of this clause. Such action shall be taken when the data are delivered to the Government, licensed or deposited for registration as a published work in the U.S. Copyright Office, or when submitted for publication. The acknowledgment of Government sponsorship and license rights shall be substantially similar to the following:

> Notice: These data were produced by (insert name of Contractor) under Contract No. _____ with the Department of Energy. During the period of commercialization or such other time period specified by DOE, 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. Subsequent to that period, 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. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, 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)

(viii) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the period that Contractor is commercializing the software as provided for in paragraph (e)(3)(iv) 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 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)(i) of this clause. Before licensing under this subparagraph (viii), DOE 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 to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—"Appeals."

(ix) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE 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.

(4) The following notice may be included in computer software prior to any publication or release and prior to the Contractor's obtaining permission from the Department of Energy 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 (DOE). All rights in the computer software are reserved by DOE 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, prior to any publication or release and prior to Contractor's obtaining permission of DOE Patent Counsel to assert copyright.

(f) *Open software source.* 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) *DOE Program notice for copyright assertion for OSS.*

(i) The Contractor shall provide written notice to each DOE Program(s) that have provided a substantial portion of the funding (funding source(s)) to develop the software that the Contractor intends to release as OSS unless the funding Program(s) have previously provided blanket approval for all software developed with funding from that Program or a specific DOE project stipulates the software to be released as OSS. Unless Program has objected to the assertion of copyright within ten working days of such written notice, the Contractor may assert copyright in the software. If notification to funding DOE Program(s) is not practicable, the Contractor shall consult with Patent Counsel, which may provide approval. For software developed under a CRADA, User Facility Agreement, or SPP Agreement, authorization from the CRADA Participant(s) or User Facility User(s), or SPP Sponsor(s), as applicable, shall be additionally obtained for OSS release unless such Agreement has a provision providing for copyright.

(ii) If the software is developed with funding from a federal government agency or agencies (funding source(s)) other than DOE, then authorization from all the funding agency(ies) 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(ies). 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 approval from such federal government agency(ies) is not practicable, the Patent Counsel may provide approval instead.

(2) *Assert copyright in the OSS.* Once the Contractor has met the Program and sponsor approval requirements set forth in paragraph (f)(1) of this clause, copyright in the software to be distributed as OSS may be asserted by the Contractor, or, for OSS developed under a CRADA, User Facility Agreement, or SPP Agreement, copyright in the software to be distributed as OSS may be asserted either by the Contractor, CRADA Participant, User Facility User, or SPP Sponsor, as applicable, whereby such assertion precludes marking such OSS as protectable from public distribution.

(3) *Submit Software Announcement Notice 241.4 to OSTI.* The Contractor must submit the Software Announcement Notice (AN) 241.4 (or the current notice as may be required by

DOE) to DOE's OSTI, which may require the unique URL (i.e., a persistent identifier) from which the software can be obtained so that OSTI can announce the availability of the OSS and the public has access via the URL.

(4) *Maintain OSS record.* The Contractor must maintain adequate records of all software distributed as OSS. Upon request of the Patent Counsel, the Contractor shall provide the necessary information regarding any or all OSS.

(5) *Provide public access to the OSS.* The Contractor shall ensure that the OSS is publicly accessible as open source via the Contractor's website, DOE, software repositories or other industry methods.

(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 Assistant General Counsel for Technology Transfer and Intellectual Property, may periodically issue guidance on OSS licenses. Each Contractor-created OSS license, must contain, at a minimum, the following provisions:

(i) An industry standard disclaimer 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. This provision may 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 (f) and (g) of the clause within this contract entitled Technology Transfer Mission (48 CFR 970.5227-3). The requirement for the 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) *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 to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(10) *Contractor abandons OSS.* If the Contractor ceases to make OSS publicly available, then the Contractor shall submit to OSTI the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised Announcement Notice 241.4 (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to OSTI.

(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 DOE policy and procedures by using "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Other modifications (e.g., Alternates II through IV of that clause or using "Special Works" at 48 CFR 52.227-17) may be made with the approval of the Patent Counsel. 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 the 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). 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, the Contractor shall instead use the "Rights in Data-Facilities" clause at 48 CFR 970.5227-1.

(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. _____ with the United States Department of Energy 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 Contract No. ___. 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 Contract No. ___ 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, e.g., 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.140 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2019) (SC ALTERNATE APR 2018) (DEVIATION) (PREV. I.142 REVISED APR 2020)

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 Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory 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 Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Strategic Partnership Projects (SPP); providing information exchanges; and making available laboratory user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, SPP, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

(3) *Trademarks and service marks.* The Contractor, with notification to DOE Patent Counsel, is authorized to protect goods/services resulting from work at the Laboratory through Trademark and Service Mark protection. DOE reserves the right to require the Contractor to cancel registration or cease the use of any such mark upon written notice. The Laboratory name, including nicknames, and associated logos are owned

by the Department of Energy and shall be protected by DOE Patent Counsel. In furtherance of the technology transfer mission, should the Contractor want to assert trademark or service mark protection for any word, phrase, symbol, design, or combination thereof that includes or is associated with the Laboratory name, the Contractor must first notify the DOE Patent Counsel. All marks resulting from work at the Laboratory that are not owned by DOE, whether registered with the United States Patent and Trademark Office or not, are subject to paragraph (i) *(Transfer to Successor Contractor)* of this clause, below, unless an exception is allowed by the DOE Patent Counsel.

(b) *Definitions.*

(1) *Contractor's Laboratory Director* means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

(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 Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, 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 Laboratory; 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 Laboratory 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 Laboratory Intellectual Property, subject to the Government's retained rights.

(6) *Laboratory 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 Laboratory employees or through the use of Laboratory research facilities.

(7) *Laboratory 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 Laboratory employees or through the use of Laboratory research facilities.

(8) *Bailment* means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory 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) *Department of Energy (DOE),* as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

(10) *Patent Counsel* means the DOE or NNSA Patent counsel assisting the contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

(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, widespread notice of technology transfer opportunities, and early stage and precommercial technology demonstration to remove barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from Laboratory activities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract.

(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 other persons participating in Laboratory 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) Require employees with a substantial role in negotiation, approval and performance of the CRADA in paragraph (n) to conform with standards of conduct and integrity in

connection with the 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 projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or SPP activities of the Contractor;

(5) Conduct DOE-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 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 Laboratory employee within the previous two years or to the company in which the individual is a principal; and

(9) Notify non-Federal sponsors of SPP activities, of any relevant Intellectual Property interest of the Contractor prior to execution of SPPs.

(10) Notify the Contracting Officer and the funding party or program prior to evaluating a proposal by a third party or a DOE 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 Laboratory and by entities other than the Contractor.

(f) *U.S. Industrial Competitiveness - for licensing and assignments of intellectual property.*

(1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, 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 licensing and assignment decisions involving Laboratory intellectual property where the Laboratory

obtains rights during the course of the Contractor's operation of the Laboratory 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 the proposed licensee or 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 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 (f)(1)(ii)(B) of this clause, 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; and

(D) The Contractor shall 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 are 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. Except for CRADA and SPP where the guidance is already provided elsewhere, 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) [*Deviation*] 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 Laboratory, consistent with the research and development mission and objectives of the Laboratory 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 Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract. *In the special case of royalties or other income received as a result of performance of authorized technology transfer activities involving Inorganic Membrane Technology, such royalties or other income is also subject to the additional expenses associated with non-proliferation studies of membrane products and, after payment of such additional expenses as well as the costs and expenses identified above, payment of 50 percent of the remaining inorganic membrane royalties or other income to the Treasury of the United States prior to consideration of such inorganic membrane royalties or other income in determining the net or excess amounts in accordance with this paragraph (h)(1).*

(2) The Contractor shall include as a part of its annual Laboratory 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 Laboratory, 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 establish subject to the approval of the contracting officer a 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. The Contractor shall notify the Contracting Officer of any changes to that policy, and 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 Laboratory 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 or several packages if necessary, 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 Laboratory, 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 by statute or executive order or controlled under Section 148 of the Atomic Energy Act (42 U.S.C. 2168), as amended, or is subject to export control for nonproliferation and other nuclear-related national security purposes. Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE 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 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 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 and in such a format which will serve to adequately inform DOE 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's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan may be included in the Annual Laboratory Plan and 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. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) *Technology Transfer Through Cooperative Research and Development Agreements.* Upon approval of the contracting officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director, or designee, may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(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 Laboratory 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 Laboratory 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 Laboratory 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. The Contractor, in considering these factors, may rely upon the following information

(A) U.S. Trade Representative inventory of Foreign Trade Barriers;

(B) U.S. Trade Representative Special 301 Report; and

(C) Such other relevant information available to the Contracting Officer. The Contractor shall 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.

(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 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 facilities for use by DOE 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. A final report, upon completion of a CRADA, shall be provided to DOE's Office of Scientific and Technical Information; reports marked as Protected CRADA Information will not be released to the public for a period up to five years, in accordance with the terms of the CRADA.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) *Strategic Partnership Projects and User Facility Programs.* (i) SPP and User Facility Agreements (UFAs) are not CRADAs and will be 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, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, *i.e.*, SPP and UFA, and of the Class Patent Waiver provisions associated therewith. (ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in SPP and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers. (iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE 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 class waiver (including SPP and User Class Waivers) or individually negotiated waiver which 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 negotiation, approval or performance 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 negotiation, approval or performance of the CRADA;

(*2*) Receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the negotiation, approval or performance of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the negotiation, approval or performance 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 negotiation, approval or performance 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 negotiation, approval or performance 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 negotiating, approving or performing 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 laboratory, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contactor's laboratory staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the laboratory or facility, 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 laboratory or facility regarding technology partnerships, patents, and technology licensing; (ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and (iii) Submitting a quarterly report, in a format provided by DOE, 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.

I.141 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) (SC ALTERNATE CORRECTED OCT 2019) (PREV. I.143 REVISED APR 2020)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c) (1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed the simplified

acquisition threshold at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed the simplified acquisition threshold.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than the simplified acquisition threshold does not affect this authorization and consent.

I.142 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000) (SC ALTERNATE APR 2018) (PREV. I.144 REVISED APR 2020)

(a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed the simplified acquisition threshold.

I.143 970.5227-6 PATENT INDEMNITY - SUBCONTRACTS (DEC 2000) (PREV. I.145)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

I.144 970.5227-8 REFUND OF ROYALTIES (AUG 2002) (PREV. I.146)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

(1) Name and address of licensor;

(2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(4) Percentage or dollar rate of royalty per unit;

(5) Unit price of contract item;

(6) Number of units;

(7) Total dollar amount of royalties; and

(8) A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any

payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

I.145 970.5227-10 PATENT RIGHTS - MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (DEC 2000) (DEVIATION AUG 2002) (SC ALTERNATE APR 2018) (PREV. I.147, REVISED APR 2020)

(a) *Definitions.*

(1) *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR Part 781.

(2) (*Deviation*) *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 Part 401.3(e). *For purposes of this contract, this definition does not include Inorganic Membrane Technology Subject Inventions which are the subject of a Class Waiver to the Contractor.*

(3) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(6) *Patent Counsel* means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.

(7) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, are used.

(9) *Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, (7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of Principal Rights.*

(1) (*Deviation*) *Retention of title by the Contractor*. Except for exceptional circumstance subject inventions, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. *Additionally, with respect to Inorganic Membrane Subject Inventions, the Federal Government shall have an irrevocable, paid-up exclusive license in the field of use of uranium enrichment with the exclusive right to grant sublicenses in that field of use.*

(2) (*SC Alternate*) *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 DOE's Office of International Affairs (International Commitments--IEC) (http://energy.gov/ia/iec-documents), 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.*

(3) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign

to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:
  (A) Uranium enrichment technology;
  (B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and
  (C) National security technologies classified by stature or executive order or controlled under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following are exceptional circumstance subject inventions:
  (A) DOE Steel Initiative and Metals Initiative;
  (B) U.S. Advanced Battery Consortium; and
  (C) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI); and,
  (D) *(Deviation) Solid State Energy Conversion Alliance (SECA) if Contractor is a participant in the "Core Technology Program."*
  (E) *(Deviation) Solid State Lighting (SSL) Program if the Contractor is a participant in the "Core Technology Program."*

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(4) *Contractor request for greater rights in exceptional circumstance subject inventions*. The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

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

by the Contractor employee-inventor.

(6) (*Deviation*) *Government assignment of rights in Government employees' subject inventions*. If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304-1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee, *as DOE deems appropriate*.

(c) *Subject invention disclosure, election of title and filing of patent application by contractor*.

(1) *Subject invention disclosure.* The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted or made available for publication at the time of disclosure. The disclosure shall identify if the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will notify the agency of any accepted manuscript describing the invention for publication or on sale or public use planned by the contractor that is 60 days prior to the end of the statutory period. The Contractor shall notify Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(2) *Election by the Contractor*. Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use

has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) *Filing of patent applications by the Contractor.* The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) (*SC Alternate*) *Contractor's reporting under this subparagraph. Reporting of Subject Invention disclosures, election of title, filing of patent applications and associated activities under subparagraphs (c)(1), (2) and (3) is reported to the agency and Patent Counsel using the NIH's iEdison portal unless the Contractor receives a waiver from Patent Counsel.*

(5) *Contractor's request for an extension of time.* Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.

(6) (SC Alternate) *Publication review. During the course of the work under this contract, the Contractor may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. Contractor's Invention Identification Procedures under paragraph (f)(5) should address timely disclosure of inventions, consider whether review is required, and if so, facilitate such review by Contractor personnel responsible for patent matters prior to disclosure of publications in order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor.*

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the DOE, upon written request, title to any subject invention.

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or to elect within the specified times.

(2) In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of

any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(e) *Minimum rights of the Contractor and protection of the Contractor's right to file.*

(1) (*Deviation*) *Request for a Contractor license*. The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries, affiliates, *and members*, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) *Revocation or modification of a Contractor license*. The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and DOE licensing regulations at 10 CFR Part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.

(3) *Notice of revocation of modification of a Contractor license*. Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest.*

(1) *Execution of delivery of title or license instruments.* The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and

(ii) Convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Notification of discontinuation of patent protection.* The contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) *Notification of Government rights.* The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(5) *Invention identification procedures.* The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(6) *Invention filing documentation.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than

English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(7) *Duplication and disclosure of documents*. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR Part 40.

(g) *Subcontracts*.

(1) *Subcontractor subject inventions*. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause - non-profit organization or small business firm subcontractors*. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 48 CFR 952.227- 11.

(3) *Inclusion of patent rights clause - subcontractors other than non-profit organizations and small business firms*. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause.

(4) *DOE and subcontractor contract*. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) *Subcontractor refusal to accept terms of patent clause*. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract*. Upon the award of any subcontract at any

tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions*. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.

(h) (*SC Alternate*) *Reporting on utilization of subject inventions.*
The Contractor agrees to submit to DOE the annual data call for the Department of Commerce report that includes the number of patent applications filed, the number of patents issued, gross royalties received by the Contractor, licensing activity and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States Industry*.
Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.*
The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that --

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not

reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.*
If the Contractor is a nonprofit organization, it agrees that -

(1) *DOE approval of assignment of rights.* Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

(2) *Small business firm licensees.* It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

(3) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(l) *Communications.*
The Contractor shall direct any notification, disclosure or request provided for in this clause to the iEdison invention portal or as otherwise directed by the Patent Counsel.

(m) *Reports.*

(1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made

during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.

(2) *Final reports*. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period under which a subject invention was reported, or a statement that no such subject inventions under subcontracts were reported during the contract performance period.

(n) *Examination of Records Relating to Subject Inventions*.

(1) *Contractor compliance*. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.

(2) *Unreported inventions*. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality*. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection*. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(o) *Facilities License*.

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that

facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(p) *Atomic Energy*.

(1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements*. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(q) *Patent Functions.*

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

(r) *Educational Awards Subject to 35 U.S.C. 212.*

The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) *Annual Appraisal by Patent Counsel.*

Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(*t*) (*SC Alternate*) *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.

I.146 970.5228-1 INSURANCE-LITIGATION AND CLAIMS (JUL 2013) (PREV. I.148)

(a) The contractor must comply with 10 CFR part 719, Contractor Legal Management Requirements, if applicable.

(b) (1) Except as provided in paragraph (b)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.

(2) The contractor may, with the approval of the Contracting Officer, maintain a self-insurance program in accordance with FAR 28.308; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.

(c) The contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.

(d) Except as provided in paragraph (f) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance without regard to the clause of this contract entitled "Obligation of Funds."

(e) The Government's liability under paragraph (d) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(f) (1) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities to third parties, including contractor employees, and directly associated costs which may include but are not limited to litigation costs, counsel fees, judgments and settlements-

(i) Which are otherwise unallowable by law or the provisions of this contract, including the cost reimbursement limitations contained in 48 CFR part 31, as supplemented by 48 CFR 970.31;

(ii) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer; or

(iii) Which were caused by contractor managerial personnel's-

(A) Willful misconduct;

(B) Lack of good faith; or

(C) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(2) The term "contractor's managerial personnel" is defined in the Property clause in this contract.

(g) (1) All litigation costs, including counsel fees, judgments and settlements shall be segregated and accounted for by the contractor separately. If the Contracting Officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (f) of this clause is not allowable.

(h) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or non-reimbursable costs incurred in connection with contract performance.

I.147 970.5229-1 STATE AND LOCAL TAXES (DEC 2000) (PREV. I.149)

(a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the contracting officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

(c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing

taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

I.148 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) - ALTERNATE I (DEC 2000) (I.150)

(a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on April 1, 2000. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to April 1, 2000, the contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

I.149 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000) (PREV. I.151)

(a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.

(b) The contractor shall be afforded a reasonable opportunity to respond in writing.

I.150 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000)-ALTERNATE II AND ALTERNATE III (DEC 2000) (DEVIATION) (PREV. I.152)

(a) *(Deviation)* 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. *Notwithstanding the above, the Contractor is*

authorized to provisionally withdraw, on the last working day of each month, against the payments cleared financing arrangement, one-twelfth (1/12) of eighty percent (80%) of the ninety (90) percent annual available fee amount. Following the Government's Determination of Total Available Fee Amount Earned, the Contractor is authorized to withdraw within fifteen (15) days any amount of earned fee over the amount previously paid on a provisional basis from the payments cleared financing arrangement. In the event the Government's Determination of Total Available Fee Amount Earned results in an overpayment to the Contractor, such overpayment shall be redeposited to the payments cleared financing arrangement within fifteen (15) days, or otherwise used as directed by 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 therefor 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 therefor 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 F. 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'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 - , DEAR 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 therefor.

(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.151 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010) (PREV. I.153)

(a) Accounts. The Contractor shall maintain a 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 current 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.152 970.5232-4 OBLIGATION OF FUNDS (DEC 2000) (PREV. I.154)

(a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is $29,627,549,342.11. Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, 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. Nothing in this paragraph is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.

(b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:

(1) collections accruing to the contractor in connection with the work under this contract and 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

(2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) Notices-Contractor excused from further performance. The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the - day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only - days and to cover the contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid and any negotiated fixed amounts, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

(d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees

(1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) to comply with other requirements of such plans and directives, and

(3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

(e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

I.153 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000) (PREV. I.155)

(a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

I.154 970.5232-6 STRATEGIC PARTNERSHIP PROJECT FUNDING AUTHORIZATION (APR 2015) (PREV. I.156)

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 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 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 Strategic Partnership Projects applicable to this contract.

I.155 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000) (PREV. I.157)

The contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial

management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

I.156 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000) (DEVIATION) (PREV. I.158)

Integrated accounting procedures are required for use under this contract. The contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract *or as otherwise directed by the contracting officer. The Contractor's financial management system shall include an integrated accounting system for product cost accounting, particularly for isotopes.*

I.157 970.5235-1 FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER SPONSORING AGREEMENT (DEC 2010) (PREV. I.159)

(a) Pursuant to 48 CFR 35.017-1, this contract constitutes the sponsoring agreement between the Department of Energy (DOE) and the Contractor, which establishes the relationship for the operation of a Department of Energy sponsored Federally Funded Research and Development Center (FFRDC).

(b) In the operation of this FFRDC, the Contractor may be provided access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities needed to discharge its responsibilities efficiently and effectively. Because of this special relationship, it is essential that the FFRDC be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the Department of Energy.

(c) Unless otherwise provided by the contract, the Contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of the clause 48 CFR 970.5217-1 Work for Others Program.

(d) As an FFRDC, the Contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1 Work for Others (Non-Department of Energy Funded Work), or its successor.

I.158 970.5242-1 PENALTIES FOR UNALLOWABLE COSTS (AUG 2009) (PREV. I.161)

(a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.

(c) Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that Contractor—

(i) Was subject to a Contracting Officer's final decision and not appealed;

(ii) The Civilian Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) Was mutually agreed to be unallowable.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is—

(1) Expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or

(2) Determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(e) The Contracting Officer may waive the penalty provisions when—

(1) The Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) The amount of the unallowable costs allocated to covered contracts is $10,000 or less; or

(3) The Contractor demonstrates to the Contracting Officer's satisfaction that—

(i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the Contractor's submission for settlement of costs; and

(ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

I.159 970.5243-1 CHANGES (DEC 2000) (DEVIATION) (PREV. I.162)

(a) Changes and adjustment of fee. The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract.

(1) *(Deviation)* If any such direction results in a material change in the level of the Contractor's management effort, an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(2) *(Deviation)* Services pursuant to mutual agreement under the provisions of paragraph (h)(3) of Section C-4, Statement of Work, of this contract shall be performed without additional fee unless DOE and the contractor shall mutually agree in writing that they will constitute a material increase in the level of the contractor's management effort under this contract, in which event the parties hereto will negotiate in good faith to agree upon an equitable fee for such additional services. Failure of the parties so to agree shall constitute a dispute within the meaning of the clause entitled "Disputes."

(b) Work to continue. Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

I.160 970.5244-1 CONTRACTOR PURCHASING SYSTEM (AUG 2016) (DEVIATION POLICY FLASHES 2013-64 AND 2015-17) (PREV. I.163)

(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 48 CFR subpart 970.41.

(c) *Acquisition of real property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.

(d) *Advance notice of proposed subcontract awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) *Audit of subcontractors.* (1) The Contractor shall provide for—

(i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and

(ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely

involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).

(f) *Bonds and insurance*. (1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of $150,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $150,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than $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 $500,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at $500,000 or less.

(h) *Construction and architect-engineer subcontracts*. (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of conflict of interest. (i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-affiliated sources*. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) *Contractor-subcontractor relationship*. The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) *Government Property*. The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.

(l) *Indemnification*. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) *Leasing of motor vehicles*. Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.

(n) [Reserved]

(o) *Management, acquisition and use of information resources*. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) *Priorities, allocations and allotments*. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) *Purchase of special items*. Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:

(1) Motor vehicles—48 CFR 908.7101

(2) Aircraft—48 CFR 908.7102

(3) Security Cabinets—48 CFR 908.7106

(4) Alcohol—48 CFR 908.7107

(5) Helium—48 CFR subpart 8.5

(6) Fuels and packaged petroleum products—48 CFR 908.7109

(7) Coal—48 CFR 908.7110

(8) Arms and Ammunition—48 CFR 908.7111

(9) Heavy Water—48 CFR 908.7121(a)

(10) Precious Metals—48 CFR 908.7121(b)

(11) Lithium—48 CFR 908.7121(c)

(12) Products and services of the blind and severely handicapped—41 CFR 101-26.701

(13) Products made in Federal penal and correctional institutions—41 CFR 101-26.702.

(r) *Purchase versus lease determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made—

(1) At time of original acquisition;

(2) When lease renewals are being considered; and

(3) At other times as circumstances warrant.

(s) *Quality assurance*. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) *Setoff of assigned subcontractor proceeds*. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) *Strategic and critical materials*. The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) *Termination*. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) *Unclassified controlled nuclear information*. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) *Subcontract flowdown requirements*. In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in

appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

(1) 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) Nondisplacement of Qualified Workers Clause prescribed in 48 CFR 22.1207.

(8) Service Contract Reporting clause prescribed in 48 CFR 4.1705.

(9) Minimum Wages under Executive Order 13658 prescribed in 48 CFR 22.1906.

(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.

I.161 970.5245-1 PROPERTY (AUG 2016) ALTERNATE I (AUG 2016) (PREV. I.164)

(a) *Furnishing of Government property*. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) *Title to property*. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by

the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) *Identification.* To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(d) *Disposition.* The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all government property which had come into the possession or custody of the Contractor under this contract.

(e) *Protection of government property—management of high-risk property and classified materials.* (1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.

(2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) *Risk of loss of Government property.* (1)(i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) *Steps to be taken in event of loss.* In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor —

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only.* Government property shall be used only for the performance of this contract.

(i) *Property Management*—(1) *Property Management System.* (i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for—

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) [Reserved]

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by “best in class” performers.

(iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) *Property Inventory.* (i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term “contractor's managerial personnel” as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of—

(1) The Contractor's business; or

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

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

(k) The Contractor shall include this clause in all cost reimbursable subcontracts.

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

SECTION J—LIST OF ATTACHMENTS

Appendix A	Personnel Costs and Related Expenses
Appendix B	Key Personnel
Appendix C	Performance Guarantee Agreement
Appendix D	Requirements Change Notice Process
Appendix E	Laws, Regulations, and DOE Directives
Appendix F	Special Financial Institution Account Agreement
Appendix G	Performance Evaluation and Measurement Plan
Appendix H	Annex on Information and Intellectual Property
Appendix I	Intellectual Property Management Plan
Appendix J	Sensitive Foreign Nations Controls

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I. INTRODUCTION

(a) This Advance Understanding is intended to document the principles and measures for evaluation of the Contractor's Human Resources Management (CHRM) programs and to address items of allowable personnel costs and related expenses not specifically addressed elsewhere under this contract. The previous Advance Understanding on this subject addressed ORNL-specific policies, practices, and plans that are cost drivers. These are now contained in the Human Resources Operating Plan (HROP). Consistent with previous agreements and practices, changes to the HROP are subject to Contracting Officer approval.

(b) The Contractor shall select, manage, and direct its work force and apply its human resource policies in general conformity with its private operations and/or industrial practices insofar as they are consistent with this Contract. Some contractor decisions are subject to advance approval by the Contracting Officer or, in some cases, other DOE officials. For example, compensation program design changes and benefit plan terminations require prior approval. These and other examples are called out elsewhere in the contract. Any programs or policies initiated for corporate application, permanently or for a finite period, that will impact staffing levels or compensation costs (i.e., furloughs or salary cuts) will not be applicable to Laboratory employees or employees otherwise funded through this contract, without prior approval of the Contracting Officer.

(c) The Laboratory's programs will comply with the contract for all Human Resources programs. The Contractor shall use effective management review procedures and internal controls to assure compliance with the contract as well as to ensure that the cost limitation set forth herein are not exceeded, and that areas which require prior approval of the DOE Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.

(d) This Appendix A may be modified from time to time by agreement of the Parties. Either Party may, at any time, request that this Appendix A be revised, and the Parties hereto agree to negotiate in good faith concerning any requested revision. Revisions to this Appendix A shall be accomplished by executing modification to the prime contract.

(e) The Laboratory Director may make exceptions to the provisions of Appendix A when such exceptions are in the best interest of contract operations or will facilitate or enhance contract performance and are approved in advance by the Contracting Officer.

(f) The Contractor, or designated representative, shall promptly furnish all reports and information required or otherwise indicated in this Advance Understanding to the Contracting Officer. The Contractor recognizes that the Contracting Officer or

designated representative may make other data requests from time to time and the Contractor agrees to cooperate in meeting requests.

(g) This Appendix A is adopted for the exclusive benefit and convenience of the parties hereto, and nothing herein contained will be construed as conferring any right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. Accordingly, neither this Appendix A nor any part thereof, as amended or modified, will be deemed to constitute a contract between a party hereto and any employee of the contractor or to be consideration for, or an inducement or condition of, the employment of any person, or to afford the basis for any claim or right of action whatsoever against a party hereto by any employee of the contractor or other third party.

(h) It is understood that no provision of this Appendix can affect any right guaranteed to a bargaining unit employee by the terms of a Collective Bargaining Agreement.

II. HUMAN RESOURCES STRATEGY, BUSINESS PLANNING AND PERFORMANCE MANAGEMENT

Reserved (Modification 1022).

III. COMPENSATION

(a) Salary increases

(1) Reserved (Modification 1022).

(2) When significant changes in duties and responsibilities of a position occur on a temporary basis the employee may temporarily receive up to 10% of his/her current pay for a period not to exceed one year. The change in wages shall not exceed the maximum of the salary range of the new position.

(3) Notwithstanding any other term or condition set forth in this Contract, the Contracting Officer's approval of compensation actions pursuant to the Employee Compensation clause of the contract will consider:
A. Relative alignment of proposed salaries with subordiante levels;
B. Available market data, comparing total-cash compensation;
C. Total compensation relative to 41 U.S.C. 4304(a)(16).

(b) Compensation Increase Plan (CIP)

(1) The Contractor shall submit the CIP proposal as called for annually by DOE.

(2) In order to pay "on-market-average," in the calculation of market position, Laboratory salary data shall be matched to survey data as of the midpoint of the salary cycle (i.e., July 1 1 for a 1/1-12/31 salary cycle).

(3) The CIP shall be expressed as a percentage of the projected base payroll for the end of the preceding salary cycle (i.e., base payroll for 12/31 for a 1/1 – 12/31 salary cycle).

(c) Payment of Joint Appointees

Joint appointees shall be paid at the salary and fringe benefit rates established by the home institution, for the percentage of time worked at the host institution.

IV. ANCILLARY PAY COMPONENTS

(a) Premium Pay

The Contractor is authorized to provide shift differentials and other premium pay, reporting allowances, meals allowances, licensing payments, holiday pay pursuant to the HROP and other premium pay as approved by the Contracting Officer.

(b) Medical evacuation services/insurance

Employees required to perform official travel to foreign countries where local care is substandard (according to U.S. standards) may have coverage that pays for evacuation services to an acceptable medical facility in a proximal location on an urgent or emergency basis. The policy shall cover evacuation, expatriation of remains, and ancillary costs associated with the incident. Costs for such coverage for eligible employees are allowable.

(c) Other approved supplements as detailed in the HROP.

V. PAYMENTS ON SEPARATION

Vacation

The contractor is authorized to pay for accumulated vacation upon termination at the rate in effect as of the date of termination, including any shift differential.

VI. LABOR RELATIONS

(a) Collective Bargaining

Costs of fringe benefits and wages paid to employees under collective bargaining agreements are allowable. All other reasonable costs and expenses, such as expenses relating to the grievance process, arbitration and arbitration awards, and other costs and expenses incurred pursuant to applicable collective bargaining agreements and revisions thereto, are also allowable.

(b) Collective Bargaining Agreements

The Contractor shall provide copies of collective bargaining agreements to the Contracting Officer as they are supplemented, ratified, or modified.

(c) Bargaining Unit Activity

Pay for absences from work by employees acting in the capacity of union officers, union stewards and committee members for time spent in handling grievances, negotiating with the Laboratory, and serving on labor management committees are allowable.

SECTION VII – SETTLEMENT COSTS

Separately Addressed in Contract Clause 970.5228-1.

VIII. PROGRAMS INVOLVING EMPLOYEE ABSENCE FROM THE WORKPLACE

(a) Paid Leave

The Laboratory will provide a reasonable and cost effective paid leave program. Paid leave governance, as approved by DOE, is discussed in the HROP.

(b) Sabbaticals/Temporary Assignments of Laboratory Employees to other Institutions for Teaching and Research

The Contractor shall be reimbursed for expenditures consistent with Laboratory policy as laid out in the HROP.

(c) Military Leave

Military leave and associated pay are authorized as allowable costs in accordance with Uniformed Services Employment and Reemployment Rights Act, Contractor's HROP and/or relevant State or Federal law.

(d) Security Leave

If the access authorization of an employee is suspended by direction of the Manager, ORNL Site Office, the Contractor shall transfer the employee to perform work not requiring access if such work is available. As detailed in the HROP, subject to DOE's concurrence, the Contractor may place the employee on leave with pay if such work is not available.

(e) Temporary Domestic Assignment Allowances

Temporary domestic assignment allowances shall be consistent with AL 2013-01 dated October 18, 2012 entitled "Contractor Domestic Extended Personnel Assignments," which may be revised from time to time, and Contractor policy consistent with the aforementioned Acquisition Letter.

IX. EMPLOYEE TRAINING, EDUCATION AND DEVELOPMENT

(a) Reserved (Modification 1022).

(b) The Laboratory shall establish training, education and development programs that are consistent with DOE requirements and guidance, industry standards, and other Federal, State and local regulations. These programs shall ensure that employees are well-qualified and competent to manage facilities and meet mission requirements through administrative, professional and technical excellence.

(1) Training
The Contractor may conduct or permit employees to attend training programs and courses (while receiving full pay) that are based on training needs assessments. These training courses should contribute to the performance of work under the contract and be provided at reasonable costs to the government.

(2) Education
(A) The Laboratory may approve and support educational courses taken by employees which serve to improve efficiency and productivity of Laboratory operations, increase needed skills, or prepare employees for increased responsibilities.

(B) An employee (or a third party on the employee's behalf) may be paid for tuition, required textbooks and fees for courses approved in advance by the Laboratory.

(3) Development
The Contractor shall be reimbursed for the cost of development programs, including but not limited to, apprenticeship training, supervisory training, management development, career updating and redirection, and work-study and other programs supporting the development of staff in fields of interest to the Laboratory.

(4) Licenses and Fees.
The costs of required licenses, fees, and similar costs to certify and maintain employee qualifications which are necessary to perform work under the contract are allowable. The Contractor will closely manage and control the number of licenses/fees to limit reimbursed costs to provide a sufficient number of qualified employees to reasonably perform the affected work under the contract.

X. EMPLOYEE PROGRAMS

(a) The costs of employee recognition programs and organizational and individuals memberships are allowable based on a budget formula not to exceed ¼ of 1% of base payroll on September 30 of the prior fiscal year. Program costs include the following:

(1) Company service awards for achieving service milestones consistent with the corporate service awards program.

(2) Safety awards and recognition to promote health and safety.

(3) Awards, recognition, and celebrations for participating in management initiatives, special achievements, retirement, and similar activities to the extent that they are reasonable and consistent with industry practice.

(4) The costs of organization and employee memberships in trade, business, and technical organizations necessary for effective performance of work under the contract provided they are reasonable and do not constitute payments for, or in support of, partisan of political (lobbying) activity.

(b) Participation in Association Activities

Cost incurred as a result of participation in the activities of technical, professional, and business methods associations will be allowed, as long as reasonable and necessary for the performance of effective work under the contract.

(c) Patent Awards

The cost of cash awards to inventors of patented technologies, authors of copyrighted works, and creators of mask works or copyrighted computer software that benefit the objectives of the Contractor and DOE are allowable. Details are set forth in the HROP.

(d) Cost of Health Services

The Contractor shall be reimbursed for the costs of operating a Health Unit for Laboratory employees, including but not limited to the following: Pre-employment physicals and other medical examinations required to meet Laboratory employment requirements, and medical care for occupational injuries.

(e) Other

(1) The Contractor will be reimbursed for the costs incidental to the promotion of morale and welfare, and health and safety of employees such as: employee publications; net costs of in-plant food services (operated on a break-even

basis); employees time to promote employee participation in Blood Drives, U.S. Savings Bonds and United Fund campaigns; and other similar incidental costs which may be sanctioned by the contractor

(2) Wellness program.

Costs of a Wellness Program to promote employee health and fitness are allowable. This program includes health and first aid clinics, on-site fitness centers and the use of buildings and facilities when such use does not interfere with the official work of the Laboratory. Any significant enhancements to the approved ORNL Wellness Program Plan require prior DOE approval.

(3) Employee Assistance Program.

The Contractor shall (1) maintain a program of preventive services, education, short-term counseling, coordination with and referrals to outside agencies, and follow-up upon return to work that conforms to the requirements of 10 CFR 707.6, Employee Assistance, Education, and Training; (2) Submit for approval by the Contracting Officer any changes to the employee assistance program implementation plan; (3) Prepare and submit information to DOE concerning Employee Assistance Program services as requested by the Contracting Officer. Such reports shall not include individual identifiers.

XI. COSTS OF RECRUITING PERSONNEL

(a) The Contractor may incur costs for the recruitment of personnel, as set forth in the HROP.

(b) Recruitment/Retention Tools

(1) The Contractor may pay a sign-on bonus in accordance with the HROP to recruit employees with critical skills.

(2) Parties acknowledge that the Office of Science Human Resource Recruiting and Retention Toolbox as described and outlined in the HROP will be recognized as an authorized mechanism to retain and recruit employees with critical skills.

(3) The Parties acknowledge that an SNS Working Group Report ("Plan to Assist in Recruitment of DOE Laboratory Employees for the Spallation Neutron Source Project") was approved by the DOE Director of Office and Science as a pilot program and was implemented on September 1, 1999. This SNS Pilot Program has expired; however, all employees who were hired under this pilot program will retain their eligibility for those eligible SNS Pilot Program benefits.

(c) Leased Employees.

Employees on joint appointments are not considered leased employees. A cumulative report showing all employees leased (loaned and borrowed), along with the total days loaned and services provided, will be submitted to the DOE annually.

(1) Personnel Borrowed - The cost associated with Battelle company or University of Tennessee employees not working for UT-Battelle borrowed for incidental work under this contract is reimbursable. Reimbursement for the time such employees work under this contract will be allowable in accordance with the home operating unit's disclosed costing practices. Time worked under this contract will include the time spent by employees en route to and returning from the site of work. Travel cost of such borrowed personnel will be allowed on the same basis as for employees working on the contract.

(2) Personnel Loaned - The Contractor may loan, at no cost to the government, individuals working under this contract to other operations as long as it does not interfere with the performance of contract work. Each loan arrangement will be reviewed to assure no conflict of interest and will be approved by the cognizant UT-Battelle Director.

XII. REDUCTIONS IN CONTRACTOR EMPLOYMENT

Reductions in employment will be conducted in accordance with the contractor's personnel management policies and practices and in accordance with applicable Departmental policies and guidance on workforce restructuring, as revised from time to time.

(a) Workforce Restructuring Actions

(1) Consistent with current workforce restructuring policy, costs associated with workforce restructuring are allowable provided the following stipulations are met:

RESTRUCTURING ACTION	NUMBER OF EMPLOYEES POTENTIALLY IMPACTED	ACTION REQUIRED
Voluntary	100 **or more**	CO Notification
Involuntary	100 **or more**	CO Approval

(A) **The Contractor is only required to provide notification instead of approval of Self-Select Voluntary Separation Programs (SSVSP) if** consistent with the following parameters:

a. In accordance with approved laboratory/contractor policies;

b. No enhanced benefits (severance or pension);

c. No backfilling (internally or externally) or re-employment of employees after severance is paid. **If an employee who volunteered for termination during a SSVSP at any DOE or NNSA site is hired or rehired prior to the one-year period, the employee may be required to pay back, to the contractor who provided the severance payment, all or a pro-rata amount of the severance received under the SSVSP. There is no backfilling where a separating employee is replaced by an internal candidate so long as:**

i. The separating employee is leaving voluntarily;

ii. The internal replacement is a regular, permanent employee on the contractor's payroll, not a temporary hire, staff augmentee, or someone serving under a post-doctoral program, etc.;

iii. The replacement results in a net reduction in headcount and costs of regular employees; and

iv. **The replacement is accomplished in an otherwise legally compliant manner, including no unlawful intent to discriminate based upon age.**

d. A business case is submitted 5 business days in advance of notification date that include maximum number of voluntary reductions, maximum dollars, positions/skills impacted; reasons reductions are needed, **including how conducting a SSVSP will better position the contractor to conduct the mission work,** copy of self-select waivers, and communication plan; and

e. **Voluntary separations are offered to employees in a non-discriminatory and legally compliant manner.**

(B) **The Contractor must prepare and submit to the Contracting Officer a workforce restructuring plan (Specific Plan) prepared in accordance with DOE policy, if the Contractor intends to reduce its workforce by 100 or more employees through an involuntary separation action within a rolling 12-month period.**

(C) **The Contractor must perform an adverse impact analysis (also known as a diversity analysis) as part of its determination to undertake involuntary separation action(s). A copy of the diversity analysis for involuntary separation action(s) affecting 100 or more contractor employees within a rolling 12-month period shall be submitted to the DOE site counsel, as applicable, prior to notification of employees selected for involuntary separation.**

(D) Approval actions shall be submitted a minimum of 10 business days prior to announcement to employees.

(E) **The Contracting Officer will review and approve any Specific Plan or diversity analysis submitted for review affecting the reduction of 100 or more employees through an involuntary separation action within a rolling 12-month period within 10 business days after submission of a complete package by the Contractor unless the Contractor is notified of issues necessitating an extension of time. Should DOE request additional information from the Contractor regarding any Specific Plan or diversity analysis, the Contractor will respond to such request within 3 business days.**

(F) Waivers or self-select forms that vary from those provided in DOE policy documents are subject to approval by DOE. **The templates for contractor Involuntary Separation Plan, as well as the General Release and Waiver Forms, are available online at:**
http://www.energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension

(G) The Contractor is responsible and accountable for conducting and defending all voluntary and involuntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.

(2) Any employee who volunteers for layoff or retirement during a time period in which the Contractor has a DOE approved active reduction in force plan will be eligible for severance pay provided the termination is accepted by Laboratory management and results in the retention of an employee who otherwise would have been laid off.

a. If DOE approval is not required, severance may be paid to an employee who volunteers for layoff or retirement if contractor management has approved the restructuring action and the termination results in the retention of an employee who otherwise would be laid off.

b. **Severance is not payable to an employee who volunteers for layoff or retirement if the termination is not associated with a restructuring action approved and initiated by contractor management.**

(3) Severance pay benefit. Severance pay will be calculated on the basis of the employee's basic rate in effect at the time of layoff (including extended hours' pay, if any, but excluding all overtime premium or shift differential) and may be paid in accordance with the following schedules:

(a) Hourly Employees as set forth in the applicable collective bargaining agreements.

(b) Salaried Employees

Company Service Credit	**Severance Pay**
Under 3 months	No pay
3 months and under 1 year	Same proportion of 1/4 month's pay as completed months of service are of 12 months
1 year through 25 years of completed service	1 week of pay for every competed year of service. Payment will be capped at 25 years of service.

(4) Pay in lieu of notice. Any employee who is involuntarily separated due to a workforce restructuring action may be given pay in lieu of the required minimum written notice of termination. Accumulated vacation credit is also paid.

(5) The Contractor, to the extent practicable, shall make available outplacement services in the forms of skills assessment and resume preparation to those employees who are involuntarily separated due to a layoff.

(b) Displaced Worker Medical Benefit

Contractor employees who separate from employment voluntarily or involuntarily (under a workforce restructuring action and other than for cause)

and who were eligible for medical insurance coverage under the contractor's plan at the time of separation from employment are eligible for medical coverage under the DOE Displaced Workers' Medical Benefits Program, provided they are not eligible for coverage under another plan, e.g., another employer's group health plan, the contractor's Retiree Medical Plan, a spouse's medical plan, or Medicare, based on the following schedule:

(1) First Year: The Contractor's contribution for an active employee

(2) Second Year: One half of the Contractor's COBRA premium

(3) Third and subsequent years: Reasonable administrative costs that exceed the two percent administrative fee paid by the displaced worker.

Eligibility is determined in accordance with Departmental **policy** on workforce restructuring.

XIII. Employee Benefits

Energy Employees' Occupational Illness Compensation Program Act (EEOICPA)

The Laboratory agrees to comply with requests for information, records, and other program requirements to ensure the orderly administration and adjudication of claims under the EEOICPA.

XIV. Miscellaneous Policies

Subject to the limitations of contract clause 970.5232-2 (j), which incorporates the principles of FAR subpart 31.2 and the DEAR subpart 48 CFR 970.31, the following types of costs are allowable as they relate to Human Resources:

Business Expenses

The following expenses to the extent reasonable and which contribute to the effectiveness of the Contractor's work under the contract will be allowable:

(1) Booklets and pamphlets describing the capabilities of the Contractor, e.g., operational, financial, personnel, etc.

(2) Cost of meetings, including cost associated with activities such as labor negotiations, recruiting, etc.

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

APPENDIX B

KEY PERSONNEL

Appendix B is the list of Key Personnel considered essential to the work being performed under this contract.

APPENDIX B-KEY PERSONNEL

See the clause in Section I entitled, "Key Personnel."

1.	Laboratory Director	Thomas Zacharia
2.	Deputy for Science & Technology	Mohammad Khaleel (Interim)
3.	Deputy for Operations	Alan Icenhour
4.	Associate Laboratory Director, Neutron Sciences	Lars Ken Holst Andersen
5.	Associate Laboratory Director, Computing & Computational Sciences	Jeffrey Nichols

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J – LIST OF ATTACHMENTS

APPENDIX C
PERSONNEL COSTS AND RELATED EXPENSES

Attached to this Appendix C are the Performance Guarantee Agreements executed on behalf of the University of Tennessee by Joseph E. Johnson, President, on July 12, 1999 and on behalf of Battelle Memorial Institute by Dr. Douglas E. Olesen, President and Chief Executive Officer, on July 21, 1999.

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-AC05-99OR22725 for the Management and Operation of the Oak Ridge National Laboratory, by and between the Government and UT-Battelle, LLC, (Contractor), the undersigned, University of Tennessee (Guarantor), a corporate agency of the State of Tennessee and state university chartered under the laws of the State of Tennessee, 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 July 12, 1999.

UNIVERSITY OF TENNESSEE

JOSEPH E. JOHNSON
PRESIDENT

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

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-AC05-99OR22725 for the Management and Operation of the Oak Ridge National Laboratory, by and between the Government and **UT-Battelle, LLC**, (Contractor), the undersigned, **Battelle Memorial Institute** (Guarantor), a nonprofit corporation incorporated in the State of Ohio with its principal place of business at Columbus, Ohio, 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.

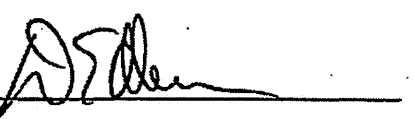
Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation 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 July 21, 1999.

BATTELLE MEMORIAL INSTITUTE

BY: 

TITLE: President and Chief Executive Officer

CORPORATE SEAL

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PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J – LIST OF ATTACHMENTS

APPENDIX D
REQUIREMENT CHANGE NOTICE PROCESS

Attached to this Appendix D is the process to be utilized for the incorporation of new and revised DOE Directives into the Appendix E List of Applicable Directives (List B).

Appendix D

Process for Incorporation of New and Revised DOE Directives into the List of Applicable Directives (List B)

Pursuant to the requirements of the DEAR clause in Section I of the contract entitled, *970.5204-2 Laws, Regulations and DOE Directives*," this Attachment describes the process for incorporation of new and revised DOE Directives into the Appendix E List of Applicable Directives (List B)

On behalf of the Contracting Officer (CO), the Contracting Officer's Representative (COR) will transmit notification of new or revised Directives to the contractor with a request for evaluation of the administrative and environment, safety and health requirements for impact to the contract.

DOE will also provide the contractor with the opportunity to comment on draft DOE Directives. Contractors must provide comments to DOE on draft DOE Directives by the stated deadline for their concerns to be recognized by DOE Headquarters.

NOTE: Contractor Directives Points of Contact must register on the DOE Directives Portal to receive notification of the publication of new/revised DOE Directives and the cancellation of DOE Directives.

As part of the impact assessment, the contractor determines (1) whether it agrees that the Directive is applicable, (2) if an Implementation Plan (IP) is required (i.e., the Directive cannot be implemented within existing funds and/or within 120 calendar days from the date of the COR's request for an impact assessment), and (3) other information required by DEAR 970.5204-2. The contractor provides written notification of the results of the impact assessment to the COR, with a copy to the CO and the Oak Ridge Office (ORO) Directives Management Group (DMG). The impact assessment is due within 30 calendar days of the date of the COR's request letter or as directed in the text of the letter.

Contractors shall ensure that Work Smart Standard (WSS) Sets and the associated development/maintenance processes meet the requirements of DOE M 450.3-1.

When the contractor cannot fully implement new or revised requirements of Administrative Directives within existing funds and/or within 120 calendar days from the date of the COR's letter requesting an impact assessment, the contractor shall prepare an Implementation Plan (IP) and provide it to the COR with a copy to the CO and the DMG.

IP revisions are required when the contractor makes substantive changes to an IP because of changing conditions, when deadlines established in the IP cannot be met, or when changes are requested by the COR. Revised IPs must be submitted before an existing commitment date is missed or within 30 calendar days from the date of the COR's request letter. Revised IPs are to be submitted in the same manner as the original plan.

Contractors must not delete uncompleted actions from an IP between one revision and the next. If multiple revisions of a plan are involved, completed items must be noted as such in at least one revision before being deleted.

Contractors send a letter to the COR, with a copy to the CO and the DMG, requesting closure and stating that the corrective actions in the IP have been completed. Any ongoing activities are noted in the letter.

Requirements are added to the contract via the Requirements Change Notice (RCN) process described herein. The contractor is responsible for initiation of the quarterly revisions to List B by submission of a draft RCN to the CO with a copy to the DMG.

Unless other arrangements have been made, the quarterly RCN shall include the following:

(a) The form (Attachment 1) entitled, "*U.S. Department of Energy, Requirements Change Notice*," which will provide an overall picture of changes currently effected in this update of List B.

(b) A *Summary of Changes* (Attachment 2) which identifies the authority for updating List B. The Summary of Changes delineates the following dates: (1) date of the COR impact assessment request; (2) date of contractor's impact assessment response; (3) date of COR's letter to contractor in response to contractor's request for clarification or guidance; and (4) if needed, implementation plan submission and/or approval dates.

When the implementation plans are developed, approved, or closed, the compliance is so annotated on the RCN. Environment Safety & Health (ES&H) Directives are required to be listed on List B as well as in the WSS Set. ES&H-related Directives will be annotated by italics and/or a footnote. DOE Directives cannot be added or removed from List B without approval by the CO or the COR.

The CO will update List B on a quarterly basis by the issuance of a contract modification which includes the approved RCN. The established schedule for issuance of RCNs is as follows:

SCHEDULE FOR ISSUANCE OF REQUIREMENTS CHANGE NOTICES		
Calendar Year Quarter	**Contractor's Submission Of Final Draft To CO**	**CO's Target Date To Issue Contract Mod**
First (Jan, Feb, Mar)	February 28	March 31
Second (Apr, May, Jun)	May 31	June 30
Third (Jul, Aug, Sep)	August 31	September 30
Fourth (Oct, Nov, Dec)	November 30	December 31

Attachment 1

(Rev. 02/2009) **U.S. Department of Energy** ***REQUIREMENTS CHANGE NOTICE***	RCN No. OR- Page 1 of XX
PROJECT: Contract Baseline Documentation	LOCATION: Oak Ridge, Tennessee
CONTRACTOR:	
CONTRACT NO.:	DATE OF CONTRACT:

This Requirements Change Notice (RCN) No. OR-XX incorporates into List B, Contract No. DE-XXXX – XXXXXX, the attached list of applicable documents, which have been assessed against the terms and conditions of the contract in accordance with the Clause in Section I entitled, "970.544-2 Laws, Regulations, and DOE Directives." This is a complete numbered list of administrative requirements and a representation of environment, safety, and health (ES&H) requirements. (In accordance with the Contractor's established procedure, information regarding ES&H-related directives and their applicability can only be obtained from specific WSS sets and S/RID functional areas sets.) ES&H-related directives in WSS sets and S/RIDs have an ES&H footnote in List B. Changes to List B are indicated by bold type. Below is a list of the directives incorporated herein:

EXECUTIVE SUMMARY OF DIRECTIVE CHANGES

ADDITIONS:

DELETIONS:

EXTENSIONS:

UPDATES:

IMPLEMENTATION PLANS (REVISED COMPLIANCE STATUS):

ADMINISTRATIVE CORRECTION:

DOE AUTHORIZING SIGNATURE: XXXXXX, Contracting Officer's Representative	DATE:

Attachment 2

Summary of Changes **Baseline List of Required Compliance Documents**			
Directive	Title	Action	Authority

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

APPENDIX E

LAWS, REGULATIONS, AND DOE DIRECTIVES

DOE Form (04/1991)	RCN No. OR-84
U.S. Department of Energy **REQUIREMENTS CHANGE NOTICE**	Page 1 of 7

PROJECT: Contract Baseline Documentation	LOCATION: Oak Ridge, Tennessee
CONTRACTOR: UT-Battelle, LLC	
CONTRACT NO.: DE-AC05-00OR22725, Clause I-125, Laws, Regulations, and DOE Directives (DEC 2000), DEAR 970.5204-2	DATE OF CONTRACT: April 1, 2020

This Requirements Change Notice (RCN) No. OR-84 incorporates into Appendix E, Contract No. DE-AC05-00OR22725, the attached list of applicable documents, which have been assessed against the terms and conditions of the subject contract in accordance with the above-referenced clause. This is a complete numbered list of administrative requirements and a representation of environment, safety, and health (ES&H) requirements. Information regarding ES&H-related directives and their applicability can only be obtained from specific WSS sets. ES&H-related directives in WSS sets have an ES&H footnote. Changes to Appendix E are indicated by bold type. Below is a list of the directives incorporated herein:

EXECUTIVE SUMMARY OF DIRECTIVE CHANGES

ADDITIONS:

DELETIONS:

EXTENSIONS

UPDATES:

WSS Set 1, Administrative Change request for DOE O 414.1D, Change 2, Quality Assurance (LtdChg) submitted to DOE OSO on 12/16/2020. Approved by DOE OSO on 02/15/2021.
WSS Set 1, Administrative Change request for DOE O 440.2C, Change 2, Aviation Management and Safety (LtdChg), submitted to DOE OSO for approved on 12/16/2020. Approved by DOE OSO on 02/07/2021.
WSS Set 1 and 9, Administrative Change request for AWS and AWWA standards submitted to DOE OSO for approval on 02/15/2021.

IMPLEMENTATION PLANS (REVISED COMPLIANCE STATUS):

A revised Implementation Plan for DOE Order 470.3C, will be submitted for approval on or before 02/21/2021. The revised IP will include DOE O 470.3C, Change 1 requirements. UT-Battelle notification letter submitted to DOE OSO on 02/19/2021. After further analysis it was determined that no additional corrective actions are required to implement DOE O 470.3C, Change 1. No revisions to the approved IP for DOE O 470.3C are required.

ADMINISTRATIVE CORRECTION:

DOE AUTHORIZING SIGNATURE: M. G. Branton Michele G. Branton, Contracting Officer's Representative	DATE: April 17, 2021

Summary of Changes for RCN-84
Baseline List of Required Compliance Documents

Directive	Title	Action	Authority
DOE O 414.1D, Change 1	Quality Assurance	WSS Set 1, Administrative Change submitted to DOE OSO on 12/16/2020. Approved by DOE OSO on 02/15/2021	ORNL Letter 12/16/2020 OSO Approved 02/15/2021
DOE O 440.2C, Change 2	Aviation Management and Safety	WSS Set 1, Administrative Change submitted to DOE OSO on 12/16/2020. Approved by DOE OSO on 02/07/2021	ORNL Letter 12/16/2020 OSO Approved 02/07/2021
DOE O 470.3C, Change 1	Design Basis Threat (DBT)	IP to be Submitted on or before 02/21/2021. ORNL Determined Revision to IP not Required	OSO Letter 10/20/2020 ORNL Letter 11/12/2020 ORNL Letter 02/19/2021
Industry Consensus Standards	American Welding Society and American Water Works Association	WSS Set 1 and Set 9 Administrative Change submitted to DOE OSO on 02/15/2021	ORNL Letter 02/15/2021

Appendix E
Baseline List of
Required Compliance Documents
List B - List of Applicable Directives

DOE Directives may be found at the following address: http://www.directives.doe.gov/				
Required Compliance Document	**Document Date**	**Title**	**Through Change**	**Notes and Comments**
DOE O 130.1	09/29/1995	Budget Formulation		
DOE M 142.2-1, Administrative Change 1	06/27/2013	Manual for Implementation of Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency		
DOE O 142.2A, Administrative Change 1	06/27/2013	Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency		
DOE O 142.3A, Change 2	12/13/2019	Unclassified Foreign Visits and Assignments Program		
DOE O 150.1A	03/31/2014	Continuity Programs		
DOE O 151.1D, Attachment 1	08/11/2016	Comprehensive Emergency Management System		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 153.1	06/27/2007	Departmental Radiological Emergency Response Assets		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 200.1A, Change 1	01/13/2017	Information Technology Management		
DOE O 205.1C		Department of Energy Cyber Security Program		
DOE O 206.1	06/11/2009	Department of Energy Privacy Program		
DOE O 206.2	02/19/2013	Identity, Credential, and Access Management (ICAM)		
DOE O 210.2A	04/08/2011	DOE Corporate Operating Experience Program		
DOE O 221.1B	09/27/2016	Reporting Fraud, Waste and Abuse to the Office of Inspector General		
DOE O 221.2A	02/25/2008	Cooperation with the Office of Inspector General		
DOE O 225.1B	03/04/2011	Accident Investigations		
DOE O 227.1A	12/21/2015	Independent Oversight Program		
DOE O 231.1B, Administrative Change 1	11/28/2012	Environment, Safety and Health Reporting		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 232.2A	01/17/2017	Occurrence Reporting and Processing of Operations Information		ES&H-related Directive included in WSS. See Footnote (1).

DOE O 241.1B, Administrative Change 1	04/26/2016	Scientific and Technical Information Management		
DOE O 243.1B, Administrative Change 1	07/08/2013	Records Management Program		
DOE O 252.1A, Administrative Change 1	03/12/2013	Technical Standards Program		
DOE O 313.1	11/19/2009	Management and Funding of the Department's Overseas Presence		See Footnote (2)
DOE O 341.1A	10/18/2007	Federal Employee Health Services		See Footnote (2)
DOE O 350.1, Change 5	09/30/2014	Contractor Human Resource Management Programs		
DOE O 410.2, Administrative Change 1	04/10/2014	Management of Nuclear Materials		
DOE O 411.2	01/04/2017	Scientific Integrity		
DOE O 413.1B	10/28/2008	Internal Control Program		
DOE O 413.2C	10/22/2015	Laboratory Directed Research and Development		
DOE O 413.3B, Change 4	10/13/2017	Program and Project Management for the Acquisition of Capital Assets		DOE O 413.3B, Chg. 2, implemented under the Office of Science approved exemption by Daniel B. Poneman, dated 01/19/2011, and specified in W. F. Brinkman Memorandum dated 02/02/2011. To the extent specified in the SC Project Decision Matrix, including any future modification.
DOE O 414.1D, Administrative Change 2	09/15/2020	Quality Assurance		ES&H-related Directive included in WSS. See Footnote (1).
Compliance Line: WSS Set 1, Administrative Change request for DOE O 414.1D, Change 2, Quality Assurance (LtdChg) submitted to DOE OSO on 12/16/2020. Approved by DOE OSO on 02/15/2021.				
DOE O 420.1C, Change 2	07/26/2018	Facility Safety		ES&H-related Directive Included in WSS See Footnote (1).
Compliance Line: Implementation Plan, Revision 2, Extension of Action 9, Submitted to DOE OSO on 06/14/2019, Approved by DOE OSO on 07/05/2019.				
DOE O 420.2C	07/21/2011	Safety of Accelerator Facilities		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 422.1, Administrative Change 2	12/03/2014	Conduct of Operations		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 425.1D, Change 2	10/04/2019	Verification of Readiness to Start Up or Restart Nuclear Facilities		ES&H-related Directive included in WSS. See Footnote (1).

DOE O 426.2, Administrative Change 1	07/29/2013	Personnel Selection, Training, Qualification, and Certification Requirements for DOE Nuclear Facilities		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 433.1B, Administrative Change 1	03/12/2013	Maintenance Management Program for DOE Nuclear Facilities		ES&H-related Directive included in WSS. See Footnote (1).
DOE M 435.1-1, Administrative Change 2	06/08/2011	Radioactive Waste Management Manual		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 435.1, Change 1	07/09/1999	Radioactive Waste Management	1 08/28/2001	ES&H-related Directive included in WSS. See Footnote (1).
DOE O 436.1	05/02/2011	Departmental Sustainability		
DOE O 440.2C, Change 2	09/15/2011	Aviation Management and Safety		ES&H-related Directive included in WSS. See Footnote (1).
Compliance Line: WSS Set 1, Administrative change request for DOE O 440.2C, Change 2, Aviation Management and Safety (LtdChg), submitted to DOE OSO for approved on 12/16/2020. Approved by DOE OSO on 02/07/2021.				
DOE O 442.1B	01/31/2019	Department of Energy Employee Concerns Program		
DOE O 442.2, Change 1	10/04/2016	Differing Professional Opinions for Technical Issues Involving Environment, Safety and Health,		
DOE O 443.1B, Administrative Change 1	04/21/2016	Protection of Human Research Subjects		ES&H-related Directive included in WSS. See Footnote (1).
DOE M 450.3-1	01/25/1996	The Department of Energy Closure Process for Necessary and Sufficient Sets of Standards		See Footnote (3)
DOE O 456.1A	07/15/2016	The Safe Handling of Unbound Engineered Nanoparticles		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 458.1, Change 4	09/15/2020	Radiation Protection of the Public and the Environment		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 460.1D	12/20/2016	Hazardous Materials Packaging and Transportation Safety		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 460.2A	12/22/2004	Departmental Materials Transportation and Packaging Management		ES&H-related Directive included in WSS. See Footnote (1).
DOE O 470.3C, Change 1	09/09/2020	Design Basis Threat (DBT)		
Compliance Line: A revised Implementation Plan for DOE Order 470.3C, will be submitted for approval on or before 02/21/2021. The revised IP will include DOE O 470.3C, Change 1 requirements. **ORNL IP Determination submitted to DOE OSO on 02/19/2021. After further analysis it was determined that no additional corrective actions are required to implement DOE O 470.3C, Change 1. No revisions to the approved IP for DOE O 470.3C are required.**				
DOE O 470.4B, Change 2	01/17/2017	Safeguards and Security Program		
DOE O 470.5	06/02/2014	Insider Threat Program		
DOE O 470.6, Change 1	01/11/2017	Technical Security Program		

DOE O 471.1B	03/01/2010	Identification and Protection of Unclassified Controlled Nuclear Information		
DOE M 471.3-1, Administrative Change 1	01/13/2011	Manual for Identifying and Protecting Official Use Only Information		
DOE O 471.3, Administrative Change 1	01/13/2011	Identifying and Protecting Official Use Only Information		
DOE O 471.5	03/29/2011	Special Access Programs (Official Use Only)		
DOE O 471.6, Administrative Change 2	05/15/2015	Information Security		
DOE O 472.2, Change 2	07/09/2014	Personnel Security		
DOE O 473.3A, Change 1	01/02/2018	Protection Program Operations		
DOE O 474.2, Change 4	09/13/2016	Nuclear Material Control and Accountability		
DOE O 475.1	12/10/2004	Counterintelligence Program		
DOE O 475.2B	10/03/2014	Identifying Classified Information		
DOE M 481.1-1A, Change 1	01/03/2001	Reimbursable Work For Non-Federal Sponsors Process Manual		
DOE O 483.1B, Change 2	12/20/2016	DOE Cooperative Research and Development Agreements		
DOE O 484.1, Administrative Change 2	06/30/2014	Reimbursable Work for the Department of Homeland Security		
DOE P 485.1A	01/19/2017	Foreign Engagements with DOE National Laboratories		
Compliance Line: Implementation Plan submitted to DOE OSO for approval on 07/31/2020				
DOE O 486.1A	09/04/2020	Department of Energy Foreign Government Talent Recruitment Programs		
Compliance Line: Procedures will be in place to comply with the Order's requirements on or before 12/14/2020.				
DOE O 522.1	11/03/2004	Pricing of Departmental Materials and Services		
DOE O 534.1B	01/06/2003	Accounting		
DOE Order 550.1, Change 1	12/13/2019	Official Travel		
DOE O 580.1A, Administrative Change 1	03/30/2012	Department of Energy Personal Property Management		See Footnote (2)
DOE Acquisition Regulation No. AL 2018-08	05/03/2018	Department of Energy Acquisition Letter, Dated 05/03/2018		
DOE O 5639.8A	07/23/1993	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities		
DOE-STD-1090-2011 with exceptions	09/30/2011	Hoisting and Rigging		ES&H-related Directive included in WSS. See Footnote (1).
DOE-STD-1186-2004	08/01/2004	Specific Administrative Controls		

Work Smart Standards (WSS) Sets may be found at the following address: https://sbms.ornl.gov/sbms/wsshome/wss.html				
Required Compliance Document	**Approval Date**	**Title**	**Change # Approval Date**	**Notes and Comments**
WSS Set 1	09/23/2019	Other Industrial, Radiological, and Non-Radiological Hazard Facilities	**111 2/10/2021 112 02/15/2021**	
WSS Set 4	12/17/1996	Radioisotope Development Laboratory (Building 3047)	31 09/28/2018	
WSS Set 5	12/17/1996	Radiochemical Engineering Development Center (Buildings 7920, 7930, and Support Areas)	30 0/28/2018	
WSS Set 7	05/07/1997	Irradiated Materials Examination and Testing Facility and Irradiated Fuels Examination Laboratory (Buildings 3025E, 3525, and Support Areas)	31 09/28/2018	
WSS Set 8	05/07/1997	Construction and Construction-like Activities	13 08/28/2015	
WSS Set 9	04/14/1998	Engineering Design of Standard Industrial, Radiological, Non-Reactor Category 2 and 3 Nuclear, and Accelerator Facilities	16 09/28/2018	
WSS Set 10	09/10/1998	High Flux Isotope Reactor and its associated facilities	34 09/28/2018	
WSS Set 13	04/18/2003	Spallation Neutron Source	7 04/30/2015	

FOOTNOTES:

(1) This document is ES&H-related and appears in one or more of the current Work Standards (WSS) Sets. In a WSS Set, the document may be referenced in its entirety or only certain chapters, paragraphs, or sections. Additional information regarding directives and their applicability may be obtained from specific WSS sets.

(2) This Directive is incorporated with implementation assumptions. The implementation assumptions may be viewed at: https://sbms.ornl.gov/SBMS/WSSHome/listbias.htm

(3) DOE M 450.3-1 was cancelled by DOE N 251.103. In accordance with the letter dated July 29, 2011 subject, *Contract DE-AC05-00OR22725, Impact Assessment for DOE N 251.103, Cancellation of Directive, Dated May 31, 2011,* UT-Battelle agrees to continue the Work Smart Standard (WSS) Sets and the associated development/maintenance processes that were included in DOE M 450.3-1 and referenced in Appendix D.

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

APPENDIX F

SPECIAL INSTITUTION ACCOUNT AGREEMENT

Attached to this Appendix F is the current Agreement.

SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT FOR USE WITH THE CHECKS PAID LOC FINANCING ARRANGEMENT

The agreement is entered into the 1 day of April, 2021, between the UNITED STATES OF AMERICA (the Government), represented by the Department of Energy (DOE) Contracting Officer executing the agreement, UT-Battelle, LLC, a limited liability company existing under the laws of the State of Tennessee, (hereinafter referred to as the "Contractor") and SunTrust now Truist Bank, a banking corporation existing under the laws of the State of North Carolina, with regional offices located at 9950 Kingston Pike, Knoxville, Tennessee (hereinafter referred to as the "Financial Institution").

RECITALS

1. Under date of April 12,1999, the Government and the Contractor entered into Contract No. DE-AC05-00OR22725 (hereinafter referred to as the "Contract",) or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the financial institution.

2. The contract or supplemental agreement requires amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Account at a member bank of the Federal Reserve System, any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The parties agree to deposit the amounts with the Financial Institution, which meets the requirement.

3. The Special Account is designated "UT-Battelle, LLC Operating." All ancillary accounts shall be designated the same, but having separate number followed by a sub-title denoting its specific purpose as in: "UT-Battelle, LLC Operating #2, Payroll", etc.

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

1. The Government has a lien on the credit balance in the account to secure the repayment of every advance payment made to the Contractor. The lien is paramount to any lien or claim of the Financial Institution regarding the account.

2. The Financial Institution is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Account and is unaccountable for the application of funds withdrawn from the account. The Financial Institution acts on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The financial institution is unaccountable to any party to the agreement for any actions complying with the written directions. Any written directions received by the

Financial Institution through the Contracting Officer on DOE stationery and purporting to be signed by, or by the direction of DOE or duly authorized representative, may be, as far as the rights, duties, and liabilities of the Financial Institution are concerned, considered as being properly issued and filed with the Financial Institution by DOE.

3. The Government, or the Government's authorized representatives, has access to the books and records maintained by the Financial Institution regarding the Special account at reasonable times and for reasonable purposes, including, the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The financial institution preserves the books and records according to its standard document retention policies which comply with applicable regulations.

4. In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the special account, the Financial Institution will promptly notify DOE at:

Judson Kingman, Contracting Officer
U.S. Department of Energy
Oak Ridge National Laboratory Site Office
Post Office Box 2008, M.S. 6269
Oak Ridge, TN 37831
Fax: (865) 574-9275

5. DOE authorizes funds to the extent obligations have been incurred in good faith thereunder by the Contractor to the Financial Institution for the benefit of the special demand deposit account. The Financial Institution agrees to honor upon presentation for payment any 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.

6. The Financial Institution agrees to service the account based on the requirements and specifications contained in (i) Contractor's prior solicitation dated September 22, 2005, attached hereto as **Exhibit 1**; (ii) the Financial Institution's bid in response to such solicitation dated October 26, 2005, attached hereto as **Exhibit 2** (the parties acknowledging that the pricing contained in such Proposal is superseded by the pricing contained in **Exhibit 4** hereto, and that certain outdated operational or technical details listed in the Solicitation and the Proposal have been replaced over time by mutual agreement of the parties, either explicitly or by way of accepted practice); and (iii) the Treasury Management Master Agreement executed by Contractor dated March 5, 2021 (as amended), attached hereto as **Exhibit 3**. The Financial Institution agrees that, for any accounts covered by this Agreement, if there is any inconsistency between the Treasury Management Master Agreement and this Agreement, this Agreement will control the addressing of that issue. The Financial Institution agrees that per-item costs, detailed in the form "Schedule of Financial Institution Processing Charges" attached hereto as Exhibit 4, will remain constant during the term of this Agreement, including the three (3),

one-year option periods. The Financial Institution shall calculate the monthly fees based on services rendered and invoice the Contractor. The Contractor shall issue a check or automated clearinghouse authorization transfer to the Financial Institution in payment thereof.

If, for reasons beyond the Financial Institution's control, the Financial Institution does not receive or reasonably anticipates not receiving same-day reimbursement of the daily funding draw as contemplated in this Agreement, or if the Financial Institution is otherwise notified by the Contracting Officer that funding is not available for reimbursement or payment, the Financial Institution is authorized to withhold distributing payment until confirmation form the Contracting Officer is received that funding is available to cover the required payments.

7. The Financial Institution posts collateral in accordance with 31 CFR 202 with the Federal Reserve bank in an amount equal to the net balances in any of the accounts included in the Agreement, less the Treasury-approved deposit insurance.

8. The Agreement, with all provisions and covenants, is in effect for a term of four (4) years, beginning on the first (1st) day of April, 2021, and ending on the thirty-first (31st) day of March, 2025. Contained within this agreement are three (3) additional one-year options to extend the Agreement. Contractor may exercise the first option by giving the Financial Institution written notice no later than January 31, 2025. If Contractor exercises that option, it may exercise the second option by giving the Financial Institution written notice not later than January 31, 2026, and it may exercise the third option by giving the Financial Institution written notice not later than January 31, 2027.

9. DOE, the Contractor, or the Financial Institution may terminate the Agreement at any time within the agreement period upon providing written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during the 90-day period are contained in Covenant 12.

10. DOE or the Contractor may terminate the Agreement at any time upon 30 days' written notice to the Financial Institution if DOE or the Contractor, or both parties, find the Financial Institution has failed to substantially perform its obligations under the Agreement or the Financial Institution is performing obligations in a manner which precludes administering the program in an effective and efficient manner or precludes the effective utilization of the Government's cash resources.

11. Notwithstanding the provisions of Covenants 9 and 10, in the event the Agreement, referenced in Recital (1), between DOE and the Contractor is not renewed or is terminated, the Agreement between DOE, the Contractor, and the Financial Institution terminates automatically upon the delivery of written notice to the Financial Institution. Therefore, a subsequent agreement based upon this Agreement, may be entered into between DOE, the new "replacement" contractor, and the Financial Institution to continue the original term of this Agreement if all parties to this Agreement, including the "terminating" contractor, agree.

12. In the event of termination, the Financial Institution agrees to retain the Contractor's special demand deposit account for an additional 90-day period to clear outstanding payment items.

TERMS

The Agreement continues to be in effect for the 90-day additional period, with exception of the following:

1. Term of Agreement (Covenant 8)

2. Termination of Agreement (Covenants 9 and 10)

All terms and conditions of the aforesaid bid submitted by the Financial Institution that are not inconsistent with the 90-day additional term shall remain in the effect for this period.

The following exhibits are attached hereto and incorporated herein:

- Exhibit 1: UT-Battelle, LLC Solicitation No. AGS-08, dated September 22, 2005
- Exhibit 2: SunTrust Proposal in response to Solicitation No. AGS-08, dated October 26, 2005
- Exhibit 3: Treasury Management Master Agreement dated March 5, 2021
- Exhibit 4: Schedule of Financial Institution Processing Charges
- Exhibit 5: Service Glossary

IN WITNESS WHEREOF the parties hereto have caused this Agreement, which consists of five (5) pages, including the signature pages but excluding Exhibits, to be executed as of the day and year first above written.

By: JUDSON KINGMAN Digitally signed by JUDSON KINGMAN Date: 2021.03.23 14:19:42 -04'00'

Judson Kingman, Contracting Officer
U.S. Department of Energy
Oak Ridge Site Office
Post Office Box 2008
Oak Ridge, TN 37831
Fax: (865) 574-9275

March 23, 2021
Date Signed

Name of Witness

Mark Boatner Digitally signed by Mark Boatner Date: 2021.03.17 09:19:10 -04'00'

Mark Boatner

UT-Battelle, LLC

By: 2021.03.17 06:50:12 -04'00'

Brooks Baldwin, UT-Battelle, LLC
Director, Contracts Division
P.O. Box 2008, Oak Ridge, TN 37831

March 17, 2021
Date Signed

Name of Witness

Name of Witness

SunTrust now Truist Bank

By:

Eric Anderson, Senior Vice President
9950 Kingston Pike, Knoxville, TN 37922

3/24/2021
Date Signed

OAK RIDGE NATIONAL LABORATORY
MANAGED BY UT-BATTELLE FOR THE DEPARTMENT OF ENERGY

P.O. Box 2008
Oak Ridge, TN 37831-6293
(865) 576-1552
INTERNET: shillingsag@ornl.gov

September 22, 2005

CLOSING DATE: October 21, 2005

TO: ALL POTENTIAL OFFERORS

Solicitation No. AGS-08

UT-Battelle, LLC (Contractor), acting under its Prime Contract No. DE-AC05-00OR22725 with the United States Department of Energy (DOE), invites you to submit a proposal to provide *off-site* services for the Contractor's primary government account operation under a payments-cleared financing arrangement in accordance with the attached *Statement of Work (SOW) dated July 20, 2005.*

Please submit **one original and seven copies** of your proposal **on or before 12:00 p.m. (noon), local time, on the closing date identified above.** All proposals must be labeled. Labels shall be marked as either *Part A – Technical Proposal* or *Part B –Business Proposal* and shall identify your organization and the Solicitation number. **Proposals submitted by facsimile will not be accepted.**

If you do not intend to submit a proposal, a prompt negative response in writing addressing why your organization elected not to respond would be appreciated.

Address your proposal and all questions concerning this request to:

Oak Ridge National Laboratory
Attn: Angela G. Shillings, Subcontract Administrator
Post Office Box 2008
Bldg. 1060COM, MS 6293
Oak Ridge, Tennessee 37831

Telephone: (865) 576-1552
E-mail: shillingsag@ornl.gov

For personal or overnight mail delivery the address is Angela G. Shillings, Oak Ridge National Laboratory, 1060 Commerce Park Drive, Room No. 257, Oak Ridge, Tennessee 37830.

I GENERAL INFORMATION

A Pre-Proposal Conference

We will hold a Pre-Proposal Conference on October 5, 2005, at the Auditorium (Room 176) in Building 1060 at Commerce Park. **All potential Proposers are**

highly encouraged to attend. We will begin at 10:00 a.m., and we expect to be completed by 12:00 p.m.

At the conference, we will discuss our requirements and allow question-and-answer periods.

A listing of the individuals who will attend the conference should be e-mailed to the Subcontract Administrator at shillingsag@ornl.gov **no later than 12:00 p.m., local time, on September 29, 2005**. The following must be provided for each:

a. Full name
b. Employer
c. Position title
d. Date of birth
e. Social Security Number
f. Gender
g. Country of citizenship

You may also include in the e-mail any questions that you may have regarding this Solicitation. We will answer your questions during the conference. Questions raised for the first time at the conference will be answered to the extent possible. Written answers to all questions considered at the conference will be posted on the Solicitation web site.

B Questions

If after the Pre-Proposal Conference your organization has any additional questions concerning this Solicitation, they should be submitted to the Subcontract Administrator via e-mail at shillingsag@ornl.gov **on or before 12:00 p.m., local time, on October 7, 2005.** No requests made via telephone will be accepted. Written answers to questions will be posted on the Solicitation web site as soon as they are available.

C Form of Agreement

It is anticipated that one Special Financial Institution Account Agreement for Use with the Payments-Cleared Financing Arrangement will be awarded to support Contractor requirements. A *Draft Agreement* is attached.

II QUALIFICATION CRITERIA

We will evaluate your proposal only if you demonstrate in your transmittal letter that you meet the following criteria:

1. Possess positive pay service capabilities for controlled disbursement accounts.

2. Possess direct on-line access to the Federal Reserve Communication System (FRCS) to make on-line requests for funds.

3. Maintain an account with the Federal Reserve Bank (FRB).

4. Accept all National Automated Clearing House Association (NACHA) Operating Rules and Procedures.

5. Capable of providing foreign denomination drafts and completing foreign denomination transactions using Society for Worldwide Interbank Financial Telecommunications (SWIFT).

6. Able to provide, at no cost, the appropriate deposit insurance and post collateral in accordance with Department of the Treasury regulations governing securing of Government accounts.

7. Able to provide electronic transmission of paid check detail for all accounts on a monthly basis and no later than 7:00 a.m. on the first workday of the calendar month following the close of business for the previous month.

8. Able to provide monthly bank statements no later than 7:00 a.m. on the first workday of the calendar month following the close of business for the previous month.

III EVALUATION CRITERIA

We will evaluate proposals using the following weighted criteria:

Criteria	Maximum Points
Total Price Total proposed price of Processing Charges for the five-year duration of the Agreement, plus price for Option services, plus any additional prices/costs proposed by the Financial Institution	400
Organizational Experience/Approach Demonstrated technical qualifications in pertinent areas of expertise as identified in the SOW and proposed organizational approach to the project.	400
Past Performance Demonstrated past performance relative to the specific requirements.	100
Qualifications and Availability of Key Personnel Qualifications and availability of Key Personnel	100
SUBTOTAL	**1000**

Bonus Point Criterion

Ability to allow Contractor to remain on the cutting edge of technology in order to promote efficiencies, economies, and fraud risk reduction. Provide a brief description of services or changes currently in place, under development, or being considered.	100
TOTAL	**1100**

IV BASIS OF AWARD

Final scoring of the proposals will be as follows:

The highest-ranked technical proposal will be awarded all available technical points. The scores for the other acceptable technical proposals will be determined by multiplying the available technical points by a fraction, the numerator of which is the number of technical points awarded the proposal by the Evaluation Team and the denominator of which is the number of technical points awarded by the Evaluation Team to the highest-ranked technical proposal. For example, if 600 technical points are available and the highest-ranked technical evaluation by the Evaluation Team is 500, this proposal will be awarded all 600 technical points. A technical proposal evaluated at 400 by the Evaluation Team will be awarded four-fifths, or 480, of the available 600 points.

The lowest-price technically acceptable proposal will be awarded all available price points. The price points awarded to other proposals will be determined by multiplying the available price points by a fraction, the numerator of which is the lowest-priced technically acceptable proposal and the denominator of which is the price of the proposal in question. For example, if 400 price points are available and the lowest-priced technically acceptable proposal is $250,000, this proposal will be awarded all 400 price points. A technically acceptable proposal of $300,000 will be awarded five-sixths ($250,000 ÷ $300,000), or 333, of the 400 points.

We will also evaluate the realism of your proposed cost/price and determine the total probable and all encompassing cost to us of your performance of the Agreement.

We may solicit information concerning your past performance and use it in our evaluation.

V EVALUATION OF OPTION AND OTHER COSTS

The Contractor shall have the option to purchase the services described in the attached document entitled *Option*.

It should be understood by the Financial Institution that the Contractor may not exercise any or all options that are not included in the base award. The award may be made by the Contractor for the initial quantity only. It is important that the foregoing be considered by the Financial Institution in preparing and submitting separate prices for the initial order quantity and for each individual option.

Proposals will be evaluated for purposes of award by adding the total price for the option quantity to the total price for the initial quantity. Evaluation of the option will not obligate the Contractor to exercise the option.

For evaluation purposes, if you do not elect to perform the option services, we will add to your total proposed price the Contractor's estimated cost for performing these services in-house. If you elect to perform the option services and your proposed option price exceeds the Contractor's estimated cost for performing the services, we will adjust (lower) your option price to the Contractor's estimated cost for performing these services. [In this case, at the time of award, the Contractor will not exercise the option but will perform the option services itself.]

Any additional costs/charges proposed by the Financial Institution will also be added.

VI PROPOSAL FORMAT

A *Part A – Technical Proposal*

Your *Technical Proposal* shall be in the following format and shall not exceed 50 pages (double-spaced, 8½" x 11"), excluding the *Appendix*:

1 The proposal should be specific and complete and should demonstrate a thorough understanding of the requirements of the SOW and proposed Agreement.

2 **Authorized Representatives**

a. Identify the names, street addresses, telephone numbers, facsimile numbers, and e-mail addresses of persons authorized to act as your representatives.

b. The proposal must be signed by an official authorized to bind your organization and must be accompanied by a statement to the effect that the proposal is firm for a period of no less than 180 calendar days after the closing date for receipt of proposals.

3 **Organizational Experience/Approach**

Provide a brief description of your organization. Demonstrate your understanding of the SOW requirements including the payments-cleared financing arrangement. Discuss your proposed organizational approach for providing the services specified in the SOW.

For each requirement in the SOW (Bank Account Information and Requirements, In-house Check Generation, On Line Communication and Processing, Positive Pay, Stop-Payment Processing, Electronic File Transfer/EDI Services, Checks-Paid File, Testing Environment, Disaster Recovery, Account Reconciliation Services/Information Requirements, Check Imaging, Wire Transfers and Drafts, Depository and Cash Services, and Monthly Analysis Statement), provide a response that describes the following:

1. Ability to perform the requirement
2. Procedural methods for performing the requirement
3. System Technology (availability and capabilities)
4. Cut-off requirements impacting the Contractor

In addition to providing the general information requested above for each requirement, ensure that your response includes adequate information.to address the specific issues and/or questions below.

Bank Account Information and Requirements:

1. Describe any problems with timely processing of zero-balance accounts in order to meet the 5:45 p.m. Eastern time deadline with the U. S. Department of the Treasury (Treasury) (for same-day credit of the daily draw down).
2. Describe any problems with the intraday float to cover items presented pending reimbursement from the Treasury.
3. Do you use Federal Reserve Payor Services?
   - For first presentment?
   - For second presentment?
   - Does the information include rejected/damaged (low speed) items?

In-house check generation:

1. Describe any requirements or restrictions you place on customers that print their own paper checks on blank check stock.
2. Describe any special considerations for paper checks printed by the Contractor and presented to you on the same day since the positive pay file recording the issuance of the check will not be received by you until the day after the check has been issued.

Positive Pay:

1. Describe any problems and their solutions created by sending data for multiple accounts in one file.
2. Describe any problems and their solutions created by the need to process multiple files in one business day.
3. Describe any problems and solutions created by sending positive pay data for the previous day (e.g., a check is written 5/1/2005 and hand-carried to the vendor, who immediately presents it for payment to you. The positive pay record of the issue will not be sent to you until 5/2/2005).
4. Describe the processing schedule and any time constraints for positive pay on your system.
5. Describe how you will verify the completeness and accuracy of the data transfer.
6. Describe how you will resolve any questions regarding the completeness and accuracy of the data transfer.
7. Describe how and when non-matching items are resolved.

Stop-Payment Processing:

1. Describe any time constraints with issuing stop payments.

Electronic File Transfer/EDI (Electronic Data Interchange) Services

Cash Concentration or Disbursement (CCD)/Pre-Arranged Payments and Deposits (PPD) Payments:

1. Describe any problems and solutions created by sending data for CCD and PPD payments on the same account in one file.
2. Describe any problems and solutions created by sending data for CCD and PPD payments on multiple accounts in one file.
3. Describe any problems and solutions created by the need to process multiple CCD/PPD payment files per day.
4. Describe the processing schedule and any time constraints for having CCD/PPD files to you for processing.
5. Describe how you will verify the completeness and accuracy of the data transfer.
6. Describe how and when the Contractor is notified of returned items.
7. Describe how and when returned items are resolved.
8. Describe your requirements relating to issuing pre-notes prior to issuing payments.

Corporate Trade Exchange (CTX) Payments:

1. Describe the version of CTX translator you currently use.
2. Describe any problems and their solutions created by the need to process multiple CTX payment files per day.
3. Describe the processing schedule and any time constraints for having CTX files to you for processing.
4. Describe how you will verify the completeness and accuracy of the data transfer.
5. Describe how and when the Contractor is notified of returned items.
6. Describe how and when returned items are resolved.
7. Describe your requirements relating to issuing pre-notes prior to issuing payments.

Electronic File Transfer Methods:

1. Describe the minimum hardware platform requirements for the Contractor.
2. Describe the minimum software platform requirements for the Contractor.
3. Describe the security features of the transfer method.
4. How long have you used this transfer method?
5. Describe customer usage and reliability of this transfer method.
6. Describe the backup transfer method should the preferred method fail or be unavailable.

Checks-Paid File:

1. State your schedule of availability for providing the paid items files on the first workday of each month, by 7:00 a.m. Eastern time, for the previous month.

Testing Environment:

1. Describe the provisions you have for a test environment as it relates to positive pay, Automated Clearing House (ACH) payments, CTX translation, and account reconciliation.
2. Describe the availability of this test environment.

Disaster Recovery:

1. Give an overview of your disaster recovery plan given the scenario where:
    a. local branch becomes unavailable (i.e., in the event of fire, natural disaster, or other unanticipated event)
    b. your on-line communication system(s) become unavailable for inquiry and/or processing needs
    c. your main processing facility becomes unavailable.
2. If Contractor's file transfer capabilities became interrupted, would we be able to hand-carry a CD, containing any files due to be transferred, to your local branch to be input to your system?

Account Reconciliation Services/Information Requirements:

1. Describe your method and schedule of availability for providing bank statements on the first workday of each month, by 7:00 a.m. Eastern time, for the previous month.

Check Imaging:

1. Describe the types of paid check image processing available through you.
2. Describe the various methods of requesting/generating a printed image.
3. Describe the retention period(s) for paid check images.
4. Describe any hardware and/or software necessary to retrieve, review, and generate a print image of a paid check from the electronic file.
5. Describe CD-Rom imaging formats and accessibility requirements.

Wire Transfers and Drafts:

1. Describe the method for initiating domestic fedwires, international wires, and foreign-denominated paper drafts.
2. Provide your opening hours and the cut-off times for initiating wire transfers to ensure same-day credit.
3. Describe your process for approving and canceling wire transfers.
4. Describe your procedure and time frames for modifying outgoing wires.

Depository and Cash Services:

1. Are you an approved depository agency having an established depository agreement with the Treasury's Financial Management System (FMS)?
2. Do you have established access to *CashLink*?
3. Are you willing to perform the depository requirements outlined in the SOW without additional compensation through the resultant Agreement (acceptance of compensation in full through Treasury Agreement)?
4. Describe any requirements you may have related to depository services.

Data Mapping Plan (Optional Services):
Provide your proposed Data Mapping Plan.

(1) If you elect to propose on these optional services at no additional charge to the Contractor, discuss your proposed approach for mapping the data to a Contractor-designated file format. Identify any information that the Contractor must provide to you and the timeframe necessary for providing this information; or

(2) If you elect to propose on these optional services at an additional charge to the Contractor, provide your file format and discuss your proposed approach for mapping the data to a Contractor-designated file format. Identify any information that the Contractor must provide to you and the timeframe necessary for providing this information; or

(3) If you elect not to propose on these optional services, provide your file format and identify any additional information necessary for the Contractor to perform the data mapping.

Implementation Plan and Schedule:
Provide your proposed Implementation Plan and Schedule. At a minimum, identify detailed activities to be performed, start and finish dates for the activities, milestones, testing, and the proposed "go live" date.

OPTIONAL: You may provide any additional information that you deem necessary for the complete and accurate evaluation of your proposal.

4 **Past Performance**

Describe your experience in providing the services identified in the SOW. Describe your experience with the payments-cleared financing method.

Identify up to five clients for which you have provided similar services. Include client's name, address, point of contact (name and telephone number), and volume (average number of monthly transactions and dollar value).

5 **Qualifications and Availability of Key Personnel**

Describe the qualifications and experience of the proposed Key Personnel. Provide the names, physical locations, and contact information (mailing address, telephone number, fax number, and e-mail address) for the Key Personnel. At a minimum, Key Personnel shall include: (1) the person(s) who will serve as the Contractor's point of contact for the day-to-day activities to be performed and (2) the Project Manager(s) (member of Financial Institution's management) who will be responsible for the overall management and administration of the services to be performed and who possesses the authority to assign personnel, as appropriate, to ensure the successful performance of the services. Identify backups/alternates for each Key Person proposed.

Discuss how the Key Personnel as well as the backups/alternates will be made available to support the SOW requirements.

6 **Bonus Point Criterion**

Discuss your ability to allow the Contractor to remain on the cutting edge of technology in order to promote efficiencies, economies, and fraud risk reduction. Provide a brief description of services or changes currently in place, under development, or being considered.

7 **Appendix**

Provide current resumes for proposed Key Personnel.

B ***Part B –Business Proposal***

Your *Business Proposal* shall be in the following format:

1 Executed and signed copy of the attached document entitled *Technical Representations and Certifications (Jul 2005).*

2 Executed and signed copy of the attached document entitled *Schedule of Financial Institution Processing Charges.*

3 Executed and signed copy of the attached document entitled *Option.* If the Financial Institution is unwilling to perform this optional service, provide a statement to that effect.

4 A description of any additional fees, charges, transition costs, etc., to be charged the Contractor, their dollar value, and the frequency of their occurrence (one-time, monthly, per transaction, etc.). If no additional charges will be billed to the Contractor, provide a statement to that effect.

5 Any exceptions taken to the proposed Agreement, including the SOW. Failure to take exception will constitute acceptance.

VII AGREEMENT AWARD

We may award the Agreement without discussion of your proposal. Therefore, you should submit your proposal on the best technical and price terms that you can.

VIII PROPOSAL EXPENSES AND PRE-AWARD COSTS

This Solicitation does not commit us to pay for any costs incurred in the preparation and submission of a proposal or for any other costs incurred prior to the execution of an Agreement.

IX ACKNOWLEDGEMENT OF AMENDMENTS

If this Solicitation is amended, you must acknowledge receipt of the Amendments (by number and date) in your transmittal letter.

NOTE: Any and all Amendments will be posted on the Solicitation web site.

Sincerely,

Angela G. Shillings
Subcontract Administrator
Contracts

AGS/ags

Attachments:

1. Statement of Work dated July 20, 2005
2. Technical Representations and Certifications (Jul 2005)
3. Schedule of Financial Institution Processing Charges
4. Option
5. Draft Agreement
6. Listing of Acronyms
7. Contractor's File Layout Specifications

c: File – RC - AGS

SOLICITATION NO. AGS-08
STATEMENT OF WORK
July 20, 2005

General Requirements

Requirements include the establishment and maintenance of government fund demand deposit accounts and the accurate and timely processing of all banking services related to these accounts. Banking services that are required include, but are not limited to: zero balance accounts; controlled disbursement; positive pay; account reconciliation; Electronic Funds Transfer (EFT) including Automated Clearing House (ACH) and wires - domestic and foreign; Electronic Data Interchange (EDI); web-based inquiry and processing capabilities; miscellaneous services such as stop payments, cancels, issues and paid check imaging; and a variety of additional reporting and communication needs.

Bank Account Information and Requirements

Establish and maintain Government Fund Accounts (GFAs) for disbursement activities. At present, five government fund demand deposit accounts are utilized. UT-Battelle, LLC (Contractor), reserves the right to consolidate existing accounts or establish additional accounts as needed during the term of the Agreement. All accounts are established as zero balance accounts and are funded by the "payments cleared method of financing" as described in a subsequent section of this Statement of Work document. Descriptions of currently established disbursement accounts follow.

Master Account
Direct disbursements from this account are limited to all wire transfers and the ACH transmittals generated for payment of general liabilities. Additionally, this account is utilized to fund all other government fund accounts listed below. Under the payments-cleared method of financing, the Financial Institution will make a daily draw from the U.S. Department of the Treasury's (Treasury) Automated Standard Application for Payments (ASAP) System which will be credited to this master account in order to bring all accounts, including this master account, back to a zero ($0.00) balance. No paper checks are issued from the master account.

Note: The Financial Institution must be a Treasury-approved government deposit insurance organization as identified in I TFM 6-9000. Accordingly, the Financial Institution shall post collateral with the Federal Reserve Bank (FRB), in an amount equal to the net balance of federal funds deposited into this master account, less the Treasury-approved deposit insurance.

Sub-Account – General Payables
Disbursements are limited to paper checks issued in satisfaction of general vendor account liabilities. This account is established as a positive pay, controlled disbursement account.

Sub-Account – Worker's Compensation and General Liability
Disbursements are limited to paper checks issued in payment of liabilities under the Contractor's Worker's Compensation Self-Insurance plan. This account is established as a positive pay, controlled disbursement account. Special Note: Check payments for worker's compensation liabilities are issued by a third-party administrator; therefore, file transfers of issues will be presented to the Financial Institution by this party.

Sub-Account – Payroll Disbursements by Check
Disbursements are limited to paper checks issued in satisfaction of payroll liabilities. This account is established as a positive pay, controlled disbursement account.

Sub-Account – Payroll Disbursements by ACH
Disbursements are limited to ACH payments issued in satisfaction of payroll liabilities.

Special Note: Other than any credit(s) due to the receipt of a returned/rejected disbursement item(s), all sub-accounts receive only one credit (deposit) per day, resulting through funding from the master account for zero-balancing. As well, the master account receives only one credit per day, resulting from the daily ASAP draw. Any other credit(s) to the master account must be due to receipt of a returned/rejected disbursement issue(s). The "netting" of accounts by offsetting disbursements with deposit receipts, other than the ASAP draw, is not permitted.

See the "Depository and Cash Services" section of this Statement of Work for a more detailed explanation of general deposit requirements.

Payments-Cleared Method of Funding
As a Prime Contractor to the United States Department of Energy (DOE), the Contractor is wholly dedicated to the operation and management of the Oak Ridge National Laboratory (ORNL). As such, the Contractor receives full funding under the "payments cleared method of funding." The payments-cleared funding arrangement is a financing method utilized by the federal government for financing grants, contracts, and other programs and utilizes a payment system called the ASAP 1031 Account. In brief, this "on line" program is used by the Financial Institution to effect full reimbursement for all payments "paid" by the Financial Institution on behalf of the Contractor on a given day. Under this arrangement, the Contractor issues payments for program costs, utilizing controlled disbursement accounts as described above. The Financial Institution will honor the payments presented for collection without pre-funding of accounts. At the close of each business day, on an intraday basis, the Financial Institution will zero balance all sub-accounts with an offsetting charge to the master account to determine the total amount advanced during the day. The Financial Institution will then access the ASAP system, using software furnished by the Treasury's Financial Management Service (FMS), connecting it to the FRB of Richmond to advise Treasury of the amount advanced. The FRB will immediately arrange a "draw" against DOE's authorized funds for same day credit to the Financial Institution's reserve account at its FRB. Funds are provided by a repetitive Fed Wire. The daily draw should bring the Contractor's full

chart of government account balances back to zero. To receive same day credit, the payment request must be received by the FRB of Richmond by 5:45 p.m. Eastern time. The intraday cut-off time established must be sufficient to meet this deadline; however, it should be as late in the day as administratively possible in order to minimize the potential for overdrafts. The amount of the daily drawdown should be sufficient to maintain the account balance net positive and as close to zero as administratively possible. If the Financial Institution has a pattern of excess drawdowns and fails to correct the problem after written notice from DOE, the Financial Institution will be assessed interest on all excess balances at the Federal Funds Rate for the month(s), and the Special Financial Institution Account Agreement will be terminated. Penalties will be remitted to the cognizant DOE finance office.

Normally, the Financial Institution's daily ASAP draw requirement ranges from $1 Million to $8 Million and averages approximately $4 Million. However, at least once per month, upon issue of the monthly payroll, the draw requirement is approximately $20 Million. The Financial Institution must have sufficient reserves to cover this intraday overdraft pending end of day settlement/reimbursement through the Treasury's ASAP system.

After award, the DOE finance office will provide the Financial Institution with enrollment forms that will permit withdrawal of funds from the ASAP 1031 account at the FRB of Richmond. The Financial Institution will complete the forms and return them to DOE for further processing.

In-house Check Generation

Accept and process paper checks generated in-house by the Contractor. The Contractor uses commercially available, blank check stock to generate its paper checks. Paper checks are printed in-house and distributed daily.

On Line Communication and Processing

Provide a secure, web-based communication and processing system(s) for check imaging display, wire transfer processing, stop payment processing and inquiry, and file transmissions (ACH, EDI, Positive Pay). Unique user identifications and passwords, along with specified authorizations, will be issued for individual personnel as requested by the Contractor.

Positive Pay

Provide positive pay for all controlled disbursement accounts (currently three accounts as described above). Check issues are processed each business day. An approximate average of 2,000 checks are issued each month from the combined controlled disbursement accounts. The Contractor defines the positive pay function as follows: Each business day, the Contractor sends to the Financial Institution, an electronic file containing data representing checks issued or voided on the previous business day. For

each controlled disbursement account, file data includes account number, check serial number, and respective amounts. The Financial Institution will provide a web-based product to facilitate transmission of respective files. The check issue and void information will be used by the Financial Institution to create and maintain an outstanding check file. Newly issued checks are accumulated into the outstanding check file. Voided checks are removed from the outstanding check file. As checks are presented to the Financial Institution, the Financial Institution compares the encoded check information to the outstanding check file. Matching items are considered to be approved for payment and removed from the outstanding check file. Non-matching items are reviewed by the Financial Institution for encoding errors. Encoding errors are corrected by the Financial Institution, and the check is removed from the outstanding check file. Non-matching items not resulting from encoding errors are referred to the Contractor's Treasury Services personnel for resolution. The purpose of this function is to allow the Contractor sufficient time to return any unauthorized payments within 48 hours as provided by the Uniform Commercial Code. In addition to the mechanism for daily file processing for positive pay as described above, the Contractor requires web-based processing capabilities for transmission of manual issues and voids.

Stop-Payment Processing

Provide stop payment capability. Stop payment orders will be placed by the Contractor via the web-based communication and processing system provided by the Financial Institution. Stop payments shall not be labeled or treated as cancellations or voids on the bank reports or on the check inquiry system. Rather, the stop payment items should be clearly identified as such.

Electronic File Transfer/EDI Services

Submit Cash Concentration or Disbursement (CCD) and Pre-arranged Payments and Deposits (PPD) formatted payment files to the ACH on a daily basis. The Contractor creates National Automated Clearing House Association (NACHA) compliant CCD and PPD payment files on a daily basis. These files are transferred electronically to the Financial Institution who submits those files on the Contractor's behalf to the ACH.

Translate a payment file from a proprietary format into Corporate Trade Exchange (CTX) format and submit the file to the ACH on a daily basis. The Contractor creates an electronic file in a proprietary format to pay vendors requesting CTX payments via the ACH. These files are transferred to the Financial Institution who reads the file and translates it to a NACHA compliant CTX format and submits the file on the Contractor's behalf to the ACH.

As stated above, all file transfers to and from the Financial Institution will be executed via a secure, web-based platform provided by the Financial Institution.

Checks-Paid File

Provide paid item files, electronically, for each controlled disbursement account, no later than 7:00 a.m. on the first work day of each calendar month following the close of business for the previous month. To accommodate the Contractor's fiscal year end deadlines with DOE, the checks paid file for September business will be needed by 7:00 a.m. on the first calendar day subsequent to the Contractor's last working day in September, whether or not this falls on a work day. Provide individual files for each controlled disbursement account.

Testing Environment

Provide a test environment for file transfer transactions during implementation and on an on-going basis. During implementation and in the event program changes are made to the Contractor's software, system testing is desirable to the point that data files are passed to and reviewed by the Financial Institution.

Provide Magnetic Ink Character Recognition (MICR) document and image quality control services for testing of paper checks as requested by the Contractor on an as-needed basis.

Disaster Recovery

Sufficient disaster recovery plans must be in place to insure uninterrupted service to the Contractor's payees.

Account Reconciliation Services/ Information Requirements

Provide, by fax or on-line access, monthly bank statements for all accounts no later than 7:00 a.m. on the first work day of each calendar month following close of business for the previous month. To accommodate the Contractor's fiscal year end deadlines with DOE, statements for the September business will be needed by 7:00 a.m. on the first calendar day subsequent to the Contractor's last working day in September, whether or not this falls on a work day. Official hard copies of the statements should follow in the U.S. mail.

Provide both full and partial reconciliation reports/services for all disbursement accounts.

Provide web accessible reports, on a daily basis, providing the following information for all accounts: summary funding and reconcilement totals of daily account activity; daily and cumulative listing of un-matched checks; stop payments placed, revoked, or rejected; cancels/voids or corrected paid items; and same day and previous day balance reporting.

Check Imaging

Provide real-time, on-line access to paid item images via a web-based product. In addition, file(s) of the paid check images shall be routinely provided to the Contractor on CD-Rom.

Wire Transfers and Drafts

Foreign Drafts
Provide Contractor with in-house method for foreign denominated paper draft preparation and printing.

Wires
Contractor makes extensive use of Domestic FedWire transactions and foreign wire transactions using Society for Worldwide Interbank Financial Telecommunications (SWIFT). Financial Institution will provide on-line service for initiating wire transfers. Also, an alternative (manual) method must be available for processing wire transfers in the event of system problems. Contractor requires capabilities for making international wire transfers in U.S. and/or foreign currency denominations. Provide capability for transacting international wires through correspondent U.S. banks and wire transactions going through multiple foreign banks. Provide same-day clearing of all wire transfers transacted in U.S. currency. Provide real-time foreign exchange rates.

Depository and Cash Services

Depository Services
As described earlier, no deposits are made to any of the government fund accounts with the single exception of the daily draw through ASAP. Any deposits made by the Contractor on behalf of DOE must be credited to the Financial Institution's Treasury General Depository Account. All of the deposits are credited and reported daily on the Treasury's *Cashlink* Federal Deposit Reporting System. This system arranges for "same day" sweep of these accounts to the Federal Reserve for credit to the Treasury. Compensation for collection float is paid by the Treasury directly to the Financial Institution as a part of the Financial Institution's agency agreement with the Treasury. Therefore, in order to qualify to perform the services in this proposal, the Financial Institution must have entered into a separate agreement with Treasury's FMS, qualifying as a collection agency.

Although most collections for DOE are directed through a Treasury lockbox system (which is not part of this procurement), the Contractor does receive some direct mail and over-the-counter receipts that must be deposited regularly. As described in the paragraph above, these deposits must be credited to the Treasury General Account rather than to the GFA accounts for the Contractor. The current operating procedure calls for the Contractor to make separate deposits to a commercial clearing account which is part of the Financial Institution's sweep system. This account is subjected to electronic analysis to determine number of items deposited and, using American Banker's Association (ABA) Routing & Transit designations, establishes assigned float that is then incorporated into the Financial Institution's periodic billing to the Treasury's FMS. The

Financial Institution is fully compensated for these services by the Treasury through the FMS billing. Therefore, there should not be any analysis charge assessed for these services under this procurement.

In summary of the above, the Financial Institution must be an "approved" depository agency having an established depository agreement with the Treasury's FMS. The Financial Institution must have access to *Cashlink* and be willing to accept the Treasury's compensation for deposit and processing and float cost as full payment for depository services rendered. Further, the Contractor requires that returned deposit items, other than "no account," "account closed," or "payment stopped," shall be resubmitted one time before being charged back against the Treasury General Account.

Deposit Verification
The Financial Institution must provide for deposit verification and return of validated deposit receipts to the Contractor.

Change Order Services
The Contractor has limited change order requirements in support of miscellaneous employee services. On a weekly basis and based on a pre-determined schedule, the Financial Institution will provide a change order of cash funds as requested by Contractor.

Monthly Analysis Statement

The Financial Institution will provide the Contractor with an account analysis monthly. The account analysis will include the data necessary for the Contractor and/or the DOE finance office to determine that the costs of the services are commensurate with the level of compensation being provided to the Financial Institution, and that the average daily demand account balance is being maintained net positive and as close to zero as administratively possible.

Data Mapping Services – OPTIONAL

Provide data mapping services to convert all input and output data in accordance with specifications as set by the Contractor. Reference the attached document entitled *Contractor's File Layout Specifications.*

SOLICITATION NO. AGS-08
TECHNICAL REPRESENTATIONS AND CERTIFICATIONS (Jul 2005)

The Financial Institution makes the following technical representations and certifications as part of its offer to provide service under a payments-cleared financing arrangement. (Check parentheses and complete blanks, as appropriate. All information is necessary.)

1. **Financial Institution Fiscal Information**

   a. The Financial Institution is a ( ) national chartered financial institution ( ) state chartered financial institution organized and existing in the State of _____.

   b. The Financial Institution ( ) maintains ( ) does not maintain an account with a Federal Reserve Bank.

   c. The current ( ) Federal ( ) State time deposit reserve requirement for the Financial Institution is _____%.

   d. The Financial Institution ( ) insures ( ) does not insure each time account for $100,000 under federally approved deposit insurance. Deposits ( ) are ( ) are not insured by a Government deposit insurance organization approved by the Department of the Treasury. Explain negative responses, if any, below.

   e. The Financial Institution ( ) has ( ) does not have direct on-line access to the Federal Reserve Communication System (FRCS). Explain negative response, if any, below.

   f. To receive same-day credit from the Federal Reserve, the Financial Institution can ascertain the amount of payments cleared net of the amount of any deposits and submit a payment request through the FRCS by _____ p.m. Eastern time.

2. **Minority Business Enterprises**

   a. The Financial Institution ( ) operates ( ) does not operate as a minority-owned business enterprise with at least 50 percent ownership by minority group members. (For present purposes, minority group members are Asian Pacific Americans, Black Americans, Hispanic Americans, Indian Tribe, Native Hawaiian Organization, Native American, and Subcontinent Asian American).

   b. The Financial Institution ( ) operates ( ) does not operate as a woman-owned business enterprise with at least 50 percent ownership by women members.

3. **Technical**

a. Does the Financial Institution currently service and reconcile an account with a payment volume equal to or exceeding the anticipated volume required by the Contractor as stated in the *Schedule of Financial Institution Processing Charges*?

Service: ( ) Yes ( ) No Reconciliation: ( ) Yes ( ) No

b. What is the highest number of payments serviced and reconciled for a single account?

Service: _____

Reconciliation: _____

_____
TYPED NAME

_____
SIGNATURE

_____
NAME OF FINANCIAL INSTITUTION

_____
DATE

_____
CORPORATE SEAL

SOLICITATION NO. AGS-08
OPTION

The Contractor shall have the option to purchase the services described below:

Option No.:	1
Description:	Map data to Contractor-designated file formats
Total Price:	$_____
Completion Date:	To be completed within 60 calendar days from date of Option exercise

In the event the Contractor does not exercise the above option at the time of award of the Special Financial Institution Account Agreement for Use with the Payments-Cleared Financing Arrangement, or any other date mutually agreed to, the Financial Institution shall be relieved of its obligation to perform these services.

_____
TYPED NAME

_____
SIGNATURE

_____
NAME OF FINANCIAL INSTITUTION

_____
DATE

_____
CORPORATE SEAL

SOLICITATION NO. AGS-08
DRAFT SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT FOR USE WITH THE PAYMENTS-CLEARED FINANCING ARRANGEMENT

Agreement entered into this _____ day of _____, ____, between the **UNITED STATES OF AMERICA**, represented by the Department of Energy (DOE), and **UT-BATTELLE, LLC**, a limited liability company organized and existing under the laws of the State of Tennessee (Contractor), and _____, a financial institution corporation existing under the laws of the State of _____, located at _____ (Financial Institution).

RECITALS

(a) On the effective date of April 12, 1999, DOE and the Contractor entered into Agreement No. DE-AC05-00OR22725, or a Supplemental Agreement(s) thereto, providing for the transfer of funds on a payments-cleared basis.

(b) DOE requires that amounts advanced to the Contractor thereunder be deposited in a special demand deposit account at a financial institution covered by the 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.

(c) The special demand deposit account shall be designated UT-Battelle, LLC, [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 title to the credit balance in said account to secure the repayment of all advance payments made to the Contractor, and said title shall be superior to any lien, title, or claim of the Financial Institution with respect to such accounts.

(2) The Financial Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the deposit and withdrawal of funds in the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from said account. After receipt by the Financial Institution of directions from the Contractor, on behalf of DOE, the Financial Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Financial Institution from the Contractor acting on behalf of DOE and purporting to be signed by, or signed at the written direction of, the Contractor may, insofar as the rights, duties, and liabilities of the

Financial Institution are concerned, be considered as having been properly issued and filed with the Financial Institution by the Contractor.

(3) DOE, or its authorized representatives, shall have access to financial records maintained by the Financial Institution with respect to such special demand deposit account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Financial Institution for a period of six years after the final payment under the Agreement.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account, the Financial Institution shall promptly notify DOE at:

U.S. Department of Energy
Oak Ridge Operations Office
Post Office Box 2001
Oak Ridge, Tennessee 37831-8759
Fax: (865) 241-2549

(5) DOE shall authorize funds (in the form of a Letter of Credit) that are irrevocable to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Financial Institution for the benefit of the special demand deposit account. The Financial Institution agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict Automated Standard Application for Payments (ASAP) 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.

If documentation furnished by the Financial Institution demonstrates that this withdrawal procedure would be inequitable to DOE or to the Financial Institution, Covenant 5 may be modified upon agreement of all parties concerned. The Financial Institution shall comply with the provisions contained in I TFM 6-2000, which states that payment vouchers (TFS form 5805) ordinarily should not be drawn more frequently than daily or for amounts less than $5,000 and in no case should they be drawn for more than $50,000,000 unless otherwise stated in the Letter of Credit. In the event that the balance remaining in the Letter of Credit limitation is not sufficient to cover the checks presented, the Department of the Treasury will, at the specific authorization of DOE, instruct the Federal Reserve Bank to immediately wire a transfer of funds from the Department of the Treasury account to the Financial Institution's account, for the benefit of the Contractor's special demand deposit account, in an amount sufficient to cover the check presented in excess of the available Letter of Credit balance.

The Financial Institution agrees to service the account in this manner based on the requirements and specifications contained in the Contractor's Solicitation No. _____ dated _____. The Financial Institution agrees that per-item costs detailed in the form *Schedule of Financial Institution Processing Charges* and contained in the Financial Institution's proposal dated _____, will remain constant during the term of this Agreement. The Financial Institution shall calculate the monthly fees based on services rendered and invoice the Contractor. The Contractor shall issue a check or

automated clearing house authorization transfer to the Financial Institution in payment thereof.

(6) The Financial Institution shall post collateral, acceptable under Title 31 CFR 202/Treasury Financial Manual Part 6, Chapter 9000, with the Federal Reserve Bank in an amount equal to the net balances in all of the accounts included in this Agreement, less the Department of the Treasury-approved deposit insurance.

(7) This Agreement, with all its provisions and covenants, shall be in effect for a term of five years beginning on the _____ day of _____, _____, and ending on the _____ day of _____, _____.

(8) DOE, the Contractor, or the Financial Institution may terminate this Agreement at any time within the Agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.

(9) DOE or the Contractor may terminate this Agreement at any time upon 30 days written notice to the Financial Institution if DOE or the Contractor, or both parties, find that the Financial Institution has failed to substantially perform its obligations under this Agreement or that the Financial Institution is performing its obligations in a manner that precludes administering the program in an effective and efficient manner or that precludes the effective utilization of the Government's cash resources.

(10) Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement, referenced in Recital (a), between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Financial Institution shall be terminated automatically upon the delivery of written notice to the Financial Institution.

(11) In the event of termination, the Financial Institution agrees to retain the Contractor's special demand deposit account for an additional 90-day period to clear outstanding payment items. During this 90-day period, DOE shall place on deposit in that account sufficient funds to cover all outstanding checks presented for payment.

During the 90-day period, it is further understood that:

(a) The Financial Institution shall maintain collateral in an amount sufficient to collateralize the highest balance in the account, less Federal Deposit Insurance Corporation (FDIC) coverage on the accounts, and that no cost of such collateralization shall accrue to the Contractor or DOE.

(b) All service charges shall be consistent with the amounts reflected in this Agreement as identified in *Schedule of Financial Institution Processing Charges.*

(c) No charge will be made for any FDIC or other depository insurance assessed.

(d) All terms and conditions of the Financial Institution's proposal dated _____, which are not inconsistent with this 90-day additional term shall remain in effect.

(e) This Agreement shall continue in effect, with exception of the following:

1. Letter of Credit (Covenant 5)
2. The term of this Agreement (Covenant 7)
3. Termination of Agreement (Covenants 8 and 9)

(12) Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s) and to the extent of such transfer and notice thereof to the Financial Institution, the Contractor shall have not further responsibilities hereunder.

The Financial Institution has submitted the forms entitled *Technical Representations and Certifications (Jul 2005), Schedule of Financial Institution Processing Charges*, and *Option*. These forms have been accepted by the Contractor and DOE and are incorporated herein with the document entitled *Statement of Work dated July 20, 2005*, as an integral part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

THE UNITED STATES OF AMERICA
U.S. DEPARTMENT OF ENERGY

BY: _____

DATE: _____

UT-BATTELLE, LLC

BY: _____

DATE: _____

[TO BE DETERMINED]

BY: _____

DATE: _____

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 and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____
(Corporate Seal)(Signature)

NOTE – The 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 and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____
(Corporate Seal)(Signature)

SOLICITATION NO. AGS-08
LISTING OF ACRONYMS

ABA	American Banker's Association
ACH	Automated Clearing House
ASAP	Automated Standard Application for Payments
CCD	Cash Concentration or Disbursement
Contractor	UT-Battelle, LLC
CTX	Corporate Trade Exchange
DOE	United States Department of Energy
EDI	Electronic Data Interchange
EFT	Electronic Funds Transfer
FDIC	Federal Deposit Insurance Corporation
FMS	Financial Management Service
FRB	Federal Reserve Bank
FRCS	Federal Reserve Communication System
GFA	Government Fund Account
MICR	Magnetic Ink Character Recognition
NACHA	National Automated Clearing House Association
ORNL	Oak Ridge National Laboratory
PPD	Pre-Arranged Payments and Deposits
SOW	Statement of Work
SWIFT	Society for Worldwide Interbank Financial Telecommunications
Treasury	United States Department of the Treasury



Solicitation No. AGS-08
Closing Date October 26, 2005

Part A – Technical Proposal

Oak Ridge National Laboratory
ATTN: Ms. Kathy Collins
P.O. Box 2008
Bldg. 1060COM, MS 6293
Oak Ridge, TN 37831

Bob L. Wrather
Senior Vice President
SunTrust Bank, Inc.
7610 Gleason Drive
Knoxville, TN 37919



SunTrust Bank, Inc.
7610 Gleason Drive
Knoxville, TN 37919
Tel (865) 692-6937
Fax (865) 692-6943

Bob L. Wrather
Senior Vice President
bob.wrather@suntrust.com

SUNTRUST

October 26, 2005

Ms. Kathy Collins
Oak Ridge National Laboratory
P.O. Box 2008
Bldg. 1060COM, MS 6293
Oak Ridge, TN 37831

Dear Ms. Collins:

SunTrust Bank appreciates the opportunity to present the enclosed banking services proposal in response to your Solicitation No. AGS-08 dated September 22, 2005, including Amendment No. 1 dated October 4, 2005 and Amendment No. 2 dated October 18, 2005, which changes the closing date to October 26, 2005. The services and prices quoted within will remain valid for 180 calendar days subsequent to the closing date of October 26, 2005, and thereafter in accordance with any resulting contract between SunTrust Bank, Inc. and UT-Battelle, LLC.

SunTrust Bank, Inc. is our complete and legal name and our Federal Employer Identification Number (EIN) is 58-0466330.

SunTrust Bank, Inc. meets the following criteria:

1. Possess positive pay service capabilities for controlled disbursement accounts.

2. Possess direct on-line access to the Federal Reserve Communication System (FRCS) to make on-line request for funds.

3. Maintain an account with the Federal Reserve Bank (FRB).

4. Accept all National Automated Clearing House Association (NACHA) Operating Rules and Procedures.

5. Capable of providing foreign denomination drafts and completing foreign denomination transactions using Society for Worldwide Interbank Financial Telecommunications (SWIFT).

6. Able to provide, at no cost, the appropriate deposit insurance and post collateral in accordance with Department of Treasury regulations governing securing of Government accounts.

7. Able to provide electronic transmission of paid check detail for all accounts on a monthly basis and no later than 7:00 a.m. on the first workday of the calendar month following the close of business for the previous month.

8. Able to provide monthly bank statements no later than 7:00 a.m. on the first workday of the calendar month following the close of business for the previous month.

SunTrust Bank, Inc. currently is providing banking services for UT-Battelle, LLC and meeting all necessary criteria.

Please show me as the contact person regarding this proposal. I am an official of SunTrust Bank, Inc. and am authorized to bind my organization in this contract.

Sincerely,

_____

Bob L. Wrather
Senior Vice President
SunTrust Bank, Inc.
7610 Gleason Drive
Knoxville, TN 37919
Phone: 865-692-6937
Fax: 865-692-6943
E-mail: bob.wrather@suntrust.com

UT-Battelle, LLC Proposal
Solicitation No. AGS-08
Closing Date October 26, 2005
Amendment No. 1 Dated October 4, 2005
Amendment No. 2 Dated October 18, 2005
Part A – Technical Proposal

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2. Authorized Representatives

a. Identify the names, street addresses, telephone numbers, facsimile numbers, and e-mail addresses of persons authorized to act as your representatives.

Relationship Manager

Bob Wrather

Senior Vice President

Phone: (865) 692-6937

Fax: (865) 692-6943

Email: bob.wrather@suntrust.com

Bob L. Wrather, Senior Vice President, is a life long resident of the Knoxville area, having grown up in Lenoir City. He has lived in Knoxville for over 35 years and he has been in the banking business for 31 years, 23 of those years with SunTrust. The majority of his career has been with the Commercial/Corporate Banking Division which he managed for several years. He serves as the Specialist for SunTrust's Government and Institutional Division. He has also served as the Regional President for our Loudon County Bank. He attended Middle Tennessee State University and the University of Tennessee and is also a graduate of The Graduate School of Banking of the South (Louisiana State University).

Treasury Management Officer

Mona H. Parsons

First Vice President

Phone: (865) 692-6903

Fax: (865) 692-6904

Email: mona.parsons@suntrust.com

Mona Parsons, First Vice President, is a Treasury Management Officer in SunTrust's Treasury Management Department. Mona has 34 years of banking experience, 22 of those years with SunTrust.

She began her career at SunTrust Bank in 1984. Prior to joining Treasury Management Services, she was Manager of the Merchant Services Division. She worked with the Governmental/Institutional Banking Division in her role as Manager of SunTrust Merchant Services. For several years prior, Ms. Parsons has held positions with various sales responsibilities. She attended Southside Junior College as well as The University of Tennessee.

Client Service Representatives

Barbara Mahaffey

Phone: (865) 692-6965

Fax: (865) 692-6904

Email: barbara.mahaffey@suntrust.com

Vonda Sparks

Administrative Assistant

Phone: (865) 692-6952

Fax: (865) 692-6904

Email: vonda.sparks@suntrust.com

Barbara and Vonda each have over 20 years of service with SunTrust. They have excellent working knowledge of treasury management operations and deliver a high level of client service to our Treasury Management clients.

The Client Services Department is part of the East Tennessee Treasury Management Team. Your Client Service Representatives work to ensure that you receive high quality customer service and that our services meet your expectations.

b. The proposal must be signed by an official authorized to bind your organization and must be accompanied by a statement to the effect that the proposal is firm for a period of no less than 180 calendar days after the closing date for receipt of proposals.

This proposal for Solicitation NO. AGS-08 (UT-Battelle, LLC) is firm for a period of no less than 180 calendar days after the closing date (October 26, 2005).

3. <u>Organizational Experience/Approach</u>

Provide a brief description of your organization. Demonstrate your understanding of the SOW requirements including the payments-cleared financing arrangement. Discuss your proposed organizational approach for providing the services specified in the SOW.

Our mission is to help people and institutions prosper. We focus on partnerships with our clients and commit to developing an in-depth understanding of their business and industries. SunTrust backs its relationships with nearly two centuries of commitment, leadership and trust. Superior financial strength, paired with ongoing income and earnings momentum, ensures that SunTrust can commit capital – regardless of market conditions.

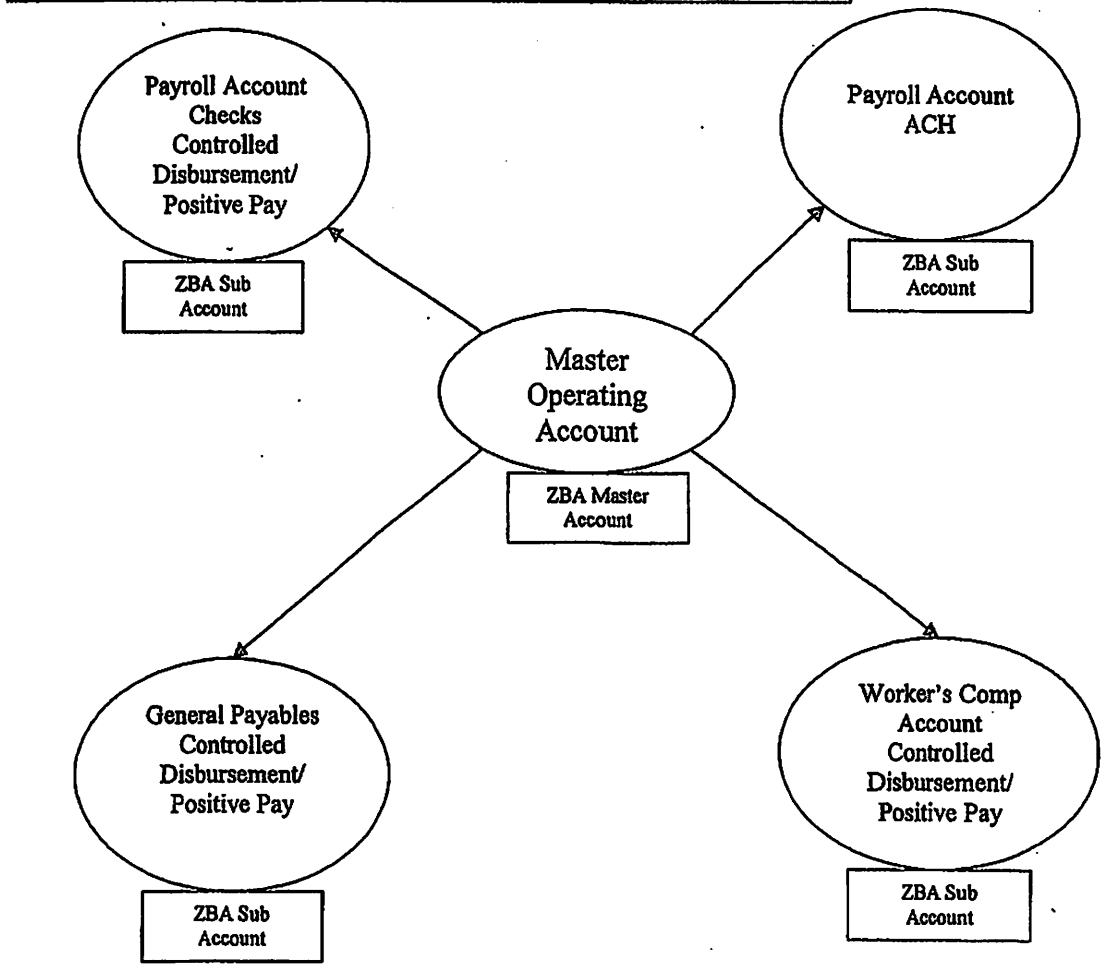
- **Assets totaling $169 billion as of 6/30/05**
- **Debt Ratings of Aa2 (Moody's) / AA- (Standard & Poor's)1**
- **Equity Market Capitalization over $26 billion as of 6/30/05**
- **Ranked seventh on the Top Ten Banks in America list (by asset size)**

SunTrust understands the SOW requirements including the payments-cleared financing arrangement. SunTrust is currently meeting all of the requirements of the SOW for UT Battelle. SunTrust currently utilizes the payments-cleared financing arrangement with UT Battelle. SunTrust is a treasury-approved government deposit insurance organization as identified in ITFM 6-9000. Accordingly, SunTrust posts collateral with the Federal Reserve Bank in an

amount equal to the net balance of federal funds deposited into UT Battelle's master account, less the treasury-approved deposit insurance.

SunTrust is an approved depository agency having an established depository agreement with the Treasury Financial Management System (FMS). SunTrust has established access to Cash Link.

Account Organizational Configuration for UT-Battelle, LLC



Bank Account Information and Requirements:

1. Describe any problems with timely processing of zero-balance accounts in order to meet the 5:45 p.m. Eastern Time deadline with the U. S. Department of the Treasury (Treasury) (for same-day credit of the daily draw down).

SunTrust has no problem with timely processing of zero-balance accounts in order to meet the 5:45 Eastern Times deadline with the U.S. Department of the Treasury. SunTrust is currently performing this service for UT-Battelle.

2. Describe any problems with the intraday float to cover items presented pending reimbursement from the Treasury.

SunTrust has no problems with the intraday float to cover items presented pending reimbursement from the Treasury.

3. Do you use Federal Reserve Payor Services? **Yes, SunTrust uses Federal Reserve Payor Services.**

   - For first presentment? **Yes, for first presentment.**
   - For second presentment? **Yes, for second presentment.**
   - Does the information include rejected/damaged (low speed) items? **Yes, the information does include rejected/damaged (low speed) items.**

In-house check generation:

1. Describe any requirements or restrictions you place on customers that print their own paper checks on blank check stock.

Your company's checks provide the fundamental information needed to administer ARP services. Check information is captured electronically by use of magnetic ink character recognition (MICR) encoding on the check. Therefore, your company's careful attention to the MICR quality on your checks is extremely important.

If your company orders checks independently of SunTrust, a reliable printer is necessary. In this case, it is imperative that the stock be tested prior to use in order to safeguard against processing delays and rejected item fees.

The SunTrust check testing process can detect poor quality printing and avoid costly reprinting and service delays. At least one month prior to each new order of checks, please follow the check testing procedures outlined below:

1. Request your company's check vendor to produce a sample of fifteen (15) checks for SunTrust to test. This step should be completed prior to producing an entire check order.

2. Prepare the sample checks for testing by writing or stamping "VOID" on the face of each check and separating the checks from stubs or copies.

3. Forward the sample checks to your company's assigned Treasury Management Implementation Professional or Client Services Representative at SunTrust.

4. SunTrust will run your sample checks and deposit tickets through its processing equipment to ensure that the MICR line is readable and all specifications have been satisfied.

5. SunTrust will notify your company of the check and deposit ticket testing results expeditiously. You must receive confirmation that testing was successful prior to using new check or deposit ticket stock.

6. Remember to schedule enough lead-time when reordering checks or deposit tickets to allow for testing and possible reprinting in the event of a test failure.

7. The testing process (Steps 1-5) must be repeated each time you re-order new checks or deposit tickets.

2. Describe any special considerations for paper checks printed by the Contractor and presented to you on the same day since the positive pay file recording the issuance of the check will not be received by you until the day after the check has been issued.

Enter manual checks issued between check cycles and void requests into Online Treasury Manager by 5:00 p.m. eastern time on the same day checks are issued or void requests are made in order to avoid unnecessary exceptions (e.g. Paid-No-Issue).

Online Communication and Processing

Online Treasury Manager is an Internet-based cash management system designed to offer our clients balance reporting (previous day and same day information including account balances, summary level and detailed transactions), electronic report delivery, ACH initiation, wire transfer initiation, same day ACH book transfers, positive pay capabilities and stop payment services. And now, with the installation of a back-office image archive system, Online Treasury Manager can provide online images of many transactions, right from your activity reports. Through Online Treasury Manager, a client is able to connect to SunTrust from any PC using a standard Web browser, 24 hours a day, seven days a week. By connecting through the Internet, there is no software to install and no upgrades to load. SunTrust provides multiple levels of security, from firewalls to passwords and encryption, to safeguard your company's financial information. In addition, we've given you the ability to control who in your company can access information, as well as who can initiate and approve transactions. You get easy access and the controls you need.

Positive Pay:

The SunTrust Positive Pay service provides a next-day fraud prevention service that matches posted items to your issue records. You will be notified of any exceptions (items that do not match your issue records) and must provide payment decisions (pay or return) by the processing deadline later that same day. Reverse Positive Pay offers a fraud protection service that allows *you* to perform the matching of posted items against outstanding issue records, rather than the bank. Using this option, your company representative notifies SunTrust of any checks to be returned by the processing deadline.

1. Describe any problems and their solutions created by sending data for multiple accounts in one file.

There are no problems created for SunTrust by sending data for multiple accounts in one file.

2. Describe any problems and their solutions created by the need to process multiple files in one business day.

Processing multiple files per day does not create any problems for SunTrust as long as they are scheduled in a way to avoid one file overlaying another. This usually requires no more than a 15 minute delay between files.

Transmit your check issue information to SunTrust no later than 11:00 p.m. eastern time on the day checks are issued according to your check cycle.

3. Describe any problems and solutions created by sending positive pay data for the previous day (e.g., a check is written 5/1/2005 and hand carried to the vendor, who immediately presents it for payment to you. The positive pay record of the issue will not be sent to you until 5/2/2005).

Enter manual checks issued between check cycles and void requests into Online Treasury Manager by 5:00 p.m. eastern time on the same day checks are issued or void requests are made in order to avoid unnecessary exceptions (e.g. Paid-No-Issue). SunTrust has the capabilities to enter a pop-up message on our teller system to alert the teller of any contact information in regard to paying checks not yet on an issue file.

4. Describe the processing schedule and any time constraints for positive pay on your system.

Daily Responsibilities

Day 1

6:00 a.m. – Client deadline for issue files with same-day teller access. Client faxes issue file transmittal form of control totals.

9:00 a.m. – Client deadline for issue files without same-day teller access. Client faxes issue file transmittal form of control totals.

11:00 a.m. – SunTrust compares checks presented against outstanding issue records.

12:00 p.m. – 10:00 p.m. – Client enters online stop payment requests.

1:00 p.m. Client retrieves online report of current day mismatched items. SunTrust provides access to images of current day mismatched items for payment approval purposes (optional).

Day 2

7:00 a.m. – SunTrust provides access to all images (including matched items) from previous-day activity (optional).

12:00 p.m. – Client submits payments decisions for mismatched items (pay or return). Client provides issue records for approved payments.

5:00 p.m. – Client deadline for online manual issue or void input.

5. Describe how you will verify the completeness and accuracy of the data transfer.

As checks are received for payment, SunTrust will match the check serial numbers and amounts to your check issue information and identify any mismatches.

6. Describe how you will resolve any questions regarding the completeness and accuracy of the data transfer.

Each business day, SunTrust will report all mismatched items to your company by 9:00 a.m. eastern time through the Positive Pay module on Online Treasury Manager. SunTrust will manually inspect all mismatched items, correcting any misreads or encoding errors and repairing any damaged checks. All mismatched checks are considered suspect items.

7. Describe how and when non-matching items are resolved.

On the same day, you must notify SunTrust no later than 12:00 p.m. eastern time through the Positive Pay module on Online Treasury Manager with payment decisions (pay or return) on all mismatches.

If payment decisions are not received for the mismatches by the payment decision deadline, the

items will be handled in accordance with the default instructions (pay or return) SunTrust has on file for your company (as indicated on the Positive Pay Service Schedule).

Mismatch Reporting and Handling

- **12:00 p.m. ET on Day 2: Client payment decisions are required for all mismatched items.**
- **This report displays mismatched checks and includes reject reasons (with the exception of stop payments).**
- **As a same-day process, CPR Operations does not have an opportunity to correct check number misreads and encoding errors prior to reporting.**
- **In order to assist with the review and handling of mismatched items, the Positive Pay report can filter based on the rejection reason.**
- **SunTrust will follow a client's default instructions if payment decisions (pay or return) are not received by this deadline.**

Stop-Payment Processing:

By using SunTrust's Stop Payment service, you can initiate stop payments requests, cancel stop payments and access stop payment activity reports. You can also enter range stops for a group of checks that may have been lost or stolen. And it all happens on a real-time basis, so you can respond quickly if you need to reissue a check.

1. Describe any time constraints with issuing stop payments.

Stop Payments can be placed or removed online through the Online Treasury Manager Stop Payment Module.

- **12:00 p.m. ET until 10:00 p.m. ET: daily availability for stop payment input.**
- **A stop payment can only be accepted if SunTrust has an issue record on file.**
- **A missing issue record can indicate that the check has been paid, an issue record has not been received, or the check has been voided.**

- **A confirmed stop payment placed through Online Treasury Manager is immediately available to SunTrust's teller system.**
- **If the client anticipates a check may be cashed in a SunTrust branch before the daily upload at 12:00 p.m. ET, then the Client Services Specialist (CSS) can accept stop payment requests.**
- **The Daily Stop Report lists stop payment requests and removals from the previous business day.**
- **Stop payments can be included within a client's issue file. This practice is not recommended for clients expecting check cashing at SunTrust branches, due to timing delays in delivery to the teller system.**
- **If a client delivers an issue and stop record for a check on the same transmission, the stop record is accepted before the issue record. Under this scenario, the check rejects as "No Issue on File" in the CPR system.**

Stop payments on CPR accounts are stored in two separate systems, the Demand Deposits (DDA) System and the Controlled Payment (CPR) System. Each system has different stop payment retention periods.

- **DDA system stops are valid for 30 months. The SunTrust teller system checks this information for check cashing purposes.**
- **CPR system stops are not removed when the stop record expires in the DDA system. For extended stop payment protection, a stop payment notation on the check issue record remains in the CPR system until the client chooses to remove the issue record.**

Electronic File Transfer/EDI (Electronic Data Interchange) Services

Electronic Data Interchange provides a standard communication vehicle to facilitate business transactions. Files submitted by direct data transmission may be formatted using one of several

transaction sets – most commonly ANSI ASC X12 821, 823, 835 or 820. Financial payments are initiated through the Automated Clearing House (ACH) or as check payments. EDI is used for the supporting information exchange. EDI allows you to take cash discounts or negotiate reduced prices with trading partners while also reducing labor and transaction costs. It enhances security of payment and information transactions and eliminates payment uncertainty, thereby improving cash management. And finally, EDI enables the reengineering of cumbersome, manual processes which equate to lower costs for you.

Cash Concentration or Disbursement (CCD)/Pre-Arranged Payments and Deposits (PPD) Payments:

1. Describe any problems and solutions created by sending data for CCD and PPD payments on the same account in one file.

SunTrust has no problems with client sending data for CCD and PPD payments on the same account in one file. A file may contain both CCD and PPD payments as long as they are contained in separate batches within the file.

2. Describe any problems and solutions created by sending data for CCD and PPD payments on multiple accounts in one file.

SunTrust has no problem with a client sending data for CCD or PPD payments on multiple accounts in one file. A file may contain both CCD and PPD payments *on multiple accounts*. The file transmission charge will be billed to one of the originating accounts.

3. Describe any problems and solutions created by the need to process multiple CCD/PPD payment files per day.

SunTrust has no problem created by the need to process multiple CCD/PPD payments files per day. The bank may accept any number of ACH files throughout the day. However, because there are limited processing windows during the day, it is in the client's best interest to consolidate and transmit files according to our processing schedule.

4. Describe the processing schedule and any time constraints for having CCD/PPD files to you for processing.

ABC Corporation Deadline	SunTrust Processing Window	ACH Operator Deposit Deadline	Settlement
3:00 a.m.	4:00 a.m.	2:00 p.m.	1 or 2 days
10:30 a.m.*	11:00 a.m.	2:00 p.m.	1 or 2 days
2:30 p.m.	3:00 p.m.	8:00 p.m.	1 or 2 days
5:30 p.m.	6:00 p.m.	8:00 p.m.	1 to 2 days
7:30 p.m.	8:00 p.m.	2:15 a.m.	1 or 2 days

*** One-day settlement payroll files must be received by the 10:30 a.m. deadline to ensure timely processing.**

5. Describe how you will verify the completeness and accuracy of the data transfer.

The SunTrust Phone Access Line (PAL) allows clients to enter some basic information through touch-tone phone which provides confirmation for ACH file totals. PAL is available 24 hours a day, seven days a week. To use this automated voice response system, you simply call our toll-free number and enter your identification number and password when prompted, followed by your control totals. The system will provide you with a confirmation number. You should record this number and then immediately transmit your ACH file to SunTrust.

Also, this system provides you with the ability to check the status of your file to ensure it has been received by SunTrust. SunTrust will compare the data on the file we receive from your company with the dollar totals and record count you input to PAL. If these totals balance, we will automatically release the ACH file for processing. If they don't match, we will contact you to resolve the discrepancy before releasing the file.

6. Describe how and when the Contractor is notified of returned items.

Notification of Change requests and return item advices are detailed in the Client Activity Report (CAR). They are available through the Electronic Report Delivery service of Online Treasury Manager at the opening of business the day following receipt of the transaction. In addition to Online Treasury Manager, this report is available by mail, fax or in an electronic file transmission.

The Notification of Change section includes the original item (live entry) information as well as the corrected data, including:

- **Individual name**
- **Individual ID**
- **Trace number**
- **Account number**
- **Reference number**

The Return Item section includes:

- **Return reason code**
- **Transaction code**
- **Amount**
- **Individual name and ID**
- **Transit routing number**
- **Account number**
- **Reference number**

7. Describe how and when returned items are resolved.

Returns received by 2:00 p.m. ET are posted to the account on the day of receipt. Returns received after that deadline are held and posted the following business day.

Returned items may be re-presented up to two times before final return. ACH re-presentments occur when items that are returned to SunTrust due to insufficient or uncollected funds are automatically re-deposited at your request. No entries are posted to your account at the time of re-presentment.

8. Describe your requirements relating to issuing pre-notes prior to issuing payments.

We do not require pre-notes. However, prior to transmitting live data, we recommend submitting a pre-note file. This ensures timely posting of entries by the receiving bank. The pre-note gives the receiving bank time to verify the accuracy of the routing/transit number, account number and transaction code prior to receiving live payments.

Corporate Trade Exchange (CTX) Payments:

Automated Clearing House (ACH) transactions are commonly used to move funds within a company among various subsidiaries or divisions, and to move funds between unrelated companies in settlement of receivables or payables transactions. These transactions may be initiated by direct transmission or Online Treasury Manager, and credited or debited to your account.

1. Describe the version of CTX translator you currently use.

SunTrust runs the current version of the VECTORsgi software VECTOR:Advantage. Designed for financial institutions, this software enables SunTrust to accept payment orders from its clients in standard ASC X12 transaction sets, such as ASC X12 820 or 835, or in custom-defined flat file formats, and create NACHA CTX payments.

2. Describe any problems and their solutions created by the need to process multiple CTX payment files per day.

Processing multiple files per day does not create any problems for SunTrust as long as they are scheduled in a way to avoid one file overlaying another. This usually requires no more than a 15

minute delay between files.

3. Describe the processing schedule and any time constraints for having CTX files to you for processing.

The table below shows the cut-off time for EDI clients submitting files for ACH processing.

Window (ET)	Client Deadline (ET)	Settlement
4:00 a.m.	2:00 a.m.	1 or 2 days
11:00 a.m. *	9:30 a.m.	1 or 2 days
3:00 p.m.	1:30 p.m.	1 or 2 days
6:00 p.m.	4:30 p.m.	1 or 2 days
8:00 p.m.	5:30 p.m.	1 or 2 days

*** One-day settlement payroll files must be received by the 10:30 a.m. deadline to ensure timely processing.**

4. Describe how you will verify the completeness and accuracy of the data transfer.

SunTrust requires control totals for each payment file submitted. The totals may be included in the file as an ASC X12 831 or may be faxed to our EDI Operations area. These totals are verified against the actual processed totals, and any discrepancies are reported to your designated contacts immediately.

5. Describe how and when the Contractor is notified of returned items.

Returned items advices are detailed in the Client Activity Report (CAR). They are available through the Electronic Report Delivery service of Online Treasury Manager at the opening of business (8:00 a.m.) the day following receipt of the transmission. In addition to Online Treasury Manager, this report is available by fax, mail or in an electronic file transmission.

6. Describe how and when returned items are resolved.

Returned items advices are detailed in the Client Activity Report (CAR). They are available through the Electronic Report Delivery service of Online Treasury Manager at the opening of business (8:00 a.m.) the day following receipt of the transmission. In addition to Online Treasury

Manager, this report is available by fax, mail or in an electronic file transmission.

7. Describe your requirements relating to issuing pre-notes prior to issuing payments.

Although pre-notifications are not required under NACHA rules, we strongly recommend that they be used to verify the accuracy of data needed for timely posting of entries by the receiving bank.

Electronic File Transfer Methods:

SunTrust has Online File Transfer (OFT) as a safe and secure method of transmitting data over the Internet. OFT is a secure Internet Data Transmission Utility. OFT utilizes Secure Socket Layer (SSL) encryption to establish a secure File Transfer Protocol (FTP) connection between SunTrust and UT-Battelle.

OFT supports scheduled and ad-hoc transmissions. After initial set-up, UT-Battelle would be able to initiate a transmission by clicking on a button on the OFT screen, or the MS Scheduler, which is built into OFT, to facilitate download and/or upload of files in an unattended mode.

1. Describe the minimum hardware platform requirements for the Contractor.

Contractor would need a PC with keyboard, mouse and Internet capabilities.

2. Describe the minimum software platform requirements for the Contractor.

No special software is required by the client if they choose HTTPS as their browser interface.
If clients elect to use secure FTP, they must supply their own FTP client software.
Client must run Internet Explorer 6.0 or Netscape Navigator 6.01 browser or higher with Secure Socket Layers or have use of secure File Transmission Protocol client software and use 128 bit encryption on their browser.

3. Describe the security features of the transfer method.

By transmitting files online through the Internet browser HTTPS option or through your own secure FTP client software package, your data files are encrypted when they are transmitted to or

from SunTrust, helping to mitigate fraud and loss.

4. How long have you used this transfer method?

SunTrust rolled out our Online File Transfer solution in June 2004.

5. Describe customer usage and reliability of this transfer method.

Customer Usage – We currently have 1100+ companies on Online File Transfer and maintain 1200+ individual IDs for OFT. On our Filebox server, we have 300+ individual IDs.

Reliability - We are running on an HP RP7410 server that is split into two VPAR's. One VPAR is in the DMZ and handles our WEB . The other VPAR is in our trusted layer and runs the application and stores the data. This system handles our HTTPS and FTP over SSL traffic. Our other system is a HP Blade server that runs Linux. It supports S/FTP(SSH) and FTP with PGP. It also sits in our DMZ.

Our Internet connection has redundancy to our Orlando data center. We are in the process of building out our failover in our Orlando site and targeting 1Q 2006.

6. Describe the backup transfer method should the preferred method fail or be unavailable.

We encourage clients to maintain their dial-up modems for contingency purposes.

Checks-Paid File:

1. State your schedule of availability for providing the paid items files on the first workday of each month, by 7:00 a.m. Eastern time, for the previous month.

Contractor is able to access a paid items file via Online Treasury Manager by selecting the desired date range of activity. Contractor can also receive a copy of the bank statement via Online Courier which is emailed to any designated recipients.

Testing Environment:

SunTrust's implementation team works hand in hand with the client to facilitate connectivity testing as well as testing the validity of the client's file formatting in relation to all of our standard file specifications. All standard file specifications are made available to the client.

1. Describe the provisions you have for a test environment as it relates to positive pay, Automated Clearing House (ACH) payments, CTX translation, and account reconciliation.

SunTrust provides for test environments for positive pay, automated clearing house (ACH) payments, CTX translation and account reconciliation. This test environment is an action step in our Implementation Plan. Our implementation team works hand in hand with the client to facilitate connectivity testing as well as testing the validity of the client's file formatting in relation to our standard file specifications.

All of SunTrust's standard file specifications for positive pay, automated clearing house (ACH) payments, CTX translation are made available to the client.

2. Describe the availability of this test environment.

This test environment is an action step in our Implementation Plan. The availability time frame would become a choice determined by the client in outlining their Implementation Plan. The test environment would run concurrent with the cut off schedules for positive pay, automated clearing house (ACH), CTX translation and account reconciliation as if it were a live transmission.

Disaster Recovery:

1. Give an overview of your disaster recovery plan given the scenario where:
   a. local branch becomes unavailable (i.e., in the event of fire, natural disaster, or other unanticipated event)

All back-up locations meet distance guidelines as suggested by regulatory agencies. This helps to ensure redundancy in staffing and technology for each area of operation. The backup and primary sites do not share any crucial communication linkages which would negatively impact production in a backup site.

b. your on-line communication system(s) become unavailable for inquiry and/or processing needs

SunTrust encourages clients to maintain their dial-up modems for contingency purposes.

c. your main processing facility becomes unavailable.

SunTrust has a formal disaster recovery plan in place to back up all day to day processing applications. Work normally processed in a capture location that is disabled, will be processed in one or more of SunTrust's surviving capture sites. Mainframe system backup is located at our hot site in Philadelphia, PA, which is managed by SunGuard Recovery Services. Please see the paragraph below which is the official SunTrust Corporate Contingency Statement.

SunTrust Corporate Contingency Planning Statement of Policy

It is the intention of SunTrust Bank, Inc. to continue service to its customers during unforeseen or extended interruption of primary business functions. The implementation of this policy is the responsibility of SunTrust Banks, Inc., and will be executed by and within each line of business of the corporation, with guidance from SunTrust Corporate Contingency Planning. Every line of business will have a Business Resumption Plan. The Business Resumption Plan will identify the requirements to recover from a disaster and resume operations regardless of size, criticality, or location of the line of business or department. Each line of business will update and test their

Business Resumption Plan at least once every twelve months.

UT-Battelle would have to have access to the Internet to get to OTM in order to perform daily activities during a disaster. These services could be slow or intermittent depending on the scope of the disaster. SunTrust would notify UT-Battelle via OTM with banner message alerts.
SunTrust surviving capture sites would be utilized as quickly as possible to resume normal business operations in conjunction with each line of business' resumption plan.

2. If Contractor's file transfer capabilities became interrupted, would we be able to hand-carry a CD, containing any files due to be transferred, to your local branch to be input to your system?

SunTrust could not accept a hand-carried CD because of the security surrounding who has had possession of the CD and the accuracy of the information contained on the CD.
However, SunTrust does have a contingency solution as listed.
Each pay period UT-Battelle would create 4 files that would be transmitted to SunTrust:

1. **ACH ddp production file**
2. **ACH ddp contingency file**
3. **Check print production file**
4. **Check print contingency file**

The transmissions would have different scripts to distinguish between the production files and the contingency files.
The contingency files are warehoused until the next pay period. If circumstances warrant the contingency to be activated, we would process the contingency files. This means that the employees' pay would be based on the previous pay period's processing.
Each pay period, the previous contingency file is replaced with a new contingency file.
Any contingency procedures will be documented. UT-Battelle will notify SunTrust when the contingency mode is warranted.

Account Reconciliation Services/Information Requirements:

Account Reconciliation provides a mechanism where the bank can assist your company in the periodic reconciliation of your disbursement activity. SunTrust's services allow for increased accuracy and timeliness of account information so that you can improve audit control. You will also be alerted more quickly to fraudulent activity and have better response time to these issues. SunTrust offers Full Account Reconciliation or Partial Account Reconciliation depending upon your specific requirements. In addition, services which compliment account reconciliation such as data transmission, sub-accounting, online image or CD-ROM image services are available.

1. Describe your method and schedule of availability for providing bank statements on the first workday of each month, by 7:00 a.m. Eastern time, for the previous month.

SunTrust is currently providing bank statements for UT Battelle on the first work day of each month by 7:00 a.m. ET for the previous month via fax. The bank statements are also available by 7:00 a.m. ET through Online Treasury Manager as long as the client has multi day functionality as well as through our Online Courier Services.

Check Imaging:

SunTrust has installed an image archive system that allows for the capture of various transactions. This back-office system has allowed us to provide online image services to our clients, including paid items, deposit tickets and the related deposited items. Access to this information is provided over the Internet using Online Treasury Manager. The balance reporting, stop payment and positive pay services provide direct access to current images from the existing reports. Historical information, which is currently building to an archive of up to seven years, is accessible through the image services module.

1. Describe the types of paid check image processing available through you.

Check images can be accessed through Online Treasury Manager and from a CD-Rom that is mailed to the Contractor.

2. Describe the various methods of requesting/generating a printed image.

SunTrust has in place an image archive system that allows for the capture of various transactions. This back-office system has allowed us to provide online image services to our clients, including paid items, deposit tickets and the related deposited items. Access to this information is provided over the Internet using Online Treasury Manager. The balance reporting, stop payment and positive pay services provide direct access to current images from the existing reports.

In addition to our online image service, SunTrust also offers our CD-Rom Imaging Service. Electronic images provide a cost-effective alternative to storing paper checks or requesting check photocopies from SunTrust. You can retrieve and display digitized images of paid checks and truncate delivery of your checks, as images are available on CD-ROM for long-term storage purposes. The flexibility of our service allows you to search for an exact serial number or range, paid dates, amounts or any of these combined. Checks written to a CD-ROM coincide with your bank statement cycle. CD-ROM gives you speedy access to critical check information and provides the ability to retrieve check images (front and back) 24 hours a day, 7 days a week.

3. Describe the retention period(s) for paid check images.

Historical information, which is currently building to an archive of up to seven years, is accessible through the image services module.

4. Describe any hardware and/or software necessary to retrieve, review, and generate a print image of a paid check from the electronic file.

Online Treasury Manager is an Internet-based cash management system designed to offer our clients balance reporting (previous day and same day information including account balances, summary level and detailed transactions), electronic report delivery, ACH initiation, wire transfer initiation, same day ACH book transfers, positive pay capabilities and stop payment

services. And now, with the installation of a back-office image archive system, Online Treasury Manager can provide online images of many transactions, right from your activity reports. Through Online Treasury Manager, a client is able to connect to SunTrust from any PC using a standard Web browser, 24 hours a day, seven days a week. By connecting through the Internet, there is no software to install and no upgrades to load. SunTrust provides multiple levels of security, from firewalls to passwords and encryption, to safeguard your company's financial information. In addition, we've given you the ability to control who in your company can access information, as well as who can initiate and approve transactions. You get easy access and the controls you need.

The SunTrust CD-Rom Check Image Viewer is a Windows based application that enables your workstation to function as an offline application. Using the software, you can search for and view images of checks from the CD's received from SunTrust Bank.

The application provides for logon security, administration of user IDs and valid accounts, allowing the user to view the permitted account information.

System Requirements:

Minimum	Recommended
Pentium CPU	Pentium III CPU
100 MB of free disk space	200 MB of free disk space
64 MB or more of RAM	128 MB or more of RAM
CD-Rom drive	CD-Rom drive

The viewer is compatible with Windows 98, 2000, NT, ME and XP operating systems.

5. Describe CD-Rom imaging formats and accessibility requirements.

The SunTrust CD-Rom Image Viewer supports 2 modes of configuration, which must be decided upon prior to installation, as you will be prompted to define the configuration during installation. These two modes are:

1. **Stand-alone – In this mode, the viewer application, and all folders and files are installed to a single PC. The PC may be shared by multiple users, if desired.**
2. **Shared – In this mode, the viewer application is installed to several PCs that are connected together on a network. Application data, which includes user profile information and the list of available volume sets, is shared among several users over the network. Even though the data files (e.g. images index records) are available via the network, the individual CD-Rom containing the images must be loaded in order to retrieve a check image.**

Wire Transfers and Drafts:

SunTrust offers Wire Transfer services, when funds must be moved between financial institutions, especially large-dollar items, for immediate availability. Domestic transfers are initiated through the Federal Reserve's Fedwire Service. International wires are transmitted through the Society for Worldwide Interbank Financial Telecommunications (SWIFT) network. Wire Transfers can be initiated in a secure environment by telephone or Online Treasury Manager using Internet access.

Use repetitive transfers for quick and efficient initiation of payment requests. These are frequent transactions to pre-defined bank accounts and will minimize the amount of information you will have to input each time you transfer funds. Your company will provide a "repeat code" or template that corresponds to the full payment instructions along with the dollar amount and settlement date for each transfer.

Use non-repetitive transfers (also referred to as free-form transfers) for less frequent transactions. These transactions require complete input of all payment information including debit account, dollar amount, receiving bank name & address, receiving bank account number and beneficiary name.

1. Describe the method for initiating domestic fedwires, international wires, and foreign-denominated paper drafts.

Outgoing transfers may be initiated by the Internet or telephone. The process for initiation, approval and release is described below. For each method, the last step before release is a check for available funds by the automated account balance monitor. If sufficient funds are available, the outgoing wire transfer is released to the Federal Reserve.

Online Treasury Manager

Our premier wire initiation product, Online Treasury Manager, is a password-protected, fully encrypted method for initiating wires and viewing wire activity. Online Treasury Manager enables clients to initiate domestic and international wires, establish repetitive wires and view activity for the current day, or as far back as 186 days. Because this secure product is Internet-based, authorized personnel can access it from any web enabled location.

Upon logging into Online Treasury Manager and selecting the wire service, you can choose to enter a wire by selecting specific accounts or by selecting a template. After the information has been entered and reviewed, the wire is released according to approval procedures set up by your designated Security Administrator. Online Treasury Manager allows separate and distinct input, approval and release functions by up to three users.

SunTrust bank supplies the check stock for UT-Battelle to initiate foreign denominated paper drafts. UT-Battelle currently uses SunTrust's Online Fx product which is a Web-based application that allows UT-Battelle to initiate drafts and wires in foreign currency.

2. Provide your opening hours and the cut-off times for initiating wire transfers to ensure same-day credit.

Type of Transfer	Input Method (All times are ET)						
	Voice	Online Treasury Manager	Touch-tone Phone	PC	CPU-to-CPU	Fax	Telex
Intra-district (within Fed district)	8:30 a.m. 4:30 p.m.	8:30 a.m. 5:30 p.m.	n/a	n/a	n/a	n/a	n/a
Inter-district (between Fed districts)	8:30 a.m. 4:30 p.m.	8:30 a.m. 5:30 p.m.	n/a	n/a	n/a	n/a	n/a
Book Transfer/ Internal	8:30 a.m. 4:30 p.m.	8:30 a.m. 5:30 p.m.	n/a	n/a	n/a	n/a	n/a
Drawdown	8:30 a.m. 4:30 p.m.	8:30 a.m. 5:30 p.m.	n/a	n/a	n/a	n/a	n/a
International	8:30 a.m. 4:30 p.m.	8:30 a.m. 5:30 p.m. USD 8:30 a.m. 5:00 p.m. Non-USD	n/a	n/a	n/a	n/a	n/a

3. Describe your process for approving and canceling wire transfers.

Approving Wire Transfers

A combination of four elements (Company ID, Company Password, User ID and User Password) is required to access Online Treasury Manager. This service requires users to create a new password when they access the system for the first time. Passwords must consist of at least six characters, which must contain at least one alpha and one numeric character. Users must change their passwords every 30 days. Online Treasury Manager prohibits reuse of the previous six passwords.

The Online Treasury Manager Wire Transfer service requires an additional User ID to process wire transfers. The multiple ID and password authentication for Online Treasury Manager, combined with the tertiary ID for wire transfer initiation provides an additional level of security.

For each account used for wire transfer activity, your Security Administrator will specify the number of approvals required to complete wire transfer requests. You can require 0, 1, 2, or "dynamic" approvals. Dynamic approvals indicate a number of approval levels and a transfer amount range for each. For example, you might require:

- 0 approvals if the transfer amount is under $100.00
- 1 approval if the transfer amount is between $100.01 and $1,000.00
- 2 approvals if the transfer amount is greater than $1,000.00

In addition to account approval settings, your Security Administrator can also specify the number of approvals for a "bank-defined repetitive template." When you use a bank-defined repetitive, these approval settings override the settings used for the account.

Finally, along with the parameters assigned by the Security Administrator, a PIN authenticated by the Central Wire Facility for each unique user is required for the release of a wire transfer request.

Cancel Wire Transfers

To cancel a wire transfer initiated by telephone, your company should call our Central Wire Facility toll-free at 1-800-947-3786. A wire may be cancelled until such time as it is released to the Federal Reserve. After your wire has been released, federal regulations govern recovery procedures. We will be happy to assist you in reversing any wire that has been released prior to your cancellation request.

A wire transfer initiated by Online Treasury Manager may be cancelled by calling the Central Wire Facility. However, most of these transactions are processed without manual intervention. If the wire has already been released to the Federal Reserve or SWIFT network, you will need to follow the procedures for requesting a reversal.

The Central Wire Facility performs wire cancellations on a best efforts basis and success depends on whether it has been released to the Federal Reserve. To cancel a wire, you must call our Central Wire Facility prior to 5:30 p.m. ET on the day of the initiation.

4. Describe your procedure and time frames for modifying outgoing wires.

SunTrust does not allow modification of wires. The client would have to cancel the wire and then re-enter the corrected wire. Please refer to procedures for canceling a wire transfer as outlined under Cancel Wire Transfer.

Depository and Cash Services:

SunTrust offers a highly secure and efficient method of handling your daily cash processing. We offer cash vault deposits, money shipments (coin and currency order fulfillment), and customized reporting and tracking in order to be your source for a complete collection solution. The goal of the cash vault is to provide high quality cash processing services that allow your company to concentrate more resources on sales and less on back-office functions. Our cash vault facilities are strategically located throughout the Southeast and Mid-Atlantic region to ensure convenience to your local offices, and are managed by an experienced staff to ensure delivery of quality service with a high level of security, using the latest technology.

1. Are you an approved depository agency having an established depository agreement with the Treasury's Financial Management System (FMS)?

SunTrust is an approved depository agency that has an established depository agreement with the Treasury's Financial Management System (FMS).

2. Do you have established access to *CashLink*?

SunTrust has established access to CashLink and is currently utilizing it for UT-Battelle.

3. Are you willing to perform the depository requirements outlined in the SOW without additional compensation through the resultant Agreement (acceptance of compensation in full through Treasury Agreement)?

SunTrust is willing to perform the depository requirements as outlined in the SOW without additional compensation through the resulted agreement (acceptance of compensation in full through Treasury Agreement).

4. Describe any requirements you may have related to depository services.

All depository accounts with SunTrust Bank are governed by the Rules and Regulations for Depository Accounts that is outlined in detail in our Rules and Regulations brochure. This brochure has been made available in the Appendix as Exhibit A for further reference.

Monthly Analysis Statement

SunTrust mails analysis statements on the 8th business day after the calendar month end. The statements are bulk mailed to the designated address and include the entire calendar month. The Account Analysis statement is available for access electronically through Electronic Data Exchange (EDI).

Data Mapping Plan (Optional Services):

Provide your proposed Data Mapping Plan.

(1) If you elect to propose on these optional services at no additional charge to the Contractor, discuss your proposed approach for mapping the data to a Contractor-designated file format. Identify any information that the Contractor must provide to you and the timeframe necessary for providing this information.

SunTrust Bank, Inc. does provide Data Mapping Services (custom programming) to convert all input and output data in accordance with specifications as set by Contractor, UT-Battelle. Since SunTrust Bank, Inc. is the current provider of banking services for UT-Battelle, UT-Battelle's

existing files are now formatted to fit the requirements of SunTrust's system. SunTrust Bank, Inc. does not anticipate any file format changes and therefore no additional charges would be incurred. Should UT-Battelle have changes required on their end, additional programming fees could apply. The custom programming fees are billed at $150.00 per hour of services used.

Implementation Plan and Schedule:

Provide your proposed Implementation Plan and Schedule. At a minimum, identify detailed activities to be performed, start and finish dates for the activities, milestones, testing, and the proposed "go live" date.

SunTrust has staffed its Treasury Implementation Organization specifically to assist clients with the implementation of new services. By providing clients a dedicated, highly trained resource, we help ensure a smooth transition for any additions or changes to SunTrust services. To implement your SunTrust services, you will first need to execute the appropriate forms and agreements required for the services you have selected. Your Treasury Management Officer will schedule an initial meeting or conference call between UT-Battelle and the Treasury Implementation Professional. During this meeting, we will outline an implementation plan and address all critical business issues including action steps and responsibilities for both SunTrust and UT-Battelle.

The Treasury Implementation Professional will work with you from receipt of your initial request to complete necessary documentation, work with Operations and conduct training. In addition, they will continue to be your point of contact during an initial warranty period following the setup to help ensure you are satisfied with the process. Once you are comfortable with the service, the Treasury Implementation Professional will transition your servicing relationship to a Client Services Specialist.

OPTIONAL: You may provide any additional information that you deem necessary for the complete and accurate evaluation of your proposal.

Remote Check Capture

With SunTrust Remote Check Capture you can deposit checks as late as 5:30 p.m. ET – without leaving your office. With a scanner right at your desktop, you capture the check images and transmit them electronically to SunTrust. You spend less time at the bank and can spend more time focused on your business.

Once the deposit has been transmitted, an electronic receipt can be printed for your records. Images of deposited items can also be searched within deposits that have been completed.

Payroll Card

SunTrust is offering a Payroll Card solution marketed as a "Bank account in a card" through our partnership with Skylight Financial. Skylight provides pre-approved account based services to employees who currently do not have a banking relationship. The *Skylight account* is an FDIC insured bank account through SunTrust that seamlessly integrates into existing direct deposit/ACH system. Most of Skylight's clients have reduced their payroll distribution and administrative costs by over 80%, in addition the program provides many other benefits to UT-Battelle including:

- **Increased direct deposit participation**
- **Decreased payroll distribution & administrative expenses**
- **Decreased check fraud & escheatments**

The *Skyline account* conveniently offers UT-Battelle employees significant benefits. Most "unbanked" individuals are forced to operate on a cash-and-carry basis. Their expenses to manage their daily financial needs exceed the costs for those who are traditionally banked. The *Skylight account* offers many additional benefits to your employees, to include:

- **Increased financial security**
- **Elimination of check cashing fees**

Access to over two million ATM and point of purchase sales (POS) locations nationwide

4. **Past Performance**

Describe your experience in providing the services identified in the SOW. Describe your experience with the payments-cleared financing method. Identify up to five clients for which you have provided similar services. Include client's name, address, point of contact (name and telephone number), and volume (average number of monthly transactions and dollar value).

SunTrust is currently meeting all the requirements outlined in the SOW as the current provider of Banking Services for UT-Battelle since 1998.

SunTrust is an approved depository agency with an established depository agreement with the Treasury Financial Management Systems (FMS). SunTrust has established access to CashLink. SunTrust currently utilizes the payments-cleared financing arrangement with UT-Battelle. SunTrust is a Treasury approved government deposit insurance organization as identified in I TFM 6-9000. Accordingly, SunTrust posts collateral with the Federal Reserve Bank in amount equal to the net balance of federal funds deposited into UT-Battelle's Master account, less the Treasury approved deposit insurance.

Provided below is a list of clients for which we have provided similar services:

1) BWXT	**Karl Rapp**
1099 Commerce Park	**(865) 576-1796**
Oak Ridge, TN 37830	

***Volume/dollar value of monthly transactions**

2) ORAU	**Luke Keith**
120 Badger Ave.	**(865) 241-1286**

Oak Ridge, TN 37830

***Volume/dollar value of monthly transactions**

3) Bechtel Jacobs **Lela Ford**

PO Box 4699 **(865) 241-1218**

Oak Ridge, TN 37830

***Volume/dollar value of monthly transactions**

***This is proprietary information that SunTrust is unable to disclose on an individual account level.**

These clients are of comparable in size and services to UT-Battelle.

5. **Qualifications and Availability of Key Personnel**

Describe the qualifications and experience of the proposed Key Personnel. Provide the names, physical locations, and contact information (mailing address, telephone number, fax number, and e-mail address) for the Key Personnel. At a minimum, Key Personnel shall include: (1) the person(s) who will serve as the Contractor's point of contact for the day-to-day activities to be performed and (2) the Project Manager(s) (member of Financial Institution's management) who will be responsible for the overall management and administration of the services to be performed and who possesses the authority to assign personnel, as appropriate, to ensure the successful performance of the services. Identify backups/alternates for each Key Person proposed.

Mutual respect is the hallmark of a SunTrust relationship, and we intend to earn your respect by performing to the highest professional standards. Our Relationship Team will bring together the full resources of SunTrust Bank and the benefits of their respective backgrounds and experience to support UT-Battelle, LLC. Your SunTrust Relationship Team includes the following professionals:

Bob Wrather

Senior Vice President

Relationship Manager

Phone: (865) 692-6937

Fax: (865) 692-6943

bob.wrather@suntrust.com

Bob is your main contact for general SunTrust business and is to be considered the Project Manager. He knows your objectives, your accounts and your business requirements. He consults with you about new services, ensuring your continued satisfaction and brings together the right SunTrust specialists to meet your financial needs.

Bob L. Wrather, Senior Vice President, is a life long resident of the Knoxville area, having grown up in Lenoir City. He has lived in Knoxville for over 35 years and he has been in the banking business for 31 years, 23 of those years with SunTrust. The majority of his career has been with the Commercial/Corporate Banking Division which he managed for several years. He has also served as the Regional President for our Loudon County Bank. He attended Middle Tennessee State University and the University of Tennessee and is also a graduate of The Graduate School of Banking of the South (Louisiana State University).

Jean Martinez

Executive Assistant

Phone: (865) 692-6946

Fax: (865) 692-6943

jean.martinez@suntrust.com

Jean is Bob's Assistant as well as his backup person. She will work with you in areas related to your loan or investment activity. In general, she responds to any inquires about your daily account activity, which does not specifically relate to Treasury Management services.

Jean is originally from Florida and moved to Knoxville in 1999. Jean has 16 years of banking service with 15 of those years with SunTrust Bank. She is a graduate of the University of West Florida.

Mona Parsons

Treasury Management

First Vice President

Phone: (865) 692-6903

Fax: (865) 692-6904
mona.parsons@suntrust.com

Mona will consult with you about your business needs to develop a customized Treasury Management solution. Mona coordinates the contributions of the Treasury Management services team and keeps you informed about new services, industry trends and solutions and suggestions to optimize your Treasury Management process.

Mona Parsons, First Vice President, is a Treasury Management Officer in SunTrust's Treasury Management Department. Mona has 34 years of banking experience, 22 of those years with SunTrust.

She began her career at SunTrust Bank in 1984. Prior to joining Treasury Management Services, she was Manager of the Merchant Services Division. She worked with the Governmental/Institutional Banking Division in her role as Manager of SunTrust Merchant Services. For several years prior, Ms. Parsons has held positions with various sales responsibilities. She attended Southside Junior College as well as The University of Tennessee.

Jennifer Hamilton

Treasury Management Analyst

Phone: (865) 692-6954

Fax: (865) 692-6904

jennifer.hamilton@suntrust.com

Jennifer will be Mona's backup and she will be able to consult with you about your Treasury Management needs. In the absence of Mona, she will coordinate any Treasury Management services and answer any question you may have concerning the product offerings and services. Jennifer Hamilton, Treasury Management Analyst, is a Banking Officer of SunTrust Bank. Jennifer has 8 years of experience that have been with SunTrust. She has worked closely with the Treasury Management Officers in handling client relationships with similar SOW requirements as well as in handling problem resolution, pricing analysis and implementing new or changes in services. She is a graduate of the University of Tennessee as well as the University of Phoenix. She holds a Masters of Accounting degree.

Barbara Mahaffey

Client Services Representative

Phone: (865) 692-6965

Fax: (865) 692-6904

barbara.mahaffey@suntrust.com

Vonda Sparks

Administrative Assistant

Phone: (865) 692-6952

Fax: (865) 692-6904

vonda.sparks@suntrust.com

Barbara will coordinate your day-to-day communication with SunTrust. She will help to ensure that our service exceeds your expectations. Also, she will ensure that new services are implemented correctly by SunTrust.

Vonda will help Mona and Jennifer in your Treasury Management needs. She coordinates all activities needed to ensure the process runs smoothly.

Barbara and Vonda each have over 20 years of service with SunTrust. They have excellent working knowledge of treasury management operations and deliver a high level of client service to our Treasury Management clients.

Discuss how the Key Personnel as well as the backups/alternates will be made available to support the SOW requirements.

The key personnel are available to UT-Battelle by either a phone call or email for any need that arises in regard to the SOW requirements or any other problem as are the backups.

6. Bonus Point Criterion

Discuss your ability to allow the Contractor to remain on the cutting edge of technology in order to promote efficiencies, economies, and fraud risk reduction. Provide a brief description of services or changes currently in place, under development, or being considered.

Product Review Team

SunTrust uses a cross-functional Product Review Team (PRT) that has responsibility for identifying new product or product enhancement opportunities, as well as monitoring product quality and client customization, and ensuring that new initiatives are completed on time and within budget. Each PRT meets monthly to discuss the status of its product(s) in these areas. The team consists of representatives from Product Management, Delivery Services and Planning and Operations. SunTrust uses a project management discipline when developing new products and services and includes all of these areas, and others as necessary, on the project team.

The PRT prepares a comprehensive Product Plan annually that assists the team in evaluating SunTrust product capabilities relative to the market. The team also identifies and focuses on any product gaps that exist to ensure that the service is competitively positioned in order to meet the needs of our clients.

The senior managers for each of the member groups meet weekly to address issues that require escalation, to foster the teamwork that is vital among these three functional areas and to monitor the status of active development initiatives for all product areas.

Client Advisory Board

SunTrust Treasury Management Services has also established a Client Advisory Board, made up of clients from 25 member companies from various industries, regions and market segments. The purpose of the board is to maintain a forum for ongoing dialogue with our clients to discuss issues and trends that affect them, to help us understand their expectations and to gain insight into how our product design and planned enhancements fit with their business goals. The Board meets twice annually for 1-1/2 days in a comfortable, collegial setting that encourages participants to feel comfortable expressing their opinions about our current services and future plans. Their feedback has, and will continue to have, a direct and tangible impact on many of our strategic product decisions.

7. Appendix

   A. Resumes Key Personnel

   B. Product Profiles

   C. Exhibit A



Solicitation No. AGS-08
Closing Date October 26, 2005

Part B – Business Proposal

Oak Ridge National Laboratory
ATTN: Ms. Kathy Collins
P.O. Box 2008
Bldg. 1060COM, MS 6293
Oak Ridge, TN 37831

Bob L. Wrather
Senior Vice President
SunTrust Bank, Inc.
7610 Gleason Drive
Knoxville, TN 37919



UT-Battelle, LLC Proposal
Solicitation No. AGS-08
Closing Date October 26, 2005
Amendment No. 1 Dated October 4, 2005
Amendment No. 2 Dated October 18, 2005
Part B – Business Proposal

Table of Contents

1. Executed and signed copy of Technical Representations and Certifications (July 2005).

2. Executed and signed copy of Schedule of Financial Institution Processing Charges.

3. Executed and signed copy of Option.

4. Description of any additional fees, charges, transition costs, etc. to be charged the contractor (UT-Battelle, LLC), their dollar value, and the frequency of their occurrence or statement of no additional fees will be billed the contractor, UT-Battelle, LLC.

5. Statement of any exceptions to proposal.

SOLICITATION NO. AGS-08
TECHNICAL REPRESENTATIONS AND CERTIFICATIONS (Jul 2005)

The Financial Institution makes the following technical representations and certifications as part of its offer to provide service under a payments-cleared financing arrangement. (Check parentheses and complete blanks, as appropriate. All information is necessary.)

1. **Financial Institution Fiscal Information**

   a. The Financial Institution is a ( ) national chartered financial institution (X) state chartered financial institution organized and existing in the State of Georgia.

   b. The Financial Institution (X) maintains ( ) does not maintain an account with a Federal Reserve Bank.

   c. The current (X) Federal ( ) State time deposit reserve requirement for the Financial Institution is 0 %. Normal rate is 10% but waived for UT Battelle.

   d. The Financial Institution (X) insures ( ) does not insure each time account for $100,000 under federally approved deposit insurance. Deposits (X) are ( ) are not insured by a Government deposit insurance organization approved by the Department of the Treasury. Explain negative responses, if any, below.

   e. The Financial Institution (X) has ( ) does not have direct on-line access to the Federal Reserve Communication System (FRCS). Explain negative response, if any, below.

   f. To receive same-day credit from the Federal Reserve, the Financial Institution can ascertain the amount of payments cleared net of the amount of any deposits and submit a payment request through the FRCS by 4:30 p.m. Eastern time.

2. **Minority Business Enterprises**

   a. The Financial Institution ( ) operates (X) does not operate as a minority-owned business enterprise with at least 50 percent ownership by minority group members. (For present purposes, minority group members are Asian Pacific Americans, Black Americans, Hispanic Americans, Indian Tribe, Native Hawaiian Organization, Native American, and Subcontinent Asian American).

   b. The Financial Institution ( ) operates (X) does not operate as a woman-owned business enterprise with at least 50 percent ownership by women members.

3. **Technical**

a. Does the Financial Institution currently service and reconcile an account with a payment volume equal to or exceeding the anticipated volume required by the Contractor as stated in the *Schedule of Financial Institution Processing Charges*?

Service: (x) Yes ( ) No Reconciliation: (x) Yes ( ) No

b. What is the highest number of payments serviced and reconciled for a single account?

Service: Account Reconciliation

Reconciliation: 10,435

Bob L. Wrather
TYPED NAME

SIGNATURE

SunTrust Bank, Inc.
NAME OF FINANCIAL INSTITUTION

October 26, 2005
DATE

CORPORATE SEAL

SOLICITATION NO. AGS-08
OPTION

The Contractor shall have the option to purchase the services described below:

Option No.:	1
Description:	Map data to Contractor-designated file formats
Total Price:	$ 150.00 per hour of service used
Completion Date:	To be completed within 60 calendar days from date of Option exercise

In the event the Contractor does not exercise the above option at the time of award of the Special Financial Institution Account Agreement for Use with the Payments-Cleared Financing Arrangement, or any other date mutually agreed to, the Financial Institution shall be relieved of its obligation to perform these services.

Bob L. Wrather
TYPED NAME

SIGNATURE

SunTrust Bank, Inc.
NAME OF FINANCIAL INSTITUTION

October 26, 2005
DATE

CORPORATE SEAL

Solicitation No. AGS-08
Closing Date October 26, 2005

Part B – Business Proposal

4. Description of any additional fees, charges, transition costs, etc. to be charged the contractor (UT-Battelle, LLC), their dollar value, and the frequency of their occurrence or statement of no additional fees will be billed the contractor, UT-Battelle, LLC.

There will be no additional fees, charges, or transition costs billed unless (1) UT-Battelle implements the contingency plan suggested in lieu of hand carrying a CD to the local branch in the case that the Contractor's file transfer capabilities become interrupted as outlined on page 20 and in question # 2 of Part A of the Technical Proposal or (2) UT-Battelle did have changes, etc. on their file specifications and needed Data Mapping Custom Programming as referred to on page 30 statement # 1 of Part A of the Technical Proposal.

These are the additional charges:

(1) Contingency File Storage: $100.00 @ month

(2) Data Mapping: Custom Programming Fee: $150.00 @ hour of services used billed in the month it occurred

---

Bob L. Wrather
Senior Vice President
SunTrust Bank, Inc.
7610 Gleason Drive
Knoxville, TN 37919

Solicitation No. AGS-08
Closing Date October 26, 2005

Part B – Business Proposal

5. There are **no exceptions** to the proposal for UT-Battelle, LLC.

Bob L. Wrather
Senior Vice President
SunTrust Bank, Inc.
7610 Gleason Drive
Knoxville, TN 37919

SUNTRUST

TREASURY MANAGEMENT MASTER AGREEMENT

1. Introduction. SunTrust Bank offers a full range of treasury management services to our clients. Throughout this master agreement, (a) SunTrust Bank is referred to as "we," "us" or "our," (b) the treasury management services described in our treasury management terms and conditions referred to below are referred to as the "services," (c) this master agreement and the other documents described below are together referred to as the "agreement," (d) the person or entity using one or more of the services is referred to as "you" or "your" and (e) the individuals identified in any resolution, certificate, delegation of authority or other document that you have given us as having authority to enter into or amend the agreement on your behalf are referred to as your "authorized signers."

When you sign this master agreement you are agreeing to be bound by the terms and conditions of the agreement. The agreement is a legally binding contract that can only be changed as provided in this master agreement.

2. Organization of Agreement. As indicated above, the agreement is made up of several documents, each of which serves a special purpose. The relevant documents and their purposes are as follows:

(a) Treasury Management Terms and Conditions. Our treasury management terms and conditions fall into two categories (i) the general terms and conditions that govern the use of all services and (ii) the specific terms and conditions that govern the use of each individual service. The most recent version of our treasury management terms and conditions is always posted on the following website: www.suntrust.com/treasuryterms. You may access it at any time by visiting the site and opening the document with the password we have given you. We will also give you a printed copy of the current version of those terms and conditions upon request.

(b) Master Agreement. This master agreement describes the structure of the agreement and sets forth certain of the basic contractual provisions relating to your use of the services.

(c) Reference Materials. The reference materials for a service provide details regarding the functionality of that service, as well as certain formatting and other technical requirements that you must follow when using that service. Reference materials may include, without limitation, a user manual, a quick reference guide, a service demo and/or file formats and specifications. Not every service has reference materials.

(d) Delegation of Authority. A delegation of authority is optional. By using one, you are giving other people within your company authority with respect to the agreement and/or the services.

(e) Service Profiles. A service profile reflects certain instructions you give us regarding your setup for a particular service, such as the account(s) linked to that service, the authorized users for that service and the options you select for that service.

(f) Implementation/Setup Forms. An implementation/setup form is an internal document that we use to record additional information and/or instructions you give us with respect to a particular service.

(g) Online Services and Software Materials. We may grant to you a nonexclusive, nontransferable, limited license or sublicense to use one or more software programs in connection with certain services. There may be a separate license agreement (which may be a "shrink wrap" or "click wrap" agreement and may be with us or a third-party vendor) and/or user manual for some of those software programs. Those software programs and those other items are all part of the software materials. There may also be additional online or "click wrap" terms for the use of the online services. The agreement, online terms and any applicable separate license agreement and user manual set forth the terms and conditions relating to your right to use those online services and software programs as well as important instructions and requirements for their use.

(h) Rules and Regulations. The rules and regulations for deposit accounts that you maintain with us set forth certain general provisions relating to the establishment, maintenance and operation of your deposit accounts.

If there is any inconsistency on a particular issue among the documents that make up the agreement, the documents will control that particular issue in the order set forth from top to bottom above.

Notwithstanding the above, for any accounts of UT-Battelle, LLC which are subject to the Special Financial Institution Account Agreement For Use With The Payments-Cleared Financing Arrangement between the United States of America, represented by the Department of Energy, UT-Battelle, LLC, and SunTrust Bank, dated January 30, 2008, as amended (the "Account Agreement"), if there is any inconsistency on a particular issue between this agreement and the Account Agreement, the Account Agreement will control that particular issue.

3. Amendments. We may change or add to the provisions of this master agreement and any of the general terms and conditions by giving you 30 calendar days' prior notice. We may change or add to the terms and conditions for any individual service by giving you 10 calendar days' prior notice. We may change the information in the implementation/setup forms without giving you notice. If you continue to use a service after any of these changes or additions become effective (or you earlier confirm a service profile for an affected service), you are bound by those changes or additions. If a change or addition is required by applicable law, clearing house rules or funds transfer system rules, or if we believe that the change or addition is necessary for the security or integrity of the systems that we use in providing any services for you, we may give you notice of the change or addition promptly after we make it. In that case, you are bound by the change or addition unless you terminate your use of the relevant service(s) immediately after you receive our notice. We may change or add to the terms of the software materials or the rules and regulations by following the procedures set forth in those documents.

4. New Services. If we agree to provide a new service for you, we will create one or more service profiles reflecting certain instructions you give us regarding your setup for that new service and send or otherwise make them available to you. You may not use that service until you have confirmed (in a manner acceptable to us) that those service profiles are correct, you have successfully completed any required testing or training for that service and we have completed our implementation of your setup for that service. If you attempt to use a new service without satisfying one or more of these conditions, we may refuse to provide that service but, if we do provide it, you are bound by the terms of the agreement relating to that service (including, without limitation, the general terms and conditions and the terms and conditions for that new service).

5. Changes to Your Setup. If we agree to change your setup for a service in response to your instructions and those instructions are of the type reflected on a service profile, we will send or otherwise make one or more service profiles reflecting those instructions available to you. That change will not take effect until you have confirmed (in a manner acceptable to us) that those service

profiles are correct, you have successfully completed any required testing or training for the change and we have completed our implementation of the change. In that regard, changes to your setup for a service reflected on a service profile will be implemented either on an "incremental" basis or a "complete replacement" basis, as reflected and to the extent indicated in the service profile.

If a change is implemented to your setup for a service on an incremental basis, that change supplements (as an addition, deletion or modification), but does not replace, the information in your setup for that service. For example, if an incremental service profile indicates that it adds a new authorized user for a service, all existing authorized users for that service continue to be authorized users unless you specifically request that we delete one or more of them and that deletion is reflected in a separate service profile that you confirm (in a manner acceptable to us).

If a change is implemented to your setup for a service on a complete replacement basis, the information identified in that service profile completely replaces the information in your setup for that service, to the extent indicated in that service profile. In that regard, information can be completely replaced (a) only for the account(s) identified on the service profile, (b) only for the combination of the account(s) and linked feature(s) of the service identified on the service profile or (c) for all accounts using the service.

For example, if a service profile indicates that it completely replaces all of your previous service profiles for a service with respect to the account(s) identified in that service profile, then only the authorized users identified in that service profile are authorized to use the service with respect to the identified account(s). However, none of your service profiles for other accounts using that service are affected and all authorized users listed on them continue to be authorized users with respect to those other accounts.

Alternatively, if a service profile indicates that it completely replaces all of your previous service profiles for the combination of an account and lockbox identified in that service profile, then only the image delivery option(s) selected in that service profile will be provided with respect to the combination of the identified account and lockbox. However, none of your service profiles for other combinations of accounts and lockboxes for that service are affected and all image delivery options selected in them will continue to be provided with respect to those other combinations of accounts and lockboxes

Finally, if a service profile indicates that it completely replaces all of your previous service profiles for a service, then only the options identified in that service profile will apply with respect to any of your accounts using that service. None of your previous service profiles for that service are effective and none of the options identified on them will apply with respect to any of your accounts using the service.

We may refuse to accept letters, e-mails or other forms of communication that instruct us to change your setup for a service if those instructions are of the type reflected on a service profile. However, you agree that we may (at our option) accept an e-mail that purports to be from one of your authorized signers and that instructs us to delete one or more accounts from your setup for a service without requiring you to confirm a service profile reflecting that instruction.

6. Electronic Records and Signatures. You consent to the use of electronic records and signatures with respect to your use of the services. Without limiting the types of electronic signatures we may accept, you agree that, if we elect (at our option) to send a service profile to you as an attachment to an e-mail message, you (a) will be deemed to have confirmed that service profile is correct if we receive an e-mail message to that effect that purports to be from one of your authorized signers, (b) adopt that e-mail message as your electronic signature with the intent to sign that service profile and (c) will be bound by that service profile to the same extent as if one of your authorized signers had printed, signed and given it to us.

7. Acknowledgement of Receipt and Agreement to be Bound. By signing below (and each time you confirm a service profile), you acknowledge that you have received (or have been given electronic access, including the necessary password, to) a complete copy of, and that you have read, understand and agree to be bound by all provisions of our treasury management terms and conditions (including, without limitation, those that **(a) limit our liability to you, (b) obligate you to indemnify us, (c) authorize us to rely on authorization codes, (d) waive the right to a jury trial and (e) require binding arbitration**) in the form and with the content then posted on the identified website (as we may update them from time to time) with respect to your use of all services.

Signature. This master agreement has been signed and delivered (which you agree may be by facsimile or e-mail attachment) on your behalf by the person whose name is printed below. That person represents and warrants to us that he or she is one of your authorized signers and that you have taken all action required by your organizational documents to authorize him or her to sign and deliver this master agreement (and any other documents we may require with respect to the services) on your behalf. The agreement completely replaces any other ones you have given us in the past with respect to the services, except that any instructions you have given us under any such past agreements continue to be effective until replaced or deleted in accordance with the agreement (including, without limitation, through a service profile or an implementation/setup form).

Client Name: UT-Battelle, LLC

Authorized Signer: J Scott Br

Print Name: J. Scott Branham

Print Title: Chief Financial Officer

Address: **OAK RIDGE NATIONAL LABORATORY**
PO BOX 2008 MS6231
OAK RIDGE TN 37831-6231

E-Mail: **Building: 4500N Room: J256 Mail Stop: 6231**
Branhams@ornl.gov

Phone: **Phone: 865-241-7614**
Fax: 865-576-8346

Fax:

Date: 5/23/12

Schedule of Financial Institution Processing Charges

Service	Account Analysis Monthly Price
DEMAND DEPOSIT SERVICES	
Collection Items - Incoming	$22.0000
Account Maintenance - Monthly	$17.0000
Deposits Credited	$0.8000
Electronic Credits Posted	$0.1100
Electronic Debits Posted	$0.1100
Other Miscellaneous Debits	$0.1100
Items Deposited	$0.1100
ZERO BALANCE SERVICE	
ZBA Master Account	$25.0000
ZBA Sub Account	$10.0000
CONTROLLED PAYMENT SERVICES	
Controlled Payment-Mth Maint	$60.0000
Control Payment-Checks Paid	$0.1100
CPR Auto D/T To Bank/Tran	$6.0000
CPR Auto D/T To Bank/Rcrd	$0.0100
Control Payment - Mismatches	$1.0000
CNTL PYMT Issues - Bank Created	$15.00
CPR Returned Item	$10.0000
BRANCH/NIGHT DEPOSIT SERVICES	
Branch Cash OTC Deposit/$1000	$2.00
Branch Curr Ord/Strap	$0.00
Branch Coin Order/Roll	$0.00
Branch Curr Ord/Partial Strap	$0.30
CASH VAULT SERVICES	
Cash Vault Monthly Maint 1 LOC	$35.0000
ARP SERVICES	
Partial Recon- Base Fee	$60.0000
ARP Auto D/T to Client/Trans	$5.0000
ARP Auto D/T to Client/Rcrd	$0.0150
IMAGE DELIVERY SERVICES	
CD -ROM Premium CD	$32.0000
CD-ROM Images Per Item	$0.0425
ONLINE COURIER	
OLC DDA Statement	$5.0000
OLC ACH Returns Report	$3.0000
ACH SERVICES	
ACH Monthly Maintenance	$10.0000
ACH Calendar Monitoring Fee	$20.0000
ACH File Transmissions, Self	$9.0000
ACH File Transmissions, Vendor File	$8.0000
Consumer PPD Credits Originated	$0.0400
Consumer PPD Debits Originated	$0.4000
ACH Addenda Orig	$0.0200
Corp Credits Orig CCD,CCD+CTX	$0.0400
ACH Fax Page	$1.0000
ACH Return Item	$3.0000
ACH NOC Item	$0.0000
ACH Exception Processing	$10.0000
ACH Reversals - Item	$3.0000
OTM ACH Batch Processing Fee	$5.0000
OTM ACH Addenda Originated	$0.0150
OTM ACH Corp Pymts Credits Orig	$0.0400
ACH Exception Processing	$10.0000
ACH FRAUD CONTROL	
AFC Fraud Cntrl Monthly Main	$15.0000

Account Analysis	
Service	**Monthly Price**
DEMAND DEPOSIT SERVICES	
EDI SERVICES	
EDI Origination Per 1000 Characters	$0.500
EDI Auto D/T to Suntrust/Trans	$6.0000
EDI Auto D/T to SunTrust/Rcrd	$0.0100
EDI Translated Rpt-Per Item	$1.0000
EDI Translated Rpt-Faxed Pages	$1.0000
EDI 820 Orig Maint	$100.0000
WIRE TRANSFER SERVICES	
Wire Trsf Monthly Maint/Acct	$5.0000
Draw Down Request	$5.0000
W/T Branch/Dept Initiated	$8.0000
W/T Out Non-REP (OTM PC WIRE)	$5.5000
W/T Out Non-REP (OPER ASSIST)	$8.0000
W/T Internal Non-Rep OTM Wire	$6.0000
W/T Incoming	$5.0000
W/T Tracer/Reversal	$20.0000
W/T Internal Rep OTM Wire	$5.0000
ONLINE TREASURY MANAGER	
OTM/OLC Maintenance Fee	$60.0000
OTM/OLC Prior Day Service/Per Month	$5.0000
OTM/OLC Prior Day Acct Maint/Per Acct	$5.0000
OTM/OLC Prior Day Detail/ Per Item (1-2500)	$0.0250
OTM/OLC Prior Detail/Per Item (2501-7500)	$0.0250
OTM/OLC CUR Same Day Service / Per Month	$5.0000
OTM/OLC CUR Day Acct Maint/Per Acct	$5.0000
OTM/OLC CUR Same Day Detail/Per Item	$0.0250
OTM/OLC Special Report Service/ Per Month	$10.0000
OTM/OLC CPR - Report(s)/Per Day	$1.0000
Stop Service / Per Month	$12.0000
ACH Service / Per Month	$20.0000
Wire Service / Per Month	$15.0000
Acct Transfer/Per Transfer	$1.0000
Image Item Retrieval/Per Image (1-50)	$0.7500
Image Item Retrieval/Per Image (51+)	$0.7500
INTERNATIONAL SERVICES	
Intl W/T Out Non-Rep USD OTM	$5.0000
Intl W/T Trace/Reverse/Amend	$30.0000
Intl Incoming Wire Transfer	$16.0000
Intl Outgoing Wire Transfer	$10.0000
GENERAL ACCOUNT SERVICES	
Misc Service Debit Adjustment	$0.0000
OTHER SERVICE DESCRIPTIONS	
ACH Deletions - Item	$10.0000
ACH Deletions - Batch or File	$10.0000
Credit Reference - Manual	$15.0000
Credit Reference - Electronic	$10.0000
Overdraft Items Paid	$38.0000
Collection Items - Outgoing	$22.0000
Internal Wire Transfer Credit	$2.5000
Stop Pymt - per stop module	$8.0000

Note: other fees may be charged as new services or processes are implemented.

SUNTRUST

Service Glossary

Service Code	Service Description	Definition
9	Negative Collected Charge	Rate-based charge assessed for maintaining a negative collected balance for one or more days during the analysis period.
35	Deposit Assessment Per $1000	
3005	Other Miscellaneous Debits	Charge for posting a debit to an account
3021	Account Maintenance - Monthly	Fixed charge for maintaining a demand deposit account.
3220	Deposits Credited	Charge for handling and posting a deposit consisting of any combination of coin, currency, checks, food stamps or merchant card drafts
3267	Electronic Debits Posted	Charge for posting an incoming ACH debit to an account.
3268	Electronic Credits Posted	Charge for posting an incoming ACH credit to an account.
3651	Items Deposited	Charge for depositing a check into a SunTrust account. This is a per item fee regardless of where the item is drawn.
3835	Overdraft Items Paid	
3845	Overdraft Itm Paid Not Charged	
3855	Overdraft Item Paid - Waived	
9291	Branch Cash OTC Deposit/$1000	Charge for processing cash over the counter at the bank's branch office.
12264	Cash Vault Monthly Maint 1 Loc	Monthly Maintenance fee for Cash Vault clients with 1 location.
33269	Control Payment-Checks Paid	Per item charge for item paid against CPR accounts.
33270	Controlled Payment-Mismatches	Per item charge for handling checks drawn on a CPR account that do not match issue records as provided by the client. Some mismatches are a result of paid-no-issue records (PNIs), while other result from encoding errors. Clients are charged for all mismatch item types. Client payment approval (i.e. pay or return) for each mismatch.
33271	Controlled Payment-Mth Maint	Fixed charge for the maintenance of a CPR account. CPR is a same day Positive Pay service with daily matching by the bank of checks presented against the client's check issuance information before payment is made. Mismatch checks are paid / posted or returned, based on the client instructions. Default instructions are enacted if a mismatch payment decision is not received by the decision deadline.
33276	CPR Returned Item	Charge for Returning a Controlled Payment Item, applied to all region/groups
33307	CPR Auto D/T To Bank/Tran	Charge for receiving information from client via a transmission platform not requiring manual intervention. Client requirements and/or communications capabilities dictate the transmission platform. SuperTracs is an example of unattended transmission.
33308	CPR Auto D/T To Bank/Rcrd	Charge for receiving each record of information from client via a transmission platform not requiring manual intervention.
36654	ZBA Master Account	Charge for maintaining zero balance services at the master account level.
36655	ZBA Sub Account	Charge for maintaining zero balance services at the sub-account level.
40381	CD-ROM Premium CD	The CD-ROM Premium CD fee is accessed for the processing of the checks and storage in order to create the CD-ROM deliverable.
40383	CD ROM Images Per Item	The CD-ROM Images Per Item fee is accessed for the processing of the checks in order to create the CD-ROM deliverable.
45320	Wire Trsf Monthly Maint/Acct	Charge for providing funds transfer services. This is a fixed charge that encompasses the cost of maintaining account information on the wire database including repeat codes, standing orders, etc.
45343	W/T Incoming	Charge for handling and posting a Fedwire transfer received for the customer' s account.
45435	Draw Down Request	Charge for initiating a request by telephone to send a Fed message to another bank requesting that a wire transfer be initiated and sent back to credit the client's SunTrust account.
48379	ACH Addenda Orig	Charge for processing reference information associated with the origination of an ACH transaction; charged per-record.
48383	ACH Return Item	Charge for an originated ACH debit or credit transaction returned via the ACH network that is charged back to the originating company's account.

Service Code	Service Description	Definition
48384	ACH NOC Item	Charge for the receipt of a notification of change (NOC) on an ACH transaction originated.
48439	ACH Monthly Maintenance	Per settlement account monthly maintenance for ACH services.
48447	ACH File Transmissions, Self	Per file charge for processing an ACH file sent by direct transmission.
48449	ACH File Transmission, Vendor File	Charge for processing an ACH file from a third party vendor
48458	Consumer PPD Credits Originated	Per-credit charge for processing a PPD (consumer) ACH credit transaction originated by the client.
48460	Corp Credits Orig CCD,CCD+CTX	Per-credit charge for processing a corporate (CCD, CCD+, CTX) credit originated.
54370	ACH Fraud Cntrl Monthly Maint	Monthly maintenance fee per account for accounts set up with ACH Fraud Control (full blocks or authorization filters)
63209	ARP Auto D/T To Client/Tran	Charge for sending information to a client via a transmission platform not requiring manual intervention. Client requirements and/or communications capabilities dictate the transmission platform. SuperTracs is an example of unattended transmission.
63210	ARP Auto D/T To Client/Rcrd	Charge for sending each record of information to a client via a transmission platform not requiring manual intervention.
63455	Partial Recon - Base Fee	Fixed charge for providing partial reconciliation services. Reports provided to the client may include, but are not limited to, a bank statement, listing of paid items, as well as stop payments placed / on file.
73254	OTM/OLC Maintenance Fee	Monthly product access fee applied to each OTM company ID.
73256	OTM/OLC Prior Day Serv/Pr Mnth	Monthly module access fee applied to each OTM company ID with the PRIOR day reporting module.
73258	OTM/OLC Prior Day Per Ac Maint	Monthly account maintenance fee for each account set up for PRIOR day detail and summary information. The same price applies for all Tiers.
73260	OTM/OLC Prior Day Per Item Dtl	Charge applied to each Prior day detail item (transaction) loaded for each OTM company ID. The same price applies for all Tiers.
73262	OTM/OLC Cur Day Serv/Per Mnth	Monthly module access fee applied to each OTM company ID with the SAME day reporting module.
73264	OTM/OLC Cur Day Per Acct Maint	Monthly account maintenance fee for each account set up for SAME day detail and summary information. The same price applies for all Tiers.
73266	OTM/OLC Cur Day Per Item Dtl	Charge applied to each SAME day detail item (transaction) loaded for each OTM company ID. The same price applies for all Tiers.
73268	OTM/OLC Special Rpt Mnth Maint	Monthly module access fee applied to each OTM company ID with the Special Reports module.
73279	OTM/OLC CPR-Rpt(S)/Per Rpt	Fee charged each day a CPR report is loaded for each account (if reported seperately) or for multiple accounts (if reported in a consolidated format).
73280	Stop Service/Per Month	Monthly charge per Company ID for stop payment module.
73284	ACH Service/Per Month	ACH Module Fee
73290	Wire Service/Per Month	Monthly charge per Company ID for wire transfer module
73294	Image Item Retrieval/Per Image	Charge each image pulled and viewed on OTM.
73297	OLC DDA Statement	Charge for electronic DDA Statements available through Online Courier.
73298	OLC Analysis Statement	Charge for electronic Account Analysis Statements available through Online Courier
73401	OTM ACH Coll Appl Mthly Fee	N/A
73402	OTM ACH Batch Processing Fee	Charged for each collection application processed per processing window, regardless of the number of batches/files sent in each window.
73405	OTM ACH Addenda Originated	Charged for each ACH addenda record created
73408	OTM ACH Corp Pymts Credits Orig	Per-credit charge for processing a corporate - CCD, CCD+ (including Tax Payments) - ACH credit transaction originated by the client via OTM.
73412	OLC ACH Returns Report	Fee charged for ACH Returns Report available through Online Courier.
73502	Intl W/T Out Non-Rep USD OTM	Charge for processing an OTM-initiated, non-repetitive wire payment to a foreign benificiary, denominated in a U.S. currency. With non-repetitive transfers the debit account, transferred dollar amount, and the credit instructions may vary.
73505	W/T Out Non-Rep (OTM PC Wire)	Charge for processing a domestic non-repetitive wire transfer initiated through OTM.

Service Code	Service Description	Definition
73507	W/T Internal Non-Rep OTM Wire	Charge for posting and handling an OTM-initiated transfer received for the customer's account from another account within the bank. With non-repetitive transfers, the debit account, transferred dollar amount, and the credit instructions may vary.
78428	EDI Translated Rpt-Faxed Page	Charge for providing EDI reports via facsimile.
78871	EDI Origination Per 1000 Char	Charge for processing formatted payment information from the customer and translating it into an ACH transaction or check printing file.
78873	EDI Translated Rpt-Per Item	Charge per transaction for providing remittance information to customer via mail, fax,or secure email.
78907	EDI Auto D/T To Suntrust/Trans	Charge for electronic file transmission from client, per transmission.
78908	EDI Auto D/T To Suntrust/Rcrd	Charge for electronic file transmission from client, per record transmitted.
78950	EDI 820 Orig Maint	Monthly fee for providing EDI electronic file services.

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

APPENDIX G

PERFORMANCE EVALUATION AND MEASUREMENT PLAN

Attached to this Appendix G is the current Performance Evaluation and Measurement Plan.



STANDARDS OF PERFORMANCE-BASED FEE

FY 2021

UT-BATTELLE
PERFORMANCE EVALUATION
AND MEASUREMENT PLAN

Management and Operation of the
Oak Ridge National Laboratory

October 2020–September 2021

Approval Page

Thomas Zacharia
President and Chief Executive Officer
UT-Battelle, LLC

2/10/2021
Date

Date: 2021.02.15 18:37:57 -05'00'

Johnny O. Moore
ORNL Site Office Manager
U.S. Department of Energy

Date

JUDSON KINGMAN Digitally signed by JUDSON KINGMAN Date: 2021.02.17 08:06:36 -05'00'

Judson A. Kingman
Contracting Officer
U.S. Department of Energy

Date

HOLLY ALEMAR Digitally signed by HOLLY ALEMAR Date: 2021.02.11 09:08:22 -05'00'

Holly Alemar
Contracting Officer
U.S. Department of Energy

Date

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INTRODUCTION

This document, the Performance Evaluation and Measurement Plan (PEMP), primarily serves as DOE's Quality Assurance/Surveillance Plan (QASP) for the evaluation of UT-Battelle, LLC (hereafter referred to as "the Contractor") performance regarding the management and operations of Oak Ridge National Laboratory (hereafter referred to as "the Laboratory") for the evaluation period from October 1, 2020, through September 30, 2021. The performance evaluation provides a standard by which to determine whether the Contractor is managerially and operationally in control of the Laboratory and is meeting the mission requirement and performance expectations/objectives of the Department as stipulated within this contract.

This document also describes the distribution of the total available performance-based fee and the methodology for determining the amount of fee earned by the Contractor as stipulated within the clauses entitled, "Determining Total Available Performance Fee and Fee Earned," "Conditional Payment of Fee, Profit, or Incentives," and "Total Available Fee: Base Fee Amount and Performance Fee Amount." In partnership with the Contractor and other key customers, the Department of Energy (DOE) Headquarters (HQ) and the Site Office have defined the measurement basis that serves as the Contractor's performance-based evaluation and fee determination.

The Performance Goals (hereafter referred to as Goals), Performance Objectives (hereafter referred to as Objectives) and set of notable outcomes discussed herein were developed in accordance with contract expectations set forth within the contract. The notable outcomes for meeting the Objectives set forth within this plan have been developed in coordination with HQ program offices as appropriate. Except as otherwise provided for within the contract, the evaluation and fee determination will rest solely on the Contractor's performance within the Performance Goals and Objectives set forth within this plan.

The overall performance against each Objective of this performance plan, to include the evaluation of notable outcomes, shall be evaluated jointly by the appropriate HQ office, major customer and/or the Site Office as appropriate. This cooperative review methodology will ensure that the overall evaluation of the Contractor results in a consolidated DOE position taking into account specific notable outcomes as well as all additional information available to the evaluating office. The Site Office shall work closely with each HQ program office or major customer throughout the year in evaluating the Contractor's performance and will provide observations regarding programs and projects as well as other management and operation activities conducted by the Contractor throughout the year.

Section I provides information on how the performance rating (grade) for the Contractor, as well as the performance-based incentives fee earned (if any), will be determined. As applicable, also provides information on the award term eligibility requirements.

Section II provides the detailed information concerning each Goal, its corresponding Objectives, and notable outcomes identified, along with the weightings assigned to each Goal and Objective and a table for calculating the final grade for each Goal.

I. DETERMINING THE CONTRACTOR'S PERFORMANCE RATING, PERFORMANCE-BASED FEE AND AWARD TERM ELIGIBILITY (as applicable)

The FY 2021 Contractor performance grade for each Goal will be determined based on the weighted sum of the individual scores earned for each of the Objectives described within this document for Contractor/Laboratory Leadership and for Management and Operations (M&O). For each Science and Technology (S&T) Goal, an initial weighted sum will be calculated analogously for each evaluating office, and a cost-based weighted sum of these initial sums will determine the Contractor performance

grade. Each Goal is composed of two or more weighted Objectives. Additionally, a set of notable outcomes has been identified to highlight key aspects/areas of performance deserving special attention by the Contractor for the upcoming fiscal year. Each notable outcome is linked to one or more Objectives, and failure to meet expectations against any notable outcome will result in a grade less than B+ for that Objective(s). That is, if the contractor fails to meet expectations against a notable outcome tied to an Objective under Goal 1.0, 2.0, or 3.0, the SC program office that assigned the notable outcome shall award a grade less than "B+" for the Objective(s) to which the notable outcome is linked; and if the contractor fails to meet expectations against a notable outcome tied to an Objective under Goal 4.0, 5.0, 6.0, 7.0 or 8.0, SC shall award a grade less than "B+" for the Objective(s) to which the notable outcome is linked. Performance above expectations against a notable outcome will be considered in the context of the Contractor's entire performance with respect to the relevant Objective. The following section describes SC's methodology for determining the Contractor's grades at the Objective level.

Performance Evaluation Methodology:
The purpose of this section is to establish a methodology to develop grades at the Objective level. Each evaluating office shall provide a proposed grade and corresponding numerical score for each Objective (see Figure 1 for SC's scale). Each evaluation will measure the degree of effectiveness and performance of the Contractor in meeting the corresponding Objectives.

Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F
Total Score	**4.3-4.1**	**4.0-3.8**	**3.7-3.5**	**3.4-3.1**	**3.0-2.8**	**2.7-2.5**	**2.4-2.1**	**2.0-1.8**	**1.7-1.1**	**0.8-1.0**	**0.7-0**

Figure 1. FY 2021 Contractor Letter Grade Scale

For the three S&T Goals (1.0 – 3.0) the Contractor shall be evaluated against the defined levels of performance provided for each Objective under the S&T Goals. The Contractor performance under Goal 4.0 will also be evaluated using the defined levels of performance described for the four Objectives under Goal 4.0. The descriptions for these defined levels of performance are included in Section II.

It is the DOE's expectation that the Contractor provides for and maintains management and operational (M&O) systems that efficiently and effectively support the current mission(s) of the Laboratory and assure the Laboratory's ability to deliver against DOE's future needs. In evaluating the Contractor's performance DOE shall assess the degree of effectiveness and performance in meeting each of the Objectives provided under each of the Goals. For the four M&O Goals (5.0 – 8.0) DOE will rely on a combination of the information through the Contractor's own assurance systems, the ability of the Contractor to demonstrate the validity of this information, and DOE's own independent assessment of the Contractor's performance across the spectrum of its responsibilities. The latter might include but is not limited to operational awareness (daily oversight) activities; formal assessments conducted; "For Cause" reviews (if any); and other outside agency reviews (OIG, GAO, DCAA, etc.).

The mission of the Laboratory is to deliver the science and technology needed to support Departmental missions and other sponsors' needs. Operational performance at the Laboratory meets DOE's expectations (defined as the grade of B+) for each Objective if the Contractor is performing at a level that fully supports the Laboratory's current and future science and technology mission(s). Performance that does, or has the potential to, 1) adversely impact the delivery of the current and/or future DOE/Laboratory mission(s), 2) adversely impact the DOE and or the Laboratory's reputation, or 3) fail to provide the competent people, necessary facilities and robust systems necessary to ensure sustainable performance, shall be graded below expectations as defined in Figure I-1, below.

The Department sets our expectations high and expects performance at that level to optimize the efficient and effective operation of the Laboratory. Thus, the Department does not expect routine Contractor performance above expectations against the M&O Goals (5.0 – 8.0). Performance that might merit grades above B+ would need to reflect a Contractor's significant contributions to the management and operations at the system of Laboratories, or recognition by external, independent entities as exemplary performance.

Definitions for the grading scale for the Goal 5.0 – 8.0 Objectives are provided in Figure I-1, below:

Letter Grade	Numerical Grade	Definition
A+	4.3-4.1	Significantly exceeds expectations of performance against all aspects of the Objective in question. The Contractor's systems function at a level that fully supports the Laboratory's current and future science and technology mission(s). Performance is notable for its significant contributions to the management and operations across the SC system of laboratories, and/or has been recognized by external, independent entities as exemplary.
A	4.0-3.8	Notably exceeds expectations of performance against all aspects of the Objective in question. The Contractor's systems function at a level that fully supports the Laboratory's current and future science and technology mission(s). Performance is notable for its contributions to the management and operations across the SC system of laboratories, and/or has been recognized by external, independent entities as exemplary.
A-	3.7-3.5	Exceeds expectations of performance against all aspects of the Objective in question. The Contractor's systems function at a level that fully supports the Laboratory's current and future science and technology mission(s).
B+	3.4-3.1	Meets expectations of performance against all aspects of the Objective in question. The Contractor's systems function at a level that fully supports the Laboratory's current and future science and technology mission(s). No performance has, or has the potential to, adversely impact 1) the delivery of the current and/or future DOE/Laboratory mission(s), 2) the DOE and/or the Laboratory's reputation, or does not 3) provide a sustainable performance platform.
B	3.0 -2.8	Just misses meeting expectations of performance against a few aspects of the Objective in question. In a few minor instances, the Contractor's systems function at a level that does not fully support the Laboratory's current and future science and technology mission or provide a sustainable performance platform.
B-	2.7-2.5	Misses meeting expectations of performance against several aspects of the Objective in question. In several areas, the Contractor's systems function at a level that does not fully support the Laboratory's current and future science and technology mission or provide a sustainable performance platform.
C+	2.4-2.1	Misses meeting expectations of performance against many aspects of the Objective in question. In several notable areas, the Contractor's systems function at a level that does not fully support the Laboratory's current and future science and technology mission or provide a sustainable performance platform, and/or have affected the reputation of the Laboratory or DOE.
C	2.0-1.8	Significantly misses meeting expectations of performance against many aspects of the Objective in question. In many notable areas, the Contractor's systems do not support the Laboratory's current and future science and technology mission, nor provide a sustainable performance platform and may affect the reputation of the Laboratory or DOE.
C-	1.7- 1.1	Significantly misses meeting expectations of performance against most aspects of the Objective in question. In many notable areas, the Contractor's systems demonstrably hinder the Laboratory's ability to deliver on current and future science and technology mission and have harmed the reputation of the Laboratory or DOE.

Letter Grade	Numerical Grade	Definition
D	1.0-0.8	Most or all expectations of performance against the Objective in question are missed. Performance failures in this area have affected all parts of the Laboratory; DOE leadership engagement is required to deal with the situation and help the Contractor.
F	0.7-0	All expectations of performance against the Objective in question are missed. Performance failures in this area are not recoverable by the Contractor or DOE.

Figure I-1. Letter Grade and Numerical Grade Definitions for Objectives under M&O Goals

Calculating Individual Goal Scores and Letter Grades:
Each Objective is assigned the earned numerical score by each evaluating office as stated above. For an evaluating office, the Goal score is then computed by multiplying each Objective numerical score under that Goal by the weight assigned to that Objective by that office, and then adding these values together. For Goals 4.0-8.0, this determines the overall Goal score. For Goals 1.0-3.0, the overall Goal score is calculated by multiplying each evaluating office's Goal score by the office's cost-based weight, and then adding them. For the purpose of determining the eight Goal grades, the unrounded raw overall numerical score for each Goal will be rounded to the nearest tenth of a point using the standard rounding convention discussed below following Figure 2, and then will be compared to Figure 1. A set of tables is provided at the end of each Performance Goal section of this document to assist in the calculation from Objective numerical scores to the Goal grade. No overall rollup grade shall be provided.

The eight Performance Goal grades shall be used to create a report card for the laboratory (see Figure 2, below).

Performance Goal	Grade
1.0 Mission Accomplishment	
2.0 Design, Fabrication, Construction and Operations of Research Facilities	
3.0 Science and Technology Program Management	
4.0 Sound and Competent Leadership and Stewardship of the Laboratory	
5.0 Integrated Safety, Health, and Environmental Protection	
6.0 Business Systems	
7.0 Operating, Maintaining, and Renewing Facility and Infrastructure Portfolio	
8.0 Integrated Safeguards and Security Management and Emergency Management Systems	

Figure 2. Laboratory Report Card

Although rounded to convert to letter grades, the unrounded raw numerical score from each calculation shall be carried through to the next stage of the calculation process. The unrounded raw numerical score for weighted final S&T and weighted final M&O will be rounded to the nearest tenth of a point for purposes of determining fee. A standard rounding convention of x.44 and less rounds down to the nearest tenth (here, x.4), while x.45 and greater rounds up to the nearest tenth (here, x.5).

Determining the Amount of Performance-Based Fee Earned:
SC uses the following process to determine the amount of performance-based fee earned by the contractor. The overall Goal scores for each S&T Performance Goal shall be used to determine an initial numerical score for S&T (see Table A, below), and the overall Goal scores for each M&O Performance Goal shall be used to determine an initial numerical M&O score (see Table B, below).

S&T Performance Goal	Numerical Score	Weight[1]		
1.0 Mission Accomplishment		≥30%		
2.0 Design, Fabrication, Construction and Operation of Research Facilities				
3.0 Science and Technology Program Management		25%		
Initial S&T Score				

Table A. Fiscal Year Contractor Evaluation Initial S&T Score Calculation

M&O Performance Goal	Numerical Score	Weight		
5.0 Integrated Safety, Health, and Environmental Protection				
6.0 Business Systems				
7.0 Operating, Maintaining, and Renewing Facility and Infrastructure Portfolio				
8.0 Integrated Safeguards and Security Management and Emergency Management Systems				
Initial M&O Score				

Table B. Fiscal Year Contractor Evaluation Initial M&O Score Calculation

These initial scores will then be adjusted based on the numerical score for Goal 4.0 (see Table C, below).

	Numerical Score	Weight		
Initial S&T Score		0.75		
Goal 4.0		0.25		
Final S&T Score				
Initial M&O Score		0.75		
Goal 4.0		0.25		
Final M&O Score				

Table C. Fiscal Year Final S&T and M&O Score Calculation

The percentage of the available performance-based fee that may be earned by the Contractor shall be determined based on the final score for S&T (see Table C) and then compared to Figure 3, below. The final score for M&O from Table C shall then be utilized to determine the final fee multiplier (see Figure 3), which shall be utilized to determine the overall amount of performance-based fee earned for FY 2021 as calculated within Table D.

Overall Final Score for either S&T or M&O from Table C.	Percent S&T Fee Earned	M&O Fee Multiplier
4.3	**100%**	**100%**
4.2		
4.1		

[1] For Goals 1.0 and 2.0, the weights are based on total fiscal year costs for all evaluating programs distributed between Goals 1.0 and 2.0; however, a minimum weight of 30% for Goal 1.0 is required regardless of cost distribution. For Goal 3.0, the weight is set as a fixed percentage for all laboratories.

Overall Final Score for either S&T or M&O from Table C.	Percent S&T Fee Earned	M&O Fee Multiplier
4.0	97%	100%
3.9		
3.8		
3.7	94%	100%
3.6		
3.5		
3.4	91%	100%
3.3		
3.2		
3.1		
3.0	88%	95%
2.9		
2.8		
2.7	85%	90%
2.6		
2.5		
2.4	75%	85%
2.3		
2.2		
2.1		
2.0	50%	75%
1.9		
1.8		
1.7	0%	60%
1.6		
1.5		
1.4		
1.3		
1.2		
1.1		
1.0 to 0.8	0%	0%
0.7 to 0.0	0%	0%

Figure 3. Performance-Based Fee Earned Scale

Overall Fee Determination	
Percent S&T Fee Earned	
M&O Fee Multiplier	X
Overall Earned Performance-Based Fee	

Table D. Final Percentage of Performance-Based Fee Earned Determination

The Federal Acquisition Regulations (FAR) requirements for using and administering cost-plus-award-fee contracts were modified to provide for a five-level adjectival grading system with associated levels of available fee.[2] SC has addressed the FAR Part 16 language by mapping its standard numerical scores and associated fee determinations to the FAR Adjectival Rating System, as noted in Figure 4.

[2] See Policy Flash 2010-05, *Federal Acquisition Circular 2005-37.*

Range of Overall Final Score for S&T from Figure 3.	FAR Adjectival Rating	Maximum Performance-Fee Pool Available to be Earned
3.1 to 4.3	Excellent	100%
2.5 to 3.0	Very Good	88%
2.1 to 2.4	Good	75%
1.8 to 2.0	Satisfactory	50%
0.0 to 1.7	Unsatisfactory	0%

Figure 4. Crosswalk of SC Numerical Scores and the FAR Part 16 Adjectival Rating System

Adjustment to the Letter Grade and/or Performance-Based Fee Determination:
The lack of performance objectives and notable outcomes in this plan does not diminish the need to comply with minimum contractual requirements. Although the performance-based Goals and their corresponding Objectives shall be the primary means utilized in determining the Contractor's performance grade and/or amount of performance-based fee earned, the Contracting Officer may unilaterally adjust the rating and/or reduce the otherwise earned fee based on the Contractor's performance against all contract requirements as set forth in the Prime Contract. While reductions may be based on performance against any contract requirement, specific note should be made to contract clauses which address reduction of fee including, Standards of Contractor Performance Evaluation, DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount, and Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts. Data to support rating and/or fee adjustments may be derived from other sources to include, but not limited to, operational awareness (daily oversight) activities; "For Cause" reviews (if any); and other outside agency reviews (OIG, GAO, DCAA, etc.), as needed.

The adjustment of a grade and/or reduction of otherwise earned fee will be determined by the severity of the performance failure and consideration of mitigating factors. DEAR 970.5215-3 Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts is the mechanism used for reduction of fee as it relates to performance failures related to safeguarding of classified information and to adequate protection of environment, health and safety. Its guidance can also serve as an example for reduction of fee in other areas.

The final Contractor performance-based grades for each Goal and fee earned determination will be contained within a year-end report, documenting the results from the DOE review. The report will identify areas where performance improvement is necessary and, if required, provide the basis for any performance-based rating and/or fee adjustments made from the otherwise earned rating/fee based on Performance Goal achievements.

II. PERFORMANCE GOALS, OBJECTIVES & NOTABLE OUTCOMES

Background

The current performance-based management approach to oversight within DOE has established a new culture within the Department with emphasis on the customer-supplier partnership between DOE and the laboratory contractors. It has also placed a greater focus on mission performance, best business practices, cost management, and improved contractor accountability. Under the performance-based management system the DOE provides clear direction to the laboratories and develops annual performance plans (such as this one) to assess the contractors' performance in meeting that direction in accordance with contract requirements. The DOE policy for implementing performance-based management includes the following guiding principles:

- Performance objectives are established in partnership with affected organizations and are directly aligned to the DOE strategic goals;
- Resource decisions and budget requests are tied to results; and
- Results are used for management information, establishing accountability, and driving long-term improvements.

The performance-based approach focuses the evaluation of the Contractor's performance against these Performance Goals. Progress against these Goals is measured through the use of a set of Objectives. The success of each Objective will be measured based on demonstrated performance by the laboratory, and on a set of notable outcomes that focus laboratory leadership on the specific items that are the most important initiatives and highest risk issues the laboratory must address during the fiscal year. These notable outcomes should be objective, measurable, and results-oriented to allow for a definitive determination of whether or not the specific outcome was achieved at the end of the year.

Performance Goals, Objectives, and Notable Outcomes

The following sections describe the Performance Goals, their supporting Objectives, and associated notable outcomes for FY 2021.

GOAL 1.0 Provide for Efficient and Effective Mission Accomplishment

The science and technology programs at the Laboratory produce high-quality, original, and creative results that advance science and technology; demonstrate sustained scientific progress and impact; receive appropriate external recognition of accomplishments; and contribute to overall research and development goals of the Department and its customers.

The weight of this Goal is TBD%.

The Provide for Efficient and Effective Mission Accomplishment Goal measures the overall effectiveness and performance of the Contractor in delivering science and technology results which contribute to and enhance the DOE's (or other relevant supporting agencies') mission of protecting our national and economic security by providing world-class scientific research capacity and advancing scientific knowledge by supporting world-class, peer-reviewed scientific results, which are recognized by others.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Offices, other cognizant HQ Program Offices, and other customers as identified below. The Goal score from each HQ Program Office and/or customer is computed by multiplying each Objective numerical score by the associated weight assigned by that Office/customer and summing them (see Table 1.1).

- Accelerator R&D and Production (ARDAP)
- Office of Advanced Scientific Computing Research (ASCR)
- Office of Biological and Environmental Research (BER)
- Office of Basic Energy Sciences (BES)
- Office of Fusion Energy Sciences (FES)
- Isotope Program (IP)
- Office of Nuclear Physics (NP)
- Office of Workforce Development for Teachers and Scientists (WDTS)
- Advanced Research Projects Agency – Energy (ARPA-E)
- Department of Homeland Security (DHS)
- Defense Nuclear Nonproliferation (DNN)
- Office of Energy Efficiency and Renewable Energy (EERE)
- Office of Fossil Energy (FE)
- Office of Intelligence (IN)
- Office of Nuclear Energy (NE)
- Nuclear Regulatory Commission (NRC)
- Office of Electricity (OE)
- Office of Cybersecurity, Energy Security, and Emergency Response (CR)

The overall Performance Goal score and grade will be determined by multiplying the Goal score assigned by each of the offices identified above by the cost-based weightings identified for each and then summing them (see Table 1.2, below). The cost-based weights to be utilized for determining the overall score will be determined following the end of the performance period and will be based on actual cost for FY 2021. The overall score earned is then compared to Table 1.3 to determine the overall letter grade for this Goal. The Contractor's success in meeting each Objective shall be determined based on the Contractor's performance as viewed by the Office of Science Program Offices, other cognizant HQ Program Offices,

and other customers for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives, the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2021 as compared to the total cost for those remaining HQ Program Offices.

Objectives

1.1 Provide Science and Technology Results with Meaningful Impact on the Field

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- Performance of the Laboratory with respect to proposed research plans;
- Performance of the Laboratory with respect to community impact and peer review; and
- Performance of the Laboratory with respect to impact to DOE (or other customer) mission needs.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Impact of publications on the field, as measured primarily by peer review;
- Impact of S&T results on the field, as measured primarily by peer review;
- Impact of S&T results outside the field indicating broader interest;
- Impact of S&T results on DOE or other customer mission(s);
- Successful stewardship of mission-relevant research areas;
- Delivery on proposed S&T plans;
- Significant awards (Nobel Prizes, R&D 100, FLC, etc.);
- Invited talks, citations, making high-quality data available to the scientific community; and
- Development of tools and techniques that become standards or widely used in the scientific community.

Letter Grade	Definition
A+	In addition to satisfying the conditions for B+ • There are *significant research areas for which* the Laboratory *has exceeded the expectations* of the proposed research plans *in significant ways through creative, new, or unconventional methods that allow greater scientific reach than expected*; • S&T conducted at the Laboratory *has resolved one of the most critical questions in the field, or has changed the way the research community thinks about a particular field through paradigm shifting discoveries that would be considered the most influential discovery of the decade for that field*; • S&T conducted at the Laboratory *provided major advances that significantly accelerate* DOE or other customer mission(s).
A	In addition to satisfying the conditions for B+ • There are *important examples* where the Laboratory *exceeded the expectations* of the proposed research plans *in significant ways through creative, new, or unconventional methods that allow greater scientific reach than expected*; • *All area*s of S&T conducted at the Laboratory are of *exceptional or outstanding* merit and quality; • S&T conducted at the Laboratory has *significant positive impact* to DOE or other customer missions.

Letter Grade	Definition
A-	In addition to satisfying the conditions for B+ • There are *important examples* where the Laboratory *exceeded the expectations* of the proposed research plans; • *Significant areas* of S&T conducted at the Laboratory are of *exceptional or outstanding* merit and quality; • S&T conducted at the Laboratory *significantly impact* DOE or other customer missions.
B+	The Laboratory has achieved each of the following objectives: • The Laboratory has successfully executed proposed research plans; • S&T conducted at the Laboratory are of *high* scientific merit and quality; • S&T conducted at the Laboratory *advance* DOE or other customer missions.
B	• The Laboratory has successfully executed proposed research plans; • S&T conducted at the Laboratory *advance* DOE or other customer missions; BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons: • S&T conducted at the Laboratory are *not uniformly of high* merit and quality OR *some areas of research, previously supported, have become uncompetitive* OR *the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities*.
B-	The Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons: • The Laboratory has *failed to successfully execute* proposed research plans, *but contingencies were in place such that no funding was or will be terminated*. OR S&T conducted at the Laboratory *does little to advance* DOE or other customer missions; • *Significant areas of* S&T conducted at the Laboratory are *not of high* merit and quality OR *some areas of research, previously supported, have become uncompetitive* OR *the Laboratory do not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities.*
C	The Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons: • *In several significant aspects*, the Laboratory *failed to deliver* on proposed research plans *using available resources such that some funding was or will be terminated* OR S&T conducted at the Laboratory *failed to contribute to* DOE or other customer missions; • *Significant areas of* S&T conducted at the Laboratory are *of poor* merit and quality OR *some areas of research, previously supported, have become uncompetitive* AND *the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities*.
D	The Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons: • *Multiple program elements at* the Laboratory *failed to deliver* on proposed research plans *using available resources such that significant funding was or will be terminated*; • *Multiple significant areas of* S&T conducted at the Laboratory are *of poor* merit and quality OR *some areas of research, previously supported, have become uncompetitive* AND *the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities*; • S&T conducted at the Laboratory *failed to contribute to* DOE or other customer missions.
F	The Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons: • *Multiple program elements at* the Laboratory *failed to deliver* on proposed research plans *using available resources resulting in total termination of funding*; • *Multiple significant areas of* S&T conducted at the Laboratory are *of poor* merit and quality OR *some areas of research, previously supported, have become uncompetitive* AND *the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities OR the Laboratory has been found to have engaged in gross scientific incompetence and/or scientific fraud*; • S&T conducted at the Laboratory *failed to contribute to* DOE or other customer missions.

1.2 Provide Quality Leadership in Science and Technology that Advances Community Goals and DOE Mission Goals

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- Innovativeness / Novelty of research ideas put forward by the Laboratory;
- Extent to which Laboratory staff members take on substantive or formal leadership roles in their community;
- Extent to which Laboratory staff members take on formal leadership roles in DOE, SC and/or other customer activities; and
- Extent to which Laboratory staff members contribute thoughtful and thorough peer reviews and other research assessments as requested by DOE, SC or other supporting customers.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.:

- Willingness to pursue novel approaches and/or demonstration of innovative solutions to problems;
- Willingness to take on high-risk/high payoff/long-term research problems, evidence that previous risky decisions by the PI/research staff have proved to be correct and are paying off;
- The uniqueness and challenge of science pursued, recognition for doing the best work in the field;
- Extent and quality of collaborative efforts;
- Staff members visible in leadership positions in the scientific community;
- Involvement in professional organizations, National Academies panels and workshops;
- Effectiveness in driving the direction and setting the priorities of the community in a research field; and
- Success in competition for resources.

Letter Grade	Definition
A+	In addition to satisfying the conditions for B+, the following conditions hold for ALL Laboratory staff: • Laboratory staff members have *leadership positions* in professional organizations AND *in National Academy or equivalent panels to discuss and determine further research directions*; • Laboratory staff members have *leadership positions* in DOE (or in other supporting agencies) sponsored workshops and strategic planning activities, for example, Laboratory staff members chair or co-chair DOE-sponsored or other supporting agency-sponsored workshops and strategic planning activities; • The Laboratory program consistently produces and submits competitive proposals that challenge convention and open *significant new fields* for research that are well aligned with DOE and/or other supporting agencies mission needs, and *the Laboratory has a strong recognized role in setting priorities and driving the direction in key research areas and are internationally recognized leaders in the field*; • Laboratory staff hold *leadership positions* in multi-institutional research collaborations.

Letter Grade	Definition
A	In addition to satisfying the conditions for B+ • Laboratory staff members have *leadership positions* in professional organizations AND *staff has contributing role in National Academy or equivalent panels to discuss further research directions*; • Laboratory staff members have *leadership positions* in DOE and/or in other supporting agencies sponsored workshops and strategic planning activities; • The Laboratory program consistently produces and submits competitive proposals that challenge convention and open *significant new fields* for research that are well aligned with DOE or other supporting agency mission needs and *the Laboratory has a strong recognized role in setting priorities and driving the direction in key research areas*; • Laboratory staff hold *leadership positions* in multi-institutional research collaborations.
A-	In addition to satisfying the conditions for B+ • Laboratory staff members have *leadership positions* in professional organizations OR *staff has contributing role in National Academy or equivalent panels to discuss further research directions*; • Laboratory staff members have *leadership positions* in DOE and/or other supporting agency-sponsored workshops and strategic planning activities; • The Laboratory program consistently submits competitive proposals that challenge convention and open *significant* new avenues for research that are well aligned with DOE or other supporting agencies mission needs; • Laboratory staff hold *leadership positions* in multi-institutional research collaborations.
B+	The Laboratory has achieved each of the following objectives: • Laboratory staff members are *active participants* in professional organizations, committees, and activities, and take on leadership responsibilities commensurate with experience and expertise; • Laboratory staff members are *active participants* in DOE and/or or other supporting agencies-sponsored workshops and strategic planning activities; • Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE or other supporting agencies; • The Laboratory program consistently provides competitive proposals that challenge convention and open new avenues for research that are well aligned with DOE or other supporting agencies mission needs; • Laboratory staff are *active participants* in multi-institutional research collaborations.
B	• Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE and/or other supporting agencies; • The Laboratory program consistently provides competitive proposals that challenge convention and open new avenues for research that are well aligned with DOE and/or other supporting agencies mission needs; BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons: • Although *regular participants* in professional organizations, committees, and activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*; • Although *regular participants* in DOE and/or other supported agencies sponsored workshops and strategic planning activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*; • Although *active members of* multi-institutional research collaborations, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.*

Letter Grade	Definition
B-	• Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE or other supporting agencies; BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons: • The Laboratory program submits competitive proposals *but these either lack innovation or are not well aligned with DOE or other supporting agencies mission needs*; • Laboratory staff are *infrequent participants* in professional organizations, committees, and activities, and *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*; • Laboratory staff are *infrequent participants* in DOE or other supported agencies sponsored workshops and strategic planning activities, and *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*; • Although *active members of* multi-institutional research collaborations, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.*
C	The Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons: • Laboratory staff members *do not reliably* contribute thoughtful and thorough peer review in a timely manner, when requested by DOE or other supporting agencies; • *Some areas of research, previously supported, are no longer competitive*; • Laboratory staff members are *infrequent participants* in professional organizations, committees, and activities, AND *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*; • Laboratory staff members are *infrequent participants* in DOE or other supported agencies sponsored workshops and strategic planning activities, and *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*; • Although Laboratory staff members are *active members of* multi-institutional research collaborations, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.*
D	The Laboratory fails to meet the conditions for B+ because *the Laboratory staff are working on problems that are no longer at the forefront of science and are considered mundane.*
F	Review has found the Laboratory staff to be *guilty of gross scientific incompetence and/or scientific fraud.*

Notable Outcomes

- **ASCR:** Contribute to establishing the synergistic research program and deliver impactful science from the ORNL-led QIS Center, as measured by the FY 2021 annual report, research publications and highlights, and participation in periodic conference calls. (Objective 1.1)
- **FES:** Assess the capability of the shattered pellet injection (SPI) system for use as the ITER baseline disruption mitigation (DMS) system technology through experimental analysis. Submit a report documenting the outcome of the research and remaining open issues for using SPI as the baseline ITER DMS. (Objective 1.1)
- **IP:** Conduct production R&D in promethium-147 production methods (both fission product recovery and neodymium-146 target irradiation) and establish at least one routine production capability for promethium-147 (Pm-147). (Objective 1.1)
- **NP:** Deliver, install, and initiate the Neutron A-B experiment (NAB). (Objective 1.2)

Program Office[3]	Letter Grade	Numerical Score	Weight	Overall Score
Accelerator R&D and Production				
1.1 Impact			50%	
1.2 Leadership			50%	
Office of Advanced Scientific Research				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall ASCR Total				
Office of Biological and Environmental Research				
1.1 Impact			60%	
1.2 Leadership			40%	
Overall BER Total				
Office of Basic Energy Sciences				
1.1 Impact			50%	
1.2 Leadership			50%	
Office of Fusion Energy Sciences				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall FES Total				
Isotope Program				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall IP Total				
Office of Nuclear Physics				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall NP Total				
Office of Workforce Development for Teachers and Scientists				
1.1 Impact			80%	
1.2 Leadership			20%	
Overall WDTS Total				
Advanced Research Projects Agency – Energy				
1.1 Impact			65%	
1.2 Leadership			35%	
Overall ARPA-E Total				
Department of Homeland Security				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall DHS Total				
Defense Nuclear Nonproliferation				
1.1 Impact			58%	
1.2 Leadership			42%	
Overall DNN Total				
Office of Energy Efficiency and Renewable Energy				
1.1 Impact			60%	

[3] A complete listing of the Objectives weightings under the S&T Goals for the SC Programs and other customers is provided within Attachment I to this plan.

1.2 Leadership			40%	
Overall EERE Total				
Office of Fossil Energy				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall FE Total				
Office of Intelligence				
1.1 Impact			65%	
1.2 Leadership			35%	
Overall IN Total				
Office of Nuclear Energy				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall NE Total				
Nuclear Regulatory Commission				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall NRC Total				
Office of Electricity				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall OE Total				
Office of Cybersecurity, Energy Security, and Emergency Response				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall CR Total				

Table 1.1 – Program Performance Goal 1.0 Score Development

Program Office[4]	Letter Grade	Numerical Score	Funding Weight (cost)	Overall Weighted Score
Office of Accelerator R&D Production				
Office of Advanced Scientific Research				
Office of Basic Energy Sciences				
Office of Biological and Environmental Research				
Office of Fusion Energy Sciences				
Isotope Program				
Office of Nuclear Physics				
Office of Workforce Development for Teachers and Scientists				
Advanced Research Projects Agency – Energy				
Department of Homeland Security				
Defense Nuclear Nonproliferation				
Office of Energy Efficiency and Renewable Energy				
Office of Fossil Energy				
Office of Intelligence				
Office of Nuclear Energy				
Nuclear Regulatory Commission				
Performance Goal 1.0 Total				

Table 1.2 – Overall Performance Goal 1.0 Score Development[4]

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 1.3 – Goal 1.0 Final Letter Grade

[4] The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2021.

GOAL 2.0 Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities

The Laboratory provides effective and efficient strategic planning; fabrication, construction and/or operations of Laboratory research facilities; and are responsive to the user community.

The weight of this Goal is TBD%.

The Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities Goal shall measure the overall effectiveness and performance of the Contractor in planning for and delivering leading-edge specialty research and/or user facilities to ensure that the required capabilities are present to meet today's and tomorrow's complex challenges. It also measures the Contractor's innovative operational and programmatic means for implementation of systems that ensures the availability, reliability, and efficiency of these facilities; and the appropriate balance between R&D and user support.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Office as identified below. The Goal score from each Program Office is computed by multiplying each Objective numerical score by the associated weight assigned by that Office and summing them (see Table 2.1).

- Office of Advanced Scientific Computing Research (ASCR)
- Office of Basic Energy Sciences (BES)
- Office of Biological and Environmental Research (BER)
- Office of Fusion Energy Sciences (FES)
- Office of Nuclear Physics (NP)

The overall Performance Goal score and grade will be determined by multiplying the Goal score assigned by each of the offices identified above by the cost-based weightings identified for each and then summing them (see Table 2.2 below). The cost-based weights to be utilized for determining the overall score will be determined following the end of the performance period and will be based on actual cost for FY 2021. The overall score earned is then compared to Table 2.3 to determine the overall letter grade for this Goal. The Contractor's success in meeting each Objective shall be determined based on the Contractor's performance as viewed by DOE HQ Office of Science's (SC) Program Offices for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives, the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2021 as compared to the total cost for those remaining HQ Program Offices.

Objectives

2.1 Provide Effective Facility Design(s) as Required to Support Laboratory Programs (i.e., activities leading up to CD-2)

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory's delivery of accurate and timely information required to carry out the critical decision and budget formulation process;

- The Laboratory's ability to meet the intent of DOE Order 413.3, Program and Project Management for the Acquisition of Capital Assets;
- The extent to which the Laboratory appropriately assesses risks and contingency needs; and
- The extent to which the Laboratory is effective in its unique management role and partnership with HQ.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- The quality of the scientific justification for proposed facilities resulting from preconceptual R&D;
- The technical quality of conceptual and preliminary designs and the credibility of the associated cost estimates;
- The credibility of plans for the full life cycle of proposed facilities including financing options;
- The leveraging of existing facilities and capabilities of the DOE Laboratory complex in plans for proposed facilities; and
- The novelty and potential impact of new technologies embodied in proposed facilities.

Letter Grade	Definition
A+	In addition to satisfying all conditions for B+; the Laboratory *exceeds expectations* in *all* of these categories: • The Laboratory is recognized by the research community as the leader for making the science case for the acquisition; • The Laboratory takes the initiative to demonstrate and thoroughly document the potential for transformational scientific advancement; • Approaches proposed by the Laboratory are widely regarded as innovative, novel, comprehensive, and potentially cost-effective; • Reviews repeatedly confirm strong potential for scientific discovery in areas that support the Department's mission, and potential to change a discipline or research area's direction; • The Laboratory identifies, analyzes and champions novel approaches for acquiring the new capability, including leveraging or extending the capability of existing facilities and financing and these efforts result in significant cost estimate and/or risk reductions without loss or, or while enhancing capability.
A	In addition to satisfying all conditions for B+, *all* of the following conditions are also met: • The Laboratory is recognized by the research community as a leader for making the science case for the acquisition; • The Laboratory takes the initiative to demonstrate the potential for revolutionary scientific advancement working in partnership with HQ; • The Laboratory identifies, analyzes, and champions, to HQ and Site office, novel approaches for acquiring the new capability, including leveraging or extending the capability of existing facilities and financing.
A-	In addition to satisfying all conditions for B+, *all* of the following conditions are also met: • The approaches proposed by the Laboratory are widely regarded as innovative, novel, comprehensive, and potentially cost-effective; • Reviews repeatedly confirm potential for scientific discovery in areas that support the Department's mission, and potential to change a discipline or research area's direction.

Letter Grade	Definition
B+	The Laboratory has achieved each of the following objectives: • The Laboratory displays leadership and commitment in the development of quality analyses, preliminary designs, and related documentation to support the approval of the mission need (CD-0), the alternative selection and cost range (CD-1) and the performance baseline (CD-2); • Documentation requested by the programs is provided in a timely and thorough manner; • The Laboratory keeps DOE appraised of the status, near-term plans and the resolution of problems on a regular basis; anticipates emerging issues that could impact plans and takes the initiative to inform DOE of possible consequences; • The Laboratory solves problems and addresses issues to avoid adverse impacts to the project.
B	The Laboratory fails to meet expectations in one of the areas listed under B+.
B-	The Laboratory fails to meet expectations in several of the areas listed under B+
C	The Laboratory fails to meet the expectations in several of the areas listed under B+ AND the required analyses and documentation developed by the Laboratory are EITHER not innovative OR reflect a lack of commitment and leadership.
D	The Laboratory fails to meet the expectations in several of the areas listed under B+ AND the Laboratory fails to provide a compelling justification for the acquisition.
F	The Laboratory fails to meet the expectations in several of the areas listed under B+ AND the approaches proposed by the Laboratory are based on fraudulent assumptions; the science case is weak to non-existent, and the business case is seriously flawed.

2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components (execution phase, post CD-2 to CD-4)

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory's adherence to DOE Order 413.3 Project Management for the Acquisition of Capital Assets;
- Successful fabrication of facility components by the Laboratory;
- The Laboratory's effectiveness in meeting construction schedule and budget;
- The quality of key Laboratory staff overseeing the project(s); and
- The extent to which the Laboratory maintains open, effective, and timely communication with HQ regarding issues and risks.

Letter Grade	Definition
A+	In addition to satisfying all conditions for A, • There is high confidence throughout the execution phase that the project will be completed *significantly* under budget and/or ahead of schedule while meeting or exceeding all performance baselines.
A	In addition to satisfying all conditions for B+, • The Laboratory has identified and implemented practices that would allow the project scope to be *significantly expanded* if such were desirable, without impact on baseline cost or schedule; • The Laboratory *always* provides *exemplary* project status reports on time to DOE and takes the initiative to communicate emerging problems or issues; • Reviews identify environment, safety and health practices to be *exemplary*; • There is high confidence throughout the execution phase that the project will meet its cost/schedule performance baseline.

Letter Grade	Definition
A-	In addition to satisfying all conditions for B+, • The Laboratory has identified practices that would allow for the project scope to be expanded if such were desirable, without impact on baseline cost or schedule; • Problems are identified and corrected by the Laboratory promptly, with no impact on scope, cost or schedule; • The Laboratory provides *particularly useful* project status reports on time to DOE and regularly takes the initiative to communicate emerging problems or issues; • Reviews identify environment, safety and health practices to *exceed expectations*; • There is high confidence throughout the execution phase that the project will meet its cost/schedule performance baseline.
B+	The Laboratory has achieved each of the following objectives • The project meets CD-2 performance measures; • The Laboratory provides sustained leadership and commitment to environment, safety and health; • Reviews regularly recognize the Laboratory for being proactive in the management of the execution phase of the project; • To a large extent, problems are identified and corrected by the Laboratory with little, or no impact on scope, cost or schedule; • DOE is kept informed of project status on a regular basis; reviews regularly indicate project is expected to meet its cost/schedule performance baseline.
B	The Laboratory provides sustained leadership and commitment to environment, safety and health BUT • The project fails to meet expectations in *one* of the remaining areas listed under B+.
B-	The Laboratory provides sustained leadership and commitment to environment, safety and health BUT • The project fails to meet expectations in *several* of the areas listed under B+.
C	The Laboratory provides sustained leadership and commitment to environment, safety and health BUT The project fails to meet expectations in *several* of the areas listed under B+ AND • Reviews indicate project remains at risk of breaching its cost/schedule performance baseline; • Reports to DOE can vary in degree of completeness.
D	The project fails to meet conditions for B+ in at least one of the following areas: • Reviews indicate project is likely to breach its cost/schedule performance baseline; • Laboratory commitment to environment, safety and health issues is inadequate; • Reports to DOE are largely incomplete; Laboratory commitment to the project has subsided.
F	The project fails to meet conditions for B+ in at least one of the following areas: • Laboratory falsifies data during project execution phase; • Shows disdain for executing the project within minimal standards for environment, safety or health; • Fails to keep DOE informed of project status; • Recent reviews indicate that the project is expected to breach its cost/schedule performance baseline.

2.3 Provide Efficient and Effective Operation of Facilities

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The availability, reliability, performance, and efficiency of Laboratory facility(ies);
- The degree to which the facility is optimally arranged to support the user community;
- The extent to which Laboratory R&D is conducted to develop/expand the capabilities of the facility(ies);
- The Laboratory's effectiveness in balancing resources between facility R&D and user support; and
- The quality of the process used to allocate facility time to users.

Letter Grade	Definition
A+	In addition to satisfying all conditions for B+; *all* of the following conditions are also met • Performance of the facility *exceeds* expectations as defined before the start of the year in all of these categories: cost of operations, users served, availability, and capability; • The schedule and the costs associated with the ramp-up to steady state operations are *significantly less* than planned and are acknowledged to be 'leadership caliber' by reviews; • Data on environment, safety, and health continues to be exemplary and widely regarded as among the 'best in class'; • The Laboratory took extraordinary means to deliver an extraordinary result for the users and the program in the performance/ review period.
A	In addition to satisfying all conditions for B+; *all* of the following conditions are also met • Performance of the facility *exceeds* expectations as defined before the start of the year in most of these categories: cost of operations, users served, availability, and capability; • The schedule and the costs associated with the ramp-up to steady state operations are *less* than planned and are acknowledged to be 'leadership caliber' by reviews; • Data on environment, safety, and health continues to be *exemplary* and widely regarded as among the 'best in class'.
A-	In addition to satisfying all conditions for B+, *one* of the following conditions is met: • Performance of the facility *exceeds* expectations as defined before the start of the year in any of these categories: cost of operations, users served, availability, and capability; • The schedule and the costs associated with the ramp-up to steady state operations are *less* than planned and are acknowledged to be among the best by reviews.
B+	The Laboratory has achieved each of the following objectives: • Performance of the facility *meets* expectations as defined before the start of the year in all of these categories: cost of operations, users served, availability, capability (for example, beam delivery, luminosity, peak performance, etc); • The schedule and the costs associated with the ramp-up to steady state operations occur as planned; • Data on environment, safety, and health continues to be very good as compared with other projects in the DOE; • User surveys meet program expectations and reflect that the Laboratory is responsive to user needs.
B	The project fails to meet expectations in *one* of the areas listed under B+.
B-	The project fails to meet expectations in *more than one* of the areas listed under B+.

Letter Grade	Definition
C	Performance of the facility fails to meet expectations in *many* of the areas listed under B+; for example, • The cost of operations is unexpectedly high, and availability of the facility is unexpectedly low, the number of users is unexpectedly low, capability is well below expectations. • The facility operates at steady state, on cost and on schedule, but the reliability of performance is somewhat below planned values, **or** the facility operates at steady state, but the associated schedule and costs exceed planned values. • Commitment to environment, safety, and health is satisfactory.
D	Performance of the facility fails to meet expectations in *many* of the areas listed under B+; for example, • The cost of operations is unexpectedly high, and availability of the facility is unexpectedly low; capability is well below expectations. • The facility operates somewhat below steady state, on cost and on schedule, and the reliability of performance is somewhat below planned values, **or** the facility operates at steady state, but the associated schedule and costs exceed planned values. • Commitment to environment, safety, and health is inadequate.
F	• The facility fails to operate; the facility operates well below steady state **and/or** the reliability of the performance is well below planned values. • Laboratory commitment to environment, safety, and health issues is inadequate.

2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The extent to which the facility is being used to perform influential science;
- The Laboratory's efforts to take full advantage of the facility to generate impactful S&T results;
- The extent to which the facility is strengthened by a resident Laboratory research community that pushes the envelope of what the facility can do and/or are among the scientific leaders of the community;
- The Laboratory's ability to appropriately balance access by internal and external user communities; and
- The extent to which there is a healthy program of outreach to the scientific community.

Letter Grade	Definition
A+	In addition to meeting all measures under *A*, • The Laboratory took extraordinary means to deliver an extraordinary result for a new user community.
A	In addition to satisfying all conditions for B+; *all* of the following conditions are met • An *aggressive* outreach programs is in place and has been documented as attracting new communities to the facility; • Reviews consistently find that the facility capability or scope of research potential *significantly* exceeds expectations for example, due to newly discovered capabilities or exposure to new research communities; OR Reviews find that multiple disciplines are using the facility in new and novel ways that the facility is being used to pursue influential science.

Letter Grade	Definition
A-	In addition to satisfying all conditions for B+, all of the following conditions are met • A *strong* outreach program is in place; • Reviews find that the facility capability or scope of research potential exceeds expectations for example, due to newly discovered capabilities or exposure to new research communities; OR Reviews document how multiple disciplines are using the facility in new and novel ways and/or that the facility is being used to pursue important science.
B^+	The Laboratory has achieved each of the following objectives: • Reviews find / validate that the facility is being used for influential science; • The scope of facility capabilities is challenged and broadened by resident users; • The Laboratory effectively manages user allocations; • The Laboratory effectively maintains the facility to required performance standards (for example, runtime, luminosity, etc.); • A healthy outreach program is in place.
B	The Laboratory fails to meet expectations in *one* of the areas listed under B+.
B-	The Laboratory fails to meet expectations in *several* of the areas listed under B+.
C	The Laboratory fails to meet expectations in *many* of the areas listed under B+.
D	Reviews find that there are few facility users, few of whom are using the facility in novel ways to produce impactful science; research base is very thin.
F	Laboratory staff does not possess capabilities to operate and/or use the facility adequately.

Notable Outcomes

- **BES:** Effectively manage and execute the PPU project in accordance with DOE Order 413.3B and the Project Execution Plan, and deliver the project scope in compliance with the technical performance specifications and within the established DOE performance goals for cost and schedule. Performance will be assessed based on the work planned and accomplished during FY 2021, not on the cumulative performance of the project. (Objective 2.1)
- **BES:** Execute the STS project scope in compliance with DOE Order 413.3B. Advance toward CD-1: *Approve Alternative Selection and Cost Range* and advance the preliminary and final designs toward CD-2 and CD-3 during this performance period. (Objective 2.1)
- **BES:** Perform a comprehensive analysis of the HFIR fuel manufacturing process and options with a focus on design, quality, safety, operability and life cycle considerations; consider all the improvements underway. Provide the proposed approach to DOE by November 30, 2020; complete the analysis by September 30, 2021. (Objective 2.3)
- **FES:** Complete the design and documentation of the W7-X Continuous Pellet Fueling System extruder, accelerator, gas manifold, and injection line in support of a future Final Design Review of the complete system. (Objective 2.1)
- **FES:** For the MPEX project, complete the request for proposals package(s) for the superconducting magnet system. (Objective. 2.2)
- **FES:** Initiate shipment of the ITER Central Solenoid Modules 1 and 2 from the General Atomics Magnet Technology Center in Poway, CA. (Objective. 2.2)
- **FES:** Deliver the Central Solenoid Lifting Fixture to the ITER site. (Objective. 2.2)

- **IP:** Complete the Independent Project Review and Independent Cost review in support of achieving CD-1, Approve Alternative Selection and Cost Range, and CD-3A, Approve Long-Lead Procurements for Sub-Project 1 of the Stable Isotope Production and Research Center (SIPRC). (Objective 2.1)

Program Office[5]	Letter Grade	Numerical Score	Weight	Overall Score
Office of Advanced Scientific Research				
2.1 Provide Effective Facility Design(s)			0%	
2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components			40%	
2.3 Provide Efficient and Effective Operation of Facilities			50%	
2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities			10%	
Overall ASCR Total				
Office of Basic Energy Sciences				
2.1 Provide Effective Facility Design(s)			10%	
2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components			25%	
2.3 Provide Efficient and Effective Operation of Facilities			35%	
2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities			30%	
Overall BES Total				
Office of Biological and Environmental Research				
2.1 Provide Effective Facility Design(s)			0%	
2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components			0%	
2.3 Provide Efficient and Effective Operation of Facilities			90%	
2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities			10%	
Overall BER Total				
Office of Fusion Energy Sciences				
2.1 Provide Effective Facility Design(s)			30%	
2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components			70%	
2.3 Provide Efficient and Effective Operation of Facilities			0%	
2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities			0%	
Overall FES Total				
Office of Nuclear Physics				
2.1 Provide Effective Facility Design(s)			100%	
2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components			0%	
2.3 Provide Efficient and Effective Operation of Facilities			0%	
2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities			0%	
Overall NP Total				

Table 2.1 – Program Performance Goal 2.0 Score Development

[5] A complete listing of the Objectives weightings under the S&T Goals for the SC Programs and other customers is provided within Attachment I to this plan.

Program Office	Letter Grade	Numerical Score	Funding Weight (cost)	Overall Weighted Score
Office of Advanced Scientific Research				
Office of Basic Energy Sciences				
Office of Biological and Environmental Research				
Office of Fusion Energy Sciences				
Office of Nuclear Physics				
Performance Goal 2.0 Total				

Table 2.2 – Overall Performance Goal 2.0 Score Development[6]

Total Score	**4.3-4.1**	**4.0-3.8**	**3.7-3.5**	**3.4-3.1**	**3.0-2.8**	**2.7-2.5**	**2.4-2.1**	**2.0-1.8**	**1.7-1.1**	**1.0-0.8**	**0.7-0**
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 2.3 – Goal 2.0 Final Letter Grade

[6] The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2021.

GOAL 3.0 Provide Effective and Efficient Science and Technology Program Management

The Laboratory provides effective program vision and leadership; strategic planning and development of initiatives; recruits and retains a quality scientific workforce; and provides outstanding research processes, which improve research productivity.

The weight of this Goal is 25%.

The Provide Effective and Efficient Science and Technology Program Management Goal shall measure the Contractor's overall management in executing S&T programs. Dimensions of program management covered include: 1) providing key competencies to support research programs to include key staffing requirements; 2) providing quality research plans that take into account technical risks, identify actions to mitigate risks; and 3) maintaining effective communications with customers to include providing quality responses to customer needs.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Offices, other cognizant HQ Program Offices, and other customers as identified below. The Goal score from each HQ Program Office and/or customer is computed by multiplying each Objective numerical score by the associated weight assigned by that Office/customer and summing them (see Table 3.1).

- Accelerator R&D and Production (ARDAP)
- Office of Advanced Scientific Computing Research (ASCR)
- Office of Biological and Environmental Research (BER)
- Office of Basic Energy Sciences (BES)
- Office of Fusion Energy Sciences (FES)
- Isotope Program (IP)
- Office of Nuclear Physics (NP)
- Office of Workforce Development for Teachers and Scientists (WDTS)
- Advanced Research Projects Agency – Energy (ARPA-E)
- Department of Homeland Security (DHS)
- Defense Nuclear Nonproliferation (DNN)
- Office of Energy Efficiency and Renewable Energy (EERE)
- Office of Fossil Energy (FE)
- Office of Intelligence (IN)
- Office of Nuclear Energy (NE)
- Nuclear Regulatory Commission (NRC)
- Office of Electricity (OE)
- Office of Cybersecurity, Energy Security, and Emergency Response (CR)

The overall Performance Goal score and grade will be determined by multiplying the Goal score assigned by each of the offices identified above by the cost-based weightings identified for each and then summing them (see Table 3.2 below). The cost-based weights to be utilized for determining the overall score will be determined following the end of the performance period and will be based on actual cost for FY 2021. The overall score earned is then compared to Table 3.3 to determine the overall letter grade for this Goal. The Contractor's success in meeting each Objective shall be determined based on the Contractor's performance as viewed by the Office of Science Program Offices, other cognizant HQ Program Offices, and other customers for which the Laboratory conducts work. Should one or more of the HQ Program

Offices choose not to provide an evaluation for this Goal and its corresponding Objectives, the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2021 as compared to the total cost for those remaining HQ Program Offices.

Objectives

3.1 Provide Effective and Efficient Strategic Planning and Stewardship of Scientific Capabilities and Program Vision

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The quality of the Laboratory's strategic plan;
- The extent to which the Laboratory shows strategic vision for research;
- The extent to which programs of research take advantage of Laboratory capabilities—research programs are more than the sum of their individual project parts;
- The extent to which the Laboratory undertakes research for which it is uniquely qualified;
- The extent to which lab plans are aligned with DOE or other supporting agency mission goals;
- The extent to which the Laboratory programs are balanced between high-/low- risk research for a sustainable program; and
- The extent to which the Laboratory is able to retain and recruit staff for a sustainable program.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Articulation of scientific vision;
- Development and maintenance of core competencies;
- Ability to attract and retain highly qualified staff;
- Efficiency and effectiveness of joint planning (e.g., workshops) with outside community;
- Creativity and robustness of ideas for new facilities and research programs;
- Willingness to take on high-risk/high payoff/long-term research problems, evidence that the Laboratory "guessed right" in that previous risky decisions proved to be correct and are paying off; and
- The depth and breadth of Laboratory research portfolio and its potential for growth.

Letter Grade	Definition
A+	In addition to satisfying the conditions for B+, the execution of the Laboratory's strategic plan has enabled the Laboratory to achieve each of the following: • *Most* of the Laboratory's core competencies are recognized as world leading; • The Laboratory has attracted and retained world-leading scientists in *most* programs; • There is evidence that previous decisions to pursue high-risk/high-payoff research proved to be correct and are paying off; • The Laboratory has succeeded in developing new core competencies of *outstanding* quality in areas both exploratory, high-risk research and research that is vital to the DOE/SC or other supporting department or agency missions.

Letter Grade	Definition
A	In addition to satisfying the conditions for B+, the execution of the Laboratory's strategic plan has enabled the Laboratory to achieve the following: • *Several* of the Laboratory's core competencies are recognized as world leading; • The Laboratory has attracted and retained world-leading scientists in *several* programs; • There is evidence that previous decisions to pursue high-risk/high-payoff research proved to be correct and are paying off; • The Laboratory has succeeded in developing *new* core competencies of *high* quality in areas both exploratory, high-risk research and research that is vital to the DOE/SC/other supporting departments or agency missions.
A-	In addition to satisfying the conditions for B+, the execution of the Laboratory's strategic plan has enabled the Laboratory to achieve at least one of the following: • At least one of the Laboratory's core competencies is recognized as *world-leading*; • The Laboratory has attracted and retained *world-leading* scientists in one or more programs; • The Laboratory has a coherent plan for addressing future workforce challenges.
B+	The execution of the Laboratory's strategic plan has enabled the Laboratory to achieve each of the following objectives: • The Laboratory has articulated a coherent and compelling strategic plan that has been developed with input from external research communities and headquarters guidance, which, where appropriate, includes a coherent plan for building smaller research programs into new core competencies; and reallocates resources away from less effective programs; • The Laboratory has demonstrated the ability to attract and retain professional scientific staff in support of its strategic vision; • The portfolio of Laboratory research balances the needs for both high-risk/ high-payoff research and stewardship of mission-critical research; • The Laboratory's research portfolio takes advantage of unique capabilities at the Laboratory; • The Laboratory's research portfolio includes activities for which the Laboratory is uniquely capable.
B	The Laboratory fails to satisfy one of the conditions for B+; for example • The Laboratory's strategic plan is only *partially* coherent and is not entirely well-connected with external communities; • The portfolio of Laboratory research does *not* appropriately balance high-risk/ high-payoff research and stewardship of mission-critical research; • The Laboratory has developed and maintained *some, but not all*, of its core competencies; • The plan to attract and retain professional scientific staff is *lacking* strategic vision.
B-	The Laboratory fails to satisfy *several* of the conditions for B+, including at least one of the following: • Weak programmatic vision insufficiently connected with external communities; • Development and maintenance of only a few core competencies; • Little attention to maintaining the correct balance between high-risk and mission-critical research; • Inability to attract and retain talented scientists in some programs.
C	The Laboratory fails to satisfy *several* of the conditions for B+, including at least one of the following reasons: • The Laboratory's strategic plan lacks strategic vision and lacks appropriate coordination with appropriate stakeholders including external research groups; • The Laboratory's strategic plan does not provide for sufficient maintenance of core competencies; • Plan to attract and retain professional scientific staff is unlikely to be successful or does not focus on strategic capabilities.

Letter Grade	Definition
D	The Laboratory fails to satisfy *several* of the conditions for B+, and specifically • The Laboratory has demonstrated little effort in developing a strategic plan; • The Laboratory has done little to develop and maintain core competencies; • The Laboratory has had minimal success in attracting and retaining professional scientific staff.
F	The Laboratory has: • Made limited or ineffective attempts to develop a strategic plan; • Not demonstrated the ability to develop and maintain core competencies, has failed to propose high-risk/high-reward research and has failed to steward mission-critical areas; • Failed to attract even reasonably competent scientists and technical staff.

3.2 Provide Effective and Efficient Science and Technology Project/Program/Facilities Management

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory's management of R&D programs and facilities according to proposed plans;
- The extent to which the Laboratory's management of projects/programs/facilities supports the Laboratory strategic plan;
- Adequacy of the Laboratory's consideration of technical risks;
- The extent to which the Laboratory is successful in identifying/avoiding technical problems;
- Effectiveness in leveraging across multiple areas of research and between research and facility capabilities;
- The extent to which the Laboratory demonstrates a willingness to make tough decisions (i.e., cut programs with sub-critical mass of expertise, divert resources to more promising areas, etc.); and
- The use of LDRD and other Laboratory investments and overhead funds to improve the competitiveness of the Laboratory.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Laboratory plans that are reviewed by experts outside of lab management and/or include broadly-based input from within the Laboratory.

Letter Grade	Definition
A+	In addition to meeting all expectations under A, • The Laboratory has taken extraordinary measures to deliver an extraordinary result of critical importance to DOE or other relevant supporting agency missions, which could include the delivery of a critical technology or insight in response to a National emergency.
A	In addition to satisfying the conditions for B+, • The Laboratory's implementation of project/program/facility plans has led directly to effective R&D programs/facility operations that exceed program expectations in *several* programmatic areas. Examples are listed under A-.

Letter Grade	Definition
A-	In addition to satisfying the conditions for B+, • The Laboratory's implementation of project/program/facility plans has led directly to effective R&D programs/facility operations that exceed program expectations in *more than one* programmatic area. Examples of performance that exceeds expectations include: • The Laboratory's implementation of project/program/facility plans has led directly to significant cost savings and/or significantly higher productivity than expected; • Project/program/facility plans prove to be robust against changing scientific and fiscal conditions through contingency planning; • The Laboratory has demonstrated creativity and forceful leadership in development and/or proactive management of its project/program/facility plans to reduce or eliminate risk; • The Laboratory's proposals for new initiatives are funded through reallocation of resources from less effective programs; • Research plans and management actions are proactive, not reactive, as evidenced by making hard decisions and taking strong actions; and • Management is prepared for budget fluctuations and changes in DOE or other supporting agency program priorities – multiple contingencies are planned for; and • LDRD investments, overhead funds, and other Laboratory funds are used to strengthen lab plans and fill critical gaps in the Laboratory portfolio enabling it to respond to future DOE or other relevant supporting agency initiatives and/or national emergencies.
B^+	The Laboratory has achieved each of the following objectives: • Project/program/facility plans exist for all major projects/programs/facilities; • Project/program/facility plans are consistent with known budgets, are based on reasonable assessments of technical risk, are well-aligned with DOE or other relevant supporting agency interests, provide sufficient flexibility to respond to unforeseen directives and opportunities, and effectively leverage other Laboratory resources and expertise; • The Laboratory has implemented the project/program/facility plans and has effective methods of tracking progress; • The Laboratory demonstrates willingness to make tough decisions (i.e., cut programs with sub-critical mass of expertise, divert resources to more promising areas, etc.); • The Laboratory's implementation of project/program/facility plans has led directly to effective R&D programs/facility operations; • LDRD investments and other overhead funds are managed appropriately.
B	• Project/program/facility plans exist for all major projects/programs/facilities; • The Laboratory has implemented the project/program/facility plans; BUT the Laboratory fails to meet *at least one of* the conditions for B+.
B-	• Project/program/facility plans exist for all major projects/programs/facilities; • The Laboratory has implemented the project/program/facility plans; BUT the Laboratory fails to meet *several of* the conditions for B+.
C	• Project/program/facility plans exist for most major projects/programs/facilities; BUT the Laboratory has failed to implement the project/program/facility plans AND the Laboratory fails to meet *several of* the conditions for B+.
D	• Project/program/facility plans do not exist for a significant fraction of the Laboratory's major projects/programs/facilities; OR • Significant work at the Laboratory is not in alignment with the project/program/facility plans.
F	The Laboratory has failed to conduct project/program/facility planning activities.

3.3 Provide Efficient and Effective Communications and Responsiveness to Headquarters Needs

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The quality, accuracy and timeliness of the Laboratory's response to customer requests for information;
- The extent to which the Laboratory provides point-of-contact resources and maintains effective internal communications hierarchies to facilitate efficient determination of the appropriate point-of-contact for a given issue or program element;
- The effectiveness of the Laboratory's communications and depth of responsiveness under extraordinary or critical circumstances; and
- The effectiveness of Laboratory management in accentuating the importance of communication and responsiveness.

Letter Grade	Definition
A+	In addition to meeting all expectations under A, • The Laboratory's effective communication and extraordinary responsiveness in the face of extreme situations or a national emergency had a materially positive impact on the outcome of the event and/or DOE or other relevant supporting agency's mission objectives.
A	In addition to satisfying the conditions for B+, the Laboratory also meets all of the following: • Laboratory management has instilled a culture throughout the lab that emphasizes good communication practices; • Communication channels are well-defined, and information is effectively conveyed; • Responses to HQ requests for information from all Laboratory representatives are prompt, thorough, correct and succinct; important or critical information is delivered in real-time; • Laboratory representatives *always* initiate a communication with HQ on emerging Laboratory issues; headquarters is never surprised to learn of emerging Laboratory issues through outside channels.
A-	In addition to satisfying the conditions for B+, • Laboratory management has instilled a culture throughout the lab that emphasizes good communication practices; • Responses to requests for information are prompt, thorough, and economical/succinct at all levels of interaction; • Laboratory representatives *often* initiate communication with HQ on emerging Laboratory issues; and • under critical circumstances, essential information is delivered in real-time.
B+	The Laboratory has achieved each of the following objectives: • Staff throughout the Laboratory organization engage in good communication practices; • Responses to requests for information are prompt and thorough; • The accuracy and integrity of the information provided is never in doubt; • Up-to-date point-of-contact information is widely available for all programmatic areas; and • Headquarters is always and promptly informed of both positive and negative events at the Laboratory.
B	The Laboratory failed to meet the conditions for B+ *in a few instances*.
B-	The Laboratory fails to meet the conditions for B+ for *one* of the following reasons: • Responses to requests for information do not provide the minimum requirements to meet HQ needs; while the integrity of the information provided is never in doubt, its accuracy sometimes is; • Laboratory representatives do not take the initiative to alert HQ to emerging Laboratory issues.

Letter Grade	Definition
C	The Laboratory fails to meet the conditions for B+ for *one or more* of the following reasons: • Responses to requests for information frequently fail to provide the minimum requirements to meet HQ needs; • The Laboratory used outside channels or circumvented HQ in conveying critical information; • The integrity and/or accuracy of information provided is sometimes in doubt; • Laboratory management fails to demonstrate that its employees are held accountable for ensuring effective communication and responsiveness; • Laboratory representatives failed to alert HQ to emerging Laboratory issues.
D	The Laboratory fails to meet the conditions for B+ for one of the following reasons: • Laboratory staff are generally well-intentioned in communication but consistently ineffective and/or incompetent; • The Laboratory management fails to emphasize the importance of effective communication and responsiveness.
F	The Laboratory fails to meet the conditions for B+ for one of the following reasons: • Laboratory staff are openly hostile and/or non-responsive to requests for information – emails and phone calls are consistently ignored; • Responses to requests for information are consistently incorrect, inaccurate or fraudulent – information is not organized, is incomplete, or is fabricated.

Notable Outcomes

- **ASCR:** Provide effective leadership and appropriate Exascale Computing Project Office staffing levels to ensure timely delivery of a capable Exascale systems in accordance with appropriated funding levels and project data is provided for timely reporting into PARS. (Objective 3.1)
- **ASCR:** Continue to be full members in executing the Department's Exascale Computing Project to include providing experienced staff, facilities engagement, and the intellectual engagement of the Laboratory leadership and particularly in preparing for the Independent Project Review. (Objective 3.1)
- **ASCR:** Ensure that all communications related to Exascale, including the project and the Departmental cross-cut program between ORNL and SC, DOE, vendors, the Administration and Congress are aligned with DOE/ASCR goals, strategies and guidance. (Objective 3.3)
- **BER:** In coordination with the other Bioenergy Research Centers (BRCs), deliver a summary report of the science theme (CRAM-II) discussions outlining collaborative future research opportunities among the BRCs. (Objective 3.1)
- **BES:** Provide effective leadership, management, and integration of the PPU Partner Laboratory to ensure that project requirements and performance objectives are met for FY 2021. (Objective 3.2)
- **BES:** Resolve leadership of the BES portfolio at ORNL, including impact on leadership of the ORNL CSGB program. (Objective 3.2)
- **BES:** Complete implementation of the required data reduction software for all of the remaining instruments at SNS and HFIR by July 2021. By January 31, 2021, submit a plan to BES for development of data analysis tools, including capabilities for real-time feedback to users, for all of the neutron scattering instruments at SNS and HFIR. (Objective 3.2)

- **IP:** Complete the current Good Manufacturing Practices (cGMP)/Drug Master File (DMF) implementation for actinium-225 (Ac-225) derived from thorium-229 (Th-229) decay. (Objective 3.2)
- **NP:** Appoint a permanent project manager to the nEDM experiment. (Objective 3.2)

Program Office[7]	Letter Grade	Numerical Score	Weight	Overall Score
Accelerator R&D and Production (ARDAP)				
3.1 Effective and Efficient Strategic Planning and Stewardship			40%	
3.2 Project/Program /Facilities Management			40%	
3.3 Communications and Responsiveness			20%	
Overall ARDAP Total				
Office of Advanced Scientific Computing Research				
3.1 Effective and Efficient Strategic Planning and Stewardship			30%	
3.2 Project/Program /Facilities Management			40%	
3.3 Communications and Responsiveness			30%	
Overall ASCR Total				
Office of Biological and Environmental Research				
3.1 Effective and Efficient Strategic Planning and Stewardship			20%	
3.2 Project/Program /Facilities Management			30%	
3.3 Communications and Responsiveness			50%	
Overall BER Total				
Office of Basic Energy Sciences				
3.1 Effective and Efficient Strategic Planning and Stewardship			30%	
3.2 Project/Program /Facilities Management			40%	
3.3 Communications and Responsiveness			30%	
Overall BES Total				
Office of Fusion Energy Sciences				
3.1 Effective and Efficient Strategic Planning and Stewardship			35%	
3.2 Project/Program /Facilities Management			35%	
3.3 Communications and Responsiveness			30%	
Overall FES Total				
Isotope Program				
3.1 Effective and Efficient Strategic Planning and Stewardship			30%	
3.2 Project/Program /Facilities Management			40%	
3.3 Communications and Responsiveness			30%	
Overall IP Total				
Office of Nuclear Physics				
3.1 Effective and Efficient Strategic Planning and Stewardship			30%	

[7] A complete listing of the Objectives weightings under the S&T Goals for the SC Programs and other customers is provided within Attachment I to this plan.

Program Office[7]	Letter Grade	Numerical Score	Weight	Overall Score
3.2 Project/Program /Facilities Management			40%	
3.3 Communications and Responsiveness			30%	
Overall NP Total				
Office of Workforce Development for Teachers and Scientists				
3.1 Effective and Efficient Strategic Planning and Stewardship			20%	
3.2 Project/Program /Facilities Management			50%	
3.3 Communications and Responsiveness			30%	
Overall WDTS Total				
Advanced Research Projects Agency – Energy				
3.1 Effective and Efficient Strategic Planning and Stewardship			20%	
3.2 Project/Program /Facilities Management			30%	
3.3 Communications and Responsiveness			50%	
Overall ARPA-E Total				
Department of Homeland Security				
3.1 Effective and Efficient Strategic Planning and Stewardship			20%	
3.2 Project/Program /Facilities Management			40%	
3.3 Communications and Responsiveness			40%	
Overall DHS Total				
Defense Nuclear Nonproliferation				
3.1 Effective and Efficient Strategic Planning and Stewardship			30%	
3.2 Project/Program /Facilities Management			42%	
3.3 Communications and Responsiveness			28%	
Overall DNN Total				
Office of Energy Efficiency and Renewable Energy				
3.1 Effective and Efficient Strategic Planning and Stewardship			20%	
3.2 Project/Program /Facilities Management			30%	
3.3 Communications and Responsiveness			50%	
Overall EERE Total				
Office of Fossil Energy				
3.1 Effective and Efficient Strategic Planning and Stewardship			34%	
3.2 Project/Program /Facilities Management			33%	
3.3 Communications and Responsiveness			33%	
Overall FE Total				
Office of Intelligence				
3.1 Effective and Efficient Strategic Planning and Stewardship			25%	
3.2 Project/Program /Facilities Management			40%	
3.3 Communications and Responsiveness			35%	
Overall IN Total				
Office of Nuclear Energy				

Program Office[7]	Letter Grade	Numerical Score	Weight	Overall Score
3.1 Effective and Efficient Strategic Planning and Stewardship			20%	
3.2 Project/Program /Facilities Management			30%	
3.3 Communications and Responsiveness			50%	
Overall NE Total				
Nuclear Regulatory Commission				
3.1 Effective and Efficient Strategic Planning and Stewardship			34%	
3.2 Project/Program /Facilities Management			33%	
3.3 Communications and Responsiveness			33%	
Overall NRC Total				
Office of Electricity				
3.1 Effective and Efficient Strategic Planning and Stewardship			20%	
3.2 Project/Program /Facilities Management			45%	
3.3 Communications and Responsiveness			35%	
Overall OE Total				
Office of Cybersecurity, Energy Security, and Emergency Response				
3.1 Effective and Efficient Strategic Planning and Stewardship			20%	
3.2 Project/Program /Facilities Management			45%	
3.3 Communications and Responsiveness			35%	
Overall CR Total				

Table 3.1 – Program Performance Goal 3.0 Score Development

HQ Program Office	Letter Grade	Numerical Score	Funding Weight (cost)	Overall Weighted Score
Office of Accelerator R&D Production				
Office of Advanced Scientific Research				
Office of Basic Energy Sciences				
Office of Biological and Environmental Research				
Office of Fusion Energy Sciences				
Isotope Program				
Office of Nuclear Physics				
Office of Workforce Development for Teachers and Scientists				
Advanced Research Projects Agency – Energy				
Department of Homeland Security				
Defense Nuclear Nonproliferation				
Office of Energy Efficiency and Renewable Energy				
Office of Fossil Energy				
Office of Intelligence				
Office of Nuclear Energy				
Nuclear Regulatory Commission				
Office of Electricity				
Office of Cybersecurity, Energy Security, and Emergency Response				
Performance Goal 3.0 Total				

Table 3.2 – Overall Performance Goal 3.0 Score Development[8]

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 3.3 – Goal 3.0 Final Letter Grade

[8]. The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2021.

GOAL 4.0 Provide Sound and Competent Leadership and Stewardship of the Laboratory

This Goal evaluates the Contractor's Leadership capabilities in leading the direction of the overall Laboratory, the responsiveness of the Contractor to issues and opportunities for continuous improvement, and corporate office involvement/commitment to the overall success of the Laboratory.

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in overall Contractor Leadership's planning for, integration of, responsiveness to and support for the overall success of the Laboratory. This may include, but is not limited to, the quality of Laboratory Vision/Mission strategic planning documentation and progress in realizing the Laboratory vision/mission; the ability to establish and maintain long-term partnerships/relationships with the scientific and local communities as well as private industry that advance, expand, and benefit the ongoing Laboratory mission(s) and/or provide new opportunities/capabilities; implementation of a robust assurance system; Laboratory Leadership's ability to facilitate and effectively manage external engagements and partnerships; Laboratory and Corporate Office Leadership's ability to instill responsibility and accountability down and through the entire organization; overall effectiveness of communications with DOE; understanding, management and allocation of the costs of doing business at the Laboratory commensurate with associated risks and benefits; utilization of corporate resources to establish joint appointments or other programs/projects/activities to strengthen the Laboratory; and advancing excellence in stakeholder relations to include good corporate citizenship within the local community.

Objectives:

4.1 Leadership and Stewardship of the Laboratory

By which we mean: The performance of the laboratory's senior management team as demonstrated by their ability to do such things as:

- Define an exciting yet realistic scientific vision for the future of the laboratory;
- Make progress in realizing the vision for the laboratory; and,
- Establish and maintain long-term partnerships/relationships that maintain appropriate relations with the scientific and local communities.

Letter Grade	Definition
A+	The Senior Leadership of the laboratory has made outstanding progress (on an order of magnitude scale) over the previous year in realizing their vision for the laboratory and has had a demonstrable impact on the Department and the Nation. Strategic plans are of outstanding quality, have been externally recognized and referenced for their excellence, and have an impact on the vision/plans of other national laboratories. The Senior leadership of the laboratory may have been faced very difficult challenges and plotted, successfully, its own course through the difficulty, with minimal handholding by the Department. Partners in the scientific and local communities applaud the laboratory in national fora, and the Department is strengthened by this.
A	The Senior Leadership of the laboratory has made significant progress over the previous year in realizing their vision for the laboratory, and through this, has had a demonstrable positive impact on the Office of Science and the Department. Strategic plans are of outstanding quality and recognize and reflect the vision/plans of other national laboratories. Faced with difficult challenges, actions were taken by the Senior leadership of the laboratory to redirect laboratory activities to enhance the long-term future of the laboratory. Partners in the scientific and local communities applaud the laboratory in national fora, and the Department is strengthened by this.

Letter Grade	Definition
A-	The laboratory senior management performs better than expected (B+ grade) in these areas.
B+	The Senior Leadership of the laboratory has made significant progress over the previous year in realizing their vision for the laboratory. Strategic plans present long-range goals that are both exciting and realistic. Decisions and actions taken by the lab leadership align work, facilities, equipment and technical capabilities with the laboratory vision and plan. The Senior leadership of the laboratory faced difficult challenges and successfully plotted its own course through the difficulty, with help from the Department. Partners in the scientific and local communities are supportive of the laboratory.
B	The Senior Leadership of the laboratory has made little progress over the previous year in realizing their vision for the laboratory. Strategic plans present long-range goals that are exciting and realistic; however, DOE is not fully confident that the laboratory is taking the actions necessary for the goals to be achieved. The Laboratory is not fully engaged with its partners/relationships in the scientific and local communities to maximize the potential benefits these relations have for the laboratory.
C	The Senior Leadership of the laboratory has made no progress over the previous year in realizing their vision for the laboratory or aligning work, facilities, equipment and technical capabilities with the laboratory vision and plan. Strategic plans present long-range goals that are either unexciting or unrealistic. Business plans exist, but they are not linked to the strategic plan and do not inspire DOE's confidence that the strategic goals will be achieved. Partnerships with the scientific and local communities with potential to advance the laboratory exist, but they may not always be consistent with the mission of or vision for the laboratory. Affected communities and stakeholders are mostly supportive of the laboratory and aligned with the management's vision for the laboratory.
D	The Senior Leadership of the laboratory has made no progress or has backslid over the previous year in realizing their vision for the laboratory or in aligning work, facilities, equipment and technical capabilities with the laboratory vision and plan. Strategic plans present long-range goals that are neither exciting nor realistic. Partnerships that may advance the Laboratory towards strategic goals are inappropriate, unidentified, or unlikely. Affected communities and stakeholders are not adequately engaged with the laboratory and indicate non-alignment with DOE priorities.
F	The Senior Leadership of the laboratory has made no progress or has backslid over the previous year in realizing their vision for the laboratory or in or aligning work, facilities, equipment and technical capabilities with the laboratory vision and plan. Strategic plans present long-range goals that are not aligned with DOE priorities or the mission of the laboratory. Partnerships that may advance the Laboratory towards strategic goals are inappropriate, unidentified, and unlikely, and/or the senior management team does not demonstrate a concerted effort to develop, leverage, and maintain relations with the scientific and local communities to assist the laboratory in achieving a successful future. Affected communities and stakeholders are openly non-supportive of the laboratory and DOE priorities.

4.2 Management and Operation of the Laboratory

By which we mean: The performance of the laboratory's senior management team as demonstrated by their ability to do such things as:

- Implement a robust contractor assurance system;
- Understand the costs of doing business at the laboratory and prioritize the management and allocation of these costs commensurate with their associated risks and benefits;
- Instill a culture of accountability and responsibility down and through the entire organization; and,
- Ensure good and timely communication between the laboratory and SC headquarters and the Site Office so that DOE can deal effectively with both internal and external constituencies.

Letter Grade	Definition
A+	The laboratory has a nationally or internationally recognized contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk and is working to help others internal and external to the Department establish similarly outstanding practices. The laboratory understands the drivers of cost at their lab and are prioritizing and managing these costs commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization. Communication between the laboratory and SC headquarters and the Site Office is such that all the national laboratories and the Department, as a whole, benefits.
A	The laboratory has improved dramatically in the last year in all of the following: building a robust and transparent contractor assurance system that integrates internal and external (corporate) evaluation processes to evaluate risk; demonstrating the use of this system in making decisions that are aligned with the laboratory's vision and strategic plan; understanding the drivers of cost at their lab, and prioritizing and managing these costs consistent with their associated risks and benefits to the laboratory and the SC laboratory system; demonstrating laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization; assuring communication between the laboratory and SC headquarters that is beneficial to both the lab and SC.
A-	The laboratory senior management performs better than expected (B+ grade) in these areas.
B+	The laboratory has a robust and transparent contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk. The laboratory can demonstrate use of this system in making decisions that are aligned with the laboratory's vision and strategic plan. The laboratory understands the drivers of cost at their lab and are prioritizing and managing these costs commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization. Communication between the laboratory and SC headquarters and the Site Office is such that there are no surprises or embarrassments.
B	The laboratory has a contractor assurance system in place, but further improvements are necessary, or the link between the CAS and the laboratory's decision-making processes are not evident. The laboratory understands the drivers of cost at their lab, but they are not prioritizing and managing these costs as well as they should to be commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is mostly evident down and through the entire organization. Communication between the laboratory and SC headquarters and the Site Office is such that there are no significant surprises or embarrassments.
C	The laboratory lacks a robust and transparent contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk. The laboratory cannot demonstrate use of this system in making decisions that are aligned with the laboratory's vision and strategic plan. The laboratory does not fully understand the drivers of cost at their lab, and thus are not prioritizing and managing these costs as well as they should to be commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Communication between the laboratory and SC headquarters and the Site Office is such that there has been at least one significant surprise or embarrassment.
D	The laboratory lacks a contractor assurance system, doesn't understand the drivers of cost at their lab, and is not prioritizing and managing costs. SC HQ must intercede in management decisions. Poor communication between the laboratory and SC headquarters and the Site Office has resulted in more than one significant surprise or embarrassment.
F	Lack of management by the laboratory's senior management has put the future of the laboratory at risk or has significantly hurt the reputation of the Office of Science.

4.3 Leadership of External Engagements and Partnerships

By which we mean: the performance of the laboratory leadership team to achieve the following:

- Establish a vision for developing and promoting technology transfer activities at the laboratory that align with the laboratory research portfolio, further DOE missions, and promote national and economic security of the United States;
- Identify potential partners, implement outreach activities, and manage external engagements to promote accomplishment of technology transfer objectives, and to develop a feedback loop with industry that both informs planned and ongoing technology transfer activities;
- Develop and leverage appropriate relationships with private industry and universities to the benefit of the laboratory, DOE and the U.S. taxpayer (e.g., public-private partnerships, long-term research relationships);
- Facilitate regional partnerships and initiatives that contribute to the local economy and support DOE and laboratory outreach efforts and scientific missions; and,
- Foster a culture of entrepreneurship at the laboratory that encourages staff at all levels to consider potential technology transfer opportunities within their program work and other laboratory activities.

Letter Grade	Definition
A+	Laboratory leadership has an exemplary technology transfer vision and is a leader across the complex in engaging external partners to identify technology transfer activities that are in strategic alignment with the laboratory research portfolio and in furtherance of the DOE mission. The laboratory is recognized as a preeminent leader in the technology transfer community across the DOE complex and has assisted other national laboratories to develop strategies for identifying and engaging external partnerships. The laboratory leadership successfully develops national and regional partnerships that significantly enhance DOE and laboratory outreach efforts and scientific missions. The laboratory staff are strongly encouraged to seek out and pursue potential technology transfer activities that are clearly connected and/or complementary to their research and development work at the laboratory and the laboratory is able to demonstrate how this outreach informs their ongoing technology transfer efforts.
A	The laboratory has a strong vision for engaging strategic partners and identifying strong connections between the laboratory research portfolio and potential technology transfer activities. The laboratory is one of the leaders in the technology transfer community across the DOE complex. The laboratory leadership develops national and regional partnerships that positively impact DOE and laboratory outreach efforts and scientific missions. The laboratory staff are encouraged to pursue technology transfer activities that are connected and/or complementary to their research and development work at the laboratory.
A-	The laboratory senior management performs better than expected (B+ grade) in these areas.
B+	The laboratory has a vision for engaging external partners, capturing intellectual property, and connecting laboratory research with potential technology transfer activities in furtherance of the DOE mission. The laboratory leadership develops national and regional partnerships that support DOE and laboratory outreach efforts and scientific missions. Laboratory staff are encouraged to seek out and engage in opportunities for technology transfer activities.
B	The laboratory has some external engagements that support development of a vision for technology transfer activities at the laboratory; however, this vision is not fully realized and requires more work to identify potential external partners or challenges in capturing intellectual property. The laboratory has limited partnerships to advance DOE and laboratory outreach efforts and scientific missions.
C	The laboratory lacks a vision and the mechanisms to implement a strategy to promote technology transfer at the laboratory and has little success in developing partnerships.
D	Laboratory leadership lack a vision and have not supported the mechanisms/resources necessary to develop or implement an external engagement strategy to promote technology transfer activities at the laboratory including partnership efforts. Laboratory staff are discouraged from seeking out opportunities to solicit external partner input and are also discouraged from identifying potential activities for technology transfer and from engaging in efforts to protect intellectual property.
F	Lack of vision and resources by the laboratory's senior management has hindered the ability of the laboratory to engage external partners and has hurt the laboratory's ability to identify and plan for technology activities and partnerships, this failure has significantly hurt the Department's ability to achieve its missions.

4.4 Contractor Value-added

By which we mean: the additional benefits that accrue to the laboratory and the Department of Energy by virtue of having this particular M&O contractor in place. Included here, typically, are things over which the laboratory leadership does not have immediate authority, such as:

- Corporate involvement/contributions that facilitate DOE strategic plans and program initiatives and/or deal with operational challenges at the laboratory;
- Using corporate resources to enhance DOE mission objectives by establishing programs/projects/activities that strengthen the laboratory (e.g., joint appointments, integrated research initiatives, novel educational opportunities); and,
- Providing other contributions that enable the laboratory to do things that are good for DOE, the laboratory and its community and that DOE cannot supply.

Letter Grade	Definition
A+	The laboratory has been transformed as a result of the many, substantial, additional benefits that accrue to the laboratory as a result of this contractor's support and operation of the laboratory.
A	Over the past year, the laboratory has become demonstrably stronger, better and more attractive as a place of employment as a result of the many, substantial, additional benefits that accrue to the laboratory as a result of this contractor's support and operation of the laboratory.
A-	The laboratory senior management performs better than expected (B+ grade) in these areas.
B+	The laboratory enjoys additional benefits above and beyond those associated with managing the laboratory's activities that accrue as a result of this contractor's support and operation of the laboratory.
B	The laboratory enjoys few additional benefits that accrue as a result of this contractor's operation of the laboratory; help by the contractor is needed to strengthen the laboratory.
C	The laboratory enjoys few additional benefits that accrue as a result of this contractor's operation of the laboratory; the contractor seems unable to help the laboratory.
D	The laboratory enjoys few additional benefits that accrue as a result of this contractor's operation of the laboratory; the contractor's efforts are inconsistent with the interests of the laboratory and the Department.
F	The laboratory enjoys no additional benefits that accrue as a result of this contractor's operation of the laboratory; the contractor's efforts are counter-productive to the interests of the Department.

Notable Outcomes

- **OSO/SC:** The Laboratory must keep senior SC leadership informed of key events (e.g., VIP/protocol visits, news releases, media requests) through timely population of the Science News Dashboard with all the relevant information on such activities and/or through other appropriate mechanisms. (Objective 4.2)
- **OSO/SC:** The Laboratory and contractor leadership must ensure that all communication with interested stakeholders on DOE/SC program priorities/objectives are communicated in advance to DOE and aligned with DOE/SC goals, strategies and guidance. (Objective 4.4)

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Overall Score
Goal 4.0 – Provide Sound and Competent Leadership and Stewardship of the Laboratory				
4.1 Leadership and Stewardship of the Laboratory			30%	
4.2 Management and Operation of the Laboratory			30%	
4.3 Leadership of External Engagements and Partnerships			10%	
4.4 Contractor Value-Added			30%	
Performance Goal 4.0 Total				

Table 4.1 – Performance Goal 4.0 Score Development

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 4.2 – Goal 4.0 Final Letter Grade

GOAL 5.0 Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection

The weight of this Goal is 30%.

This Goal evaluates the Contractor's overall success in deploying, implementing, and improving integrated ES&H systems that efficiently and effectively support the mission(s) of the Laboratory.

5.1 Provide an Efficient and Effective Worker Health and Safety Program
5.2 Provide Efficient and Effective Environmental Management System

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in protecting workers, the public, and the environment. This may include, but is not limited to, minimizing the occurrence of environment, safety and health (ESH) incidents; effectiveness of the Integrated Safety Management (ISM) system; effectiveness of work planning, feedback, and improvement processes; the strength of the safety culture throughout the Laboratory; the strength of the Nuclear/Facility Safety Programs; the effective development, implementation and maintenance of an efficient and effective Environmental Management system; and the effectiveness of responses to identified hazards and/or incidents.

Notable Outcomes

- **OSO:** Implement improvements to strengthen conduct of research safety culture. Improvements to work control and ISM implementation should consider recent events and focus on radiological and non-nuclear research facilities. (Objective 5.1)

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Overall Score
Goal 5.0 - Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection.				
5.1 Provide an Efficient and Effective Worker Health and Safety Program			60%	
5.2 Provide an Efficient and Effective Environmental Management System			40%	
			Performance Goal 5.0 Total	

Table 5.1 – Performance Goal 5.0 Score Development

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 5.2 – Goal 5.0 Final Letter Grade

GOAL 6.0 Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of the Laboratory Mission(s)

The weight of this Goal is 25%.

This Goal evaluates the Contractor's overall success in deploying, implementing, and improving integrated business systems that efficiently and effectively support the mission(s) of the Laboratory.

6.1 Provide an Efficient, Effective, and Responsive Financial Management System
6.2 Provide an Efficient, Effective, and Responsive Acquisition Management System and Property Management System
6.3 Provide an Efficient, Effective, and Responsive Human Resources Management System and Diversity Program
6.4 Provide Efficient, Effective, and Responsive Contractor Assurance Systems, including Internal Audit and Quality
6.5 Demonstrate Effective Transfer of Knowledge and Technology and the Commercialization of Intellectual Assets

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in the development, deployment and integration of foundational program (e.g., Contractor Assurance, Quality, Financial Management, Acquisition Management, Property Management, and Human Resource Management) systems across the Laboratory. This may include, but is not limited to, minimizing the occurrence of management systems support issues; quality of work products; continual improvement driven by the results of audits, reviews, and other performance information; the integration of system performance metrics and trends; the degree of knowledge and appropriate utilization of established system processes/procedures by Contractor management and staff; benchmarking and performance trending analysis. The DOE evaluator(s) shall consider the Laboratory's performance in making progress toward comprehensive collection and submission to OSTI of peer-reviewed accepted manuscripts for journal articles (and associated metadata) resulting from DOE-funded research as called for in the DOE Public Access Plan[9], and cooperation with the Department in meeting the relevant requirements to provide other forms of scientific and technical information to OSTI, per DOE O 241.1B. The DOE evaluator(s) shall also consider the stewardship of the pipeline of innovations and resulting intellectual assets at the Laboratory along with impacts and returns created/generated as a result of technology transfer, work for others and intellectual asset deployment activities.

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Overall Score
Goal 6.0 - Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of the Laboratory Mission(s)				
6.1 Provide an Efficient, Effective, and Responsive Financial Management System(s)			18%	
6.2 Provide an Efficient, Effective, and Responsive Acquisition Management System and Property Management System			25%	
6.3 Provide an Efficient, Effective, and Responsive Human Resources Management System and Diversity Program			17%	

[9] https://www.energy.gov/downloads/doe-public-access-plan

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Overall Score
6.4 Provide Efficient, Effective, and Responsive Contractor Assurance Systems, including Internal Audit and Quality			30%	
6.5 Demonstrate Effective Transfer of Knowledge and Technology and the Commercialization of Intellectual Assets			10%	
			Performance Goal 6.0 Total	

Table 6.1 – Performance Goal 6.0 Score Development

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 6.2 – Goal 6.0 Final Letter Grade

GOAL 7.0 Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs

The weight of this Goal is 20%.

This Goal evaluates the overall effectiveness and performance of the Contractor in planning for, delivering, and operations of Laboratory facilities and equipment needed to ensure required capabilities are present to meet today's and tomorrow's mission(s) and complex challenges.

7.1 Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage, Minimizes Life Cycle Costs, and Ensures Site Capability to Meet Mission Needs
7.2 Provide Planning for and Acquire the Facilities and Infrastructure Required to Support the Continuation and Growth of Laboratory Missions and Programs

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in facility and infrastructure programs. This may include, but is not limited to, the management of real property assets to maintain effective operational safety, worker health, environmental protection and compliance, property preservation, and cost effectiveness; planning and executing strategies to promote the resilience and reliability of laboratory infrastructure; effective facility utilization, maintenance and budget execution; day-to-day management and utilization of space in the active portfolio; maintenance and renewal of building systems, structures and components associated with the Laboratory's facility and land assets; management of energy use, conservation, and sustainability practices; the integration and alignment of the Laboratory's comprehensive strategic plan with capabilities; facility planning, forecasting, and acquisition; the delivery of accurate and timely information required to carry out the critical decision and budget formulation process; quality of site and facility planning documents; and Cost and Schedule Performance Index performance for facility and infrastructure projects.

Notable Outcomes

- **OSO:** Effectively plan, execute, and successfully deliver FY 2021 scope for the two SC projects equal to or less than $50 million delegated to the Laboratory Director by SC. These are the Craft Resources Support Facility and the Stable Isotope Production Facility. (Objective 7.2)

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Overall Score
Goal 7.0 - Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs.				
7.1 Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage, Minimizes Life Cycle Costs, and Ensures Site Capability to Meet Mission Needs			50%	
7.2 Provide Planning for and Acquire the Facilities and Infrastructure Required to support the Continuation and Growth of Laboratory Missions and Programs			50%	
			Performance Goal 7.0 Total	

Table 7.1 – Performance Goal 7.0 Score Development

Total Score	**4.3-4.1**	**4.0-3.8**	**3.7-3.5**	**3.4-3.1**	**3.0-2.8**	**2.7-2.5**	**2.4-2.1**	**2.0-1.8**	**1.7-1.1**	**1.0-0.8**	**0.7-0**
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 7.2 – Goal 7.0 Final Letter Grade

GOAL 8.0 Sustain and Enhance the Effectiveness of Integrated Safeguards and Security Management (ISSM) and Emergency Management Systems

The weight of this Goal is 25%.

This Goal evaluates the Contractor's overall success in safeguarding and securing Laboratory assets that supports the mission(s) of the Laboratory in an efficient and effective manner and provides an effective emergency management program.

8.1 Provide an Efficient and Effective Emergency Management System
8.2 Provide an Efficient and Effective Cyber Security System for the Protection of Classified and Unclassified Information
8.3 Provide an Efficient and Effective Physical Security Program for the Protection of Special Nuclear Materials, Classified Matter, Classified Information, Sensitive Information, and Property

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in the safeguards and security, cyber security and emergency management program systems. This may include, but is not limited to, the commitment of leadership to strong safeguards and security, cyber security and emergency management systems; the integration of these systems into the culture of the Laboratory; the degree of knowledge and appropriate utilization of established system processes/procedures by Contractor management and staff; maintenance and the appropriate utilization of Safeguards, Security, and Cyber risk identification, prevention, and control processes/activities; and the prevention and management controls and prompt reporting and mitigation of events as necessary.

Notable Outcomes

- **OSO:** Implement cloud access cybersecurity capabilities for detection, response, and protection of data in cloud applications to monitor usage and compliance in the cloud and to automate cybersecurity actions on events. (Objective 8.2)
- **OSO:** In support of Design Basis Threat implementation, complete chemical management consolidation. (Objective 8.3)

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Overall Score
Goal 8.0 - Sustain and Enhance the Effectiveness of Integrated Safeguards and Security management (ISSM) and Emergency Management Systems.				
8.1 Provide an Efficient and Effective Emergency Management System			15%	
8.2 Provide an Efficient and Effective Cyber Security System for the Protection of Classified and Unclassified Information			35%	
8.3 Provide an Efficient and Effective Physical Security Program for the Protection of Special Nuclear Materials, Classified Matter, Classified Information, Sensitive Information, and Property			50%	
			Performance Goal 8.0 Total	

Table 8.1 – Performance Goal 8.0 Score Development

Total Score	**4.3-4.1**	**4.0-3.8**	**3.7-3.5**	**3.4-3.1**	**3.0-2.8**	**2.7-2.5**	**2.4-2.1**	**2.0-1.8**	**1.7-1.1**	**1.0-0.8**	**0.7-0**
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 8.2 – Goal 8.0 Final Letter Grade

Attachment I

Program Office Goal & Objective Weightings
Office of Science

	ASCR	BER	BES	FES	NP		ARDAP	IP
	Weight	Weight	Weight	Weight	Weight		Weight	Weight
Goal 1.0 Mission Accomplishment								
1.1 Impact	50%	60%	50%	50%	50%		50%	50%
1.2 Leadership	50%	40%	50%	50%	50%		50%	50%
Goal 2.0 Design, Fabrication, Construction and Operation of Facilities								
2.1 Design of Facility (the initiation phase and the definition phase, i.e. activities leading up to CD-2)	0%	0%	10%	30%	100%		0%	25%
2.2 Construction of Facility / Fabrication of Components (execution phase, Post CD-2 to CD-4)	40%	0%	25%	70%	0%		0%	0%
2.3 Operation of Facility	50%	90%	35%	0%	0%		0%	65%
2.4 Utilization of Facility to Grow and Support Lab's Research Base and External User Community	10%	10%	30%	0%	0%		100%	10%
Goal 3.0 Program Management								
3.1 Effective and Efficient Strategic Planning and Stewardship	30%	20%	30%	35%	30%		40%	30%
3.2 Project/Program/Facilities Management	40%	30%	40%	35%	40%		40%	40%
3.3 Communications and Responsiveness	30%	50%	30%	30%	30%		20%	30%

Attachment II

Program Office Goal & Objective Weightings
All Other Customers[10]

	WDTS	ARPA-E	DHS	DNN	EERE	FE	IN	NE	NRC	OE	CR
	Weights										
Goal 1.0 Mission Accomplishment											
1.1 Impact	80%	65%	50%	58%	60%	50%	65%	50%	50%	50%	50%
1.2 Leadership	20%	35%	50%	42%	40%	50%	35%	50%	50%	50%	50%
Goal 3.0 Program Management											
3.1 Effective and Efficient Strategic Planning and Stewardship	20%	20%	20%	30%	20%	34%	25%	20%	34%	20%	20%
3.2 Project/Program/ Facilities Management	50%	30%	40%	42%	30%	33%	40%	30%	33%	45%	45%
3.3 Communications and Responsiveness	30%	50%	40%	28%	50%	33%	35%	50%	33%	35%	35%

[10] Objective weightings indicated for non-science customers are reflective of FY 2021 weightings and will be updated as those customers provide their weightings. Final Objective weightings will be incorporated, as appropriate, once they are determined by each HQ Program Office and provided to the Site Office. Should a HQ Program Office fail to provide final Objective weightings before the end of the first quarter FY 2021 the preliminary weightings provided shall become final.

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J – LIST OF ATTACHMENTS

APPENDIX H

ANNEX OF INFORMATION AND INTELLECTUAL PROPERTY

Annex on Information and Intellectual Property

Article 1

Subject Matter and Definitions

1.1 This Annex covers the dissemination, exchange, use and protection of information and intellectual property pertaining to protectable subject matter, in the execution of this Agreement. Unless otherwise provided, the terms used in this Annex shall have the same meaning as in this Agreement.

1.2 **Information** shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in paragraph 1.3 below.

1.3 **Intellectual Property** shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. For the purposes of this Annex, Intellectual Property may include confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and

a) have been held in confidence by their owner,

b) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents,

c) have not been made available by their owner to other parties without an obligation concerning confidentiality, and

d) are not available to the receiving party without an obligation concerning confidentiality.

1.4 **Background Intellectual Property** shall mean Intellectual Property that has been or is acquired, developed or produced, before the entry into force of this Agreement, or outside of the scope of this Agreement.

1.5 **Generated Intellectual Property** shall mean Intellectual Property that is generated or acquired with full ownership by a Member, acting through a Domestic Agency or Entity, or by the ITER Organization or jointly pursuant to and in the course of the performance of this Agreement.

1.6 **Improvements** shall mean any technological advancement to existing Intellectual Property, including derivative works.

1.7 **Entity or Entities** shall mean any entity with which a Domestic Agency or the ITER Organization has entered into a contract for the supply of goods or services for the purposes of this Agreement.

Article 2

General Provisions

2.1. Subject to the provisions of this Annex, the Members support the widest possible dissemination of Generated Intellectual Property.

2.2. Each Member shall ensure that the other Members and the ITER Organization can obtain the rights to Intellectual Property allocated in accordance with this Annex. Contracts placed by each Member or the ITER Organization with any Entity shall be consistent with the provisions of this Annex. In particular, appropriate public procurement procedures must be followed by all Members and the ITER Organization in order to ensure compliance with this Annex.

The ITER Organization shall properly identify in a timely manner the Background Intellectual Property of the contracting Entities with a view to obtaining for the ITER Organization and the Members access to this Background Intellectual Property in conformity with this Annex.

Each Member shall properly identify in a timely manner the Background Intellectual Property of the contracting Entities with a view to obtaining for the ITER Organization and the Members access to this Background Intellectual Property in conformity with this Annex.

Each Member and the ITER Organization shall ensure access for the ITER Organization and the other Members to inventions and other Intellectual Property generated or incorporated in the execution of the contracts provided that inventors' rights are respected, in conformity with this Annex.

2.3 This Annex does not alter or prejudice the allocation of rights between a Member and its nationals. Whether the rights concerning Intellectual Property shall be held by a Member or its nationals shall be determined as between themselves in accordance with their applicable laws and regulations.

2.4 If a Member generates or acquires full ownership of Intellectual Property in the course of the execution of this Agreement, the Member shall notify all other Members and the ITER Organization in a timely manner and provide details of such Intellectual Property.

Article 3

Dissemination of Information and Scientific Publications whether or not Copyrighted

Each Member shall be entitled, for non commercial uses, to translate, reproduce, and publicly distribute Information directly arising from the execution of this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

Article 4

Intellectual Property Generated or Incorporated by a Member, a Domestic Agency or Entity

4.1. Generated Intellectual Property:

4.1.1 If protectable subject matter is generated by a Member, a Domestic Agency or Entity in the course of the execution of this Agreement, the Member, the Domestic Agency or Entity shall be entitled to acquire all rights, title and interest in all countries in and to such intellectual property according to applicable laws and regulations.

4.1.2 Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property in the course of the execution of this Agreement shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty-free license to such Generated Intellectual Property to other Members and the ITER Organization, with the right of the ITER Organization to sub-license, and the right of the other Members to sub-license within their respective territory, for the purposes of publicly sponsored fusion research and development programmes.

4.1.3 Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property in the course of the execution of this Agreement shall make available on an equal and non-discriminatory basis a non-exclusive license to such Generated Intellectual Property to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which such Member licenses such Generated Intellectual Property to third parties within or outside such Member's own territory. As long as such terms have been offered such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

4.1.4 Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property pursuant to this Agreement is encouraged to enter into commercial arrangements with the other Members, Domestic Agencies, Entities and third parties in order to allow use of Generated Intellectual Property in fields other than fusion.

4.1.5. Members, and their Domestic Agencies or Entities, that license or sub-license Generated or Background Intellectual Property pursuant to this Annex, will maintain records of any such licensing, which records will be available to other Members, such as through the ITER Organization.

4.2. Background Intellectual Property:

4.2.1. Background Intellectual Property shall remain the property of the party that owns this intellectual property.

4.2.2. Any Member, acting through a Domestic Agency or Entity, which has incorporated Background Intellectual Property, except confidential information such as know-how and trade secrets into the items provided to the ITER Organization which Background Intellectual Property is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement,

shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty-free license to such Background Intellectual Property to other Members and to the ITER Organization, with the right of the ITER Organization to sub-license and the right of Members to sub-license to their research institutes and institutes of higher education within their respective territory for the purposes of publicly sponsored fusion research and development programmes.

4.2.3. (a) Any Member, acting through a Domestic Agency or Entity, which has incorporated background confidential information into the items provided to the ITER Organization which background confidential information is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item,
- when decided necessary by the Council, in advance of any public procurement, or
- for safety, for quality assurance and quality control reasons as required by regulatory authorities,

shall ensure that the ITER Organization has an irrevocable, non-exclusive, royalty-free license available to use such background confidential information including manuals or instructional training materials for the construction, operation, maintenance and repair of the ITER facilities.

(b) When confidential information is made available to the ITER Organization, it must be clearly marked so, and transmitted pursuant to an arrangement for confidentiality. The recipient of such information shall use it only for purposes set forth in 4.2.3 (a) and shall preserve its confidentiality to the extent provided in that arrangement. Compensation for damages arising from the misuse of such background confidential information by the ITER Organization shall be paid by the ITER Organization.

4.2.4. Any Member, acting through a Domestic Agency or Entity, which has incorporated background confidential information such as know how or trade secrets into the items provided to the ITER Organization which background confidential information is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or

- when decided necessary by the Council, in advance of any public procurement,

shall use its best efforts to either grant a commercial license to such background confidential information or supply the same items incorporating the background confidential information to the receiving party by means of private contracts with financial compensation for publicly sponsored fusion research and development programmes of a Member on terms no less favorable than the basis upon which such Member licenses such background confidential information or supplies the same items to third parties within or outside such Member's own territory. As long as such terms have been offered, such license or supply of such item shall not be denied. The license, if granted, may be revoked only in case the licensee does not fulfil its contractual obligations.

4.2.5. Any Member, acting through a Domestic Agency or Entity, which has incorporated Background Intellectual Property, including background confidential information, in the execution of this Agreement shall use its best efforts to make sure that the component incorporating the Background Intellectual Property is available on reasonable terms and conditions, or use its best efforts to grant on an equal and non-discriminatory basis a non-exclusive license to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory, on terms no less favorable than the basis upon which such Member licenses such Background Intellectual Property to third parties within or outside such Member's own territory. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

4.2.6. Any Member, acting through a Domestic Agency or Entity, is encouraged to make available for commercial purposes other than those set out in article 4.2.5. to the other Members, any Background Intellectual Property incorporated into the items provided to the ITER Organization which Background Intellectual Property was required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement.

Such Background Intellectual Property, if licensed by the owners to the Members, shall be licensed on an equal and non-discriminatory basis.

4.3. Licensing to Third Parties of Non-Members:

Any license on Generated Intellectual Property granted by the Members to third parties of non-Members shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.

Article 5

Intellectual Property Generated or Incorporated by the ITER Organization

5.1 Generated Intellectual Property:

5.1.1 Where intellectual property is generated by the ITER Organization, in the course of the execution of this Agreement, it shall be owned by the ITER Organization. The ITER Organization shall develop appropriate procedures for the recording, reporting and protection of the Intellectual Property.

5.1.2 Such intellectual property shall be licensed by the ITER Organization to the Members on an equal, non-discriminatory, irrevocable, non-exclusive, royalty-free basis, with the right of the Members to sub-license within their territory for the purpose of fusion research and development.

5.1.3 Generated Intellectual Property that has been developed or acquired by the ITER Organization in the course of the execution of this Agreement shall be licensed to the Members on an equal, non-discriminatory, non-exclusive basis for commercial use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which the ITER Organization licenses such Generated Intellectual Property to third parties. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

5.2. Background Intellectual Property:

5.2.1. Provided that it has the pertinent rights, when the ITER Organization incorporates Background Intellectual Property which is required:

- to construct operate, use or integrate technology for research and development in relation to the ITER facilities,
- to create improvements and derivative works,
- to repair and maintain the ITER facilities, or
- when decided necessary by the Council, in advance of any public procurement,

the ITER Organization shall make the necessary arrangements in order to sub-license that Background Intellectual Property on an equal and non-discriminatory basis by an irrevocable, non-exclusive, royalty-free license to the Members, with the right of the Members to sub-license within their respective territory for the purpose of fusion research and development. The ITER Organization shall make its best efforts to acquire the pertinent rights.

5.2.2. For Background Intellectual Property, including background confidential information, incorporated by the ITER Organization in the course of the execution of this Agreement, the ITER Organization shall use its best efforts to make available on an equal and non-discriminatory basis a non-exclusive license to the Members for commercial fusion use, with the right to sub-license for such use by such Members'

own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which the ITER Organization licenses such Background Intellectual Property to third parties. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

5.2.3. The ITER Organization shall use its best efforts to make available to the Members any Background Intellectual Property, including background confidential information, for purposes other than those set out in article 5.2.2. Such Background Intellectual Property, if licensed by the ITER Organization to the Members, shall be licensed on an equal and non-discriminatory basis.

5.3 Licensing to third parties of a non-Member:

Any license granted by the ITER Organization to third parties of a non-Member shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.

Article 6

Intellectual Property Generated by the ITER Organization's Staff and other Researchers

6.1. Intellectual Property generated by directly employed and seconded staff of the ITER Organization shall be owned by the ITER Organization and treated in corresponding employment contracts or regulations consistent with the provisions set out herein.

6.2. Intellectual Property generated by visiting researchers who are participating in the activities of the ITER Organization through an arrangement with the ITER Organization for undertaking specific activities and who are directly involved in general programmes of the ITER Organization exploitation, shall be owned by the ITER Organization unless otherwise agreed by the Council.

6.3. Intellectual Property generated by visiting researchers not involved in general programmes of the ITER Organization exploitation shall be subject to an arrangement with the ITER Organization pursuant to conditions established by the Council.

Article 7

Protection of Intellectual Property

7.1. When a Member acquires or seeks protection for Generated Intellectual Property developed or acquired by that Member, such Member shall notify in a timely manner and provide details of such protection to all other Members and to the ITER Organization. If a Member decides not to exercise its right to seek protection for Generated Intellectual Property in any country or region, it shall notify the ITER Organization in a timely manner of its decision, and the ITER Organization may then seek to obtain such protection either directly or via the Members.

7.2. For Generated Intellectual Property developed or acquired by the ITER Organization, the Council shall adopt, as soon as practicable, appropriate procedures for the reporting, protection and recording of such Intellectual Property for example through the creation of a database to which the Members may have access.

7.3. In the event of a joint creation, the participating Members and/or the ITER Organization shall have the right to seek to obtain in co-ownership Intellectual Property in any State they choose.

7.4. There shall be co-ownership of Intellectual Property when created by two or more Members or by one or more Members together with the ITER Organization and when the features of such intellectual property are not capable of being separated for the purpose of applying for, obtaining and/or maintaining in force the protection of the relevant intellectual property right. In such a case the joint creators shall agree among themselves by means of a co-ownership arrangement on the allocation of and the terms of exercising the ownership of the said Intellectual Property.

Article 8

Decommissioning

8.1. For the decommissioning phase after the transfer of the facilities to the Host State, the Host Party shall provide to the other Members all relevant information, whether published or not, generated or used during the decommissioning of the ITER facilities.

8.2. Intellectual Property generated by the Host State during the decommissioning phase shall not be affected by this Annex.

Article 9

Termination and Withdrawal

9.1. The Council shall, as necessary, address any issues relating to the termination of this Agreement or the withdrawal of a Party in so far as they relate to Intellectual Property, that are not fully addressed in this Agreement.

9.2. The Intellectual Property rights conferred and obligations imposed upon the Members and the ITER Organization by the provisions of this Annex, in particular all granted licenses, shall subsist after the termination of this Agreement, or after the withdrawal of a Party.

Article 10

Royalties

Royalties received from the licensing of Intellectual Property by the ITER Organization shall be a resource of the ITER Organization.

Article 11

Settlement of Disputes

Any dispute arising out of or in connection with this Annex shall be settled in accordance with Article 25 of this Agreement.

Article 12

Awards to Inventors

The Council shall determine appropriate terms and conditions for the remuneration of the Staff when such Staff generates Intellectual Property.

Article 13

Liability

When negotiating license arrangements, the ITER Organization and the Members shall, as appropriate, include suitable provisions governing their respective liabilities, rights and obligations arising from the execution of those license arrangements.

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J – LIST OF ATTACHMENTS

APPENDIX I
INTELLECTUAL PROPERTY MANAGEMENT PLAN

In accordance with paragraph (a)(3) of the Section H clause entitled "Intellectual Property-BioEnergy Science Center", attached is the Intellectual Property Management Plan which has been approved by the Department of Energy.

October 18, 2007

BioEnergy Science Center IP Management Plan

1. Introduction

The principal goals of this intellectual property management plan for the BioEnergy Science Center (BESC) include:

- Broad and rapid dissemination of information among the BESC team members to maximize productivity and progress;
- Timely and equitable distribution of the new technology to researchers in relevant fields including, but not necessarily limited to biofuels development; and
- Effective, coordinated commercialization of technologies through formation of promising start-up ventures as well as licensing to corporate entities pursuing biofuels development.

The BESC is comprised of researchers at the following member institutions which are universities, DOE National Laboratories, a non-profit research foundation, or industrial research partners.

DOE National Labs

- Oak Ridge National Laboratory
- National Renewable Energy Research Laboratory
- Brookhaven National Laboratory

Non-profit Research Foundation

- Samuel Roberts Noble Foundation

Universities

- The University of Tennessee:
- University of Georgia
- Georgia Institute of Technology
- Dartmouth College
- University of California at Riverside
- Washington State University
- University of Minnesota
- Virginia Polytechnic Institute and State University
- North Carolina State University
- Cornell University

Industrial Team Members

- ArborGen, LLC
- Mascoma Corporation
- Verenium Corporation

2. Definitions

2.1 The BioEnergy Science Center ("BESC") is a program funded under BESC Funding. The research of BESC is performed by employees of BESC member institutions: Oak Ridge National Laboratory, National Renewable Energy Laboratory, Georgia Institute of Technology, University of Georgia, University of Tennessee, Dartmouth College, ArborGen LLC, Verenium Corporation, Mascoma Corporation, The Samuel Roberts Noble Foundation, Inc., Brookhaven National Laboratory, Cornell University, North Carolina State University, University of California-Riverside, University of Minnesota, Virginia Polytechnic Institute and State University, and Washington State University, and, such other industry and non-profit participants as may be added from time to time by BESC (collectively referred to as BESC members or member institutions.)

2.2 "BESC Funding" means the funding for BESC that was awarded by DOE to ORNL under Contract No. DE-AC02-00OR22725 in connection with Funding Opportunity Announcement number DE PS02-06ER64304.

2.3 "BESC Invention" means an invention conceived or first actually reduced to practice under BESC Funding. Title to BESC Inventions follows inventorship as per Federal law. The BESC member institution which employs the inventors will have the right to elect title to BESC Inventions.

2.4 "Core Technology" means the following application areas:

a) Formation of biomass with reduced recalcitrance
b) New tools for biomass characterization
c) Microbial/enzymatic hydrolysis of lignocellulose

For the avoidance of doubt, these Core Technology areas do not include applications that are not related to biomass modification for biofuels production. For example, if an invention has applications both in biofuel production and in the pharmaceutical industry or in the non-biofuel specialty chemicals industry, those non-biofuel applications would be outside the core technical areas. Licensing in fields other than the Core Technologies shall be at the discretion of the party or parties owning the invention.

2.5 "BESC IP" means BESC Inventions, non-patentable materials (including biological materials), mask works, trademarks and copyrighted works that arise under BESC Funding.

3. BESC Commercialization Council

BESC will form a Commercialization Council to oversee rapid dissemination of invention disclosures as well as to consolidate licensing of BESC IP in the Core Technologies to a single, streamlined "one stop shop." The Council will be comprised of one representative from each of the BESC member institutions for as long as that institution is an active member of the BESC, i.e., for the time that member continues to receive BESC Funding. In addition, the invention owner's institution, regardless of its current status as a subcontractor, will be included on the BESC Commercialization Council for purposes of licensing the BESC IP that it owns, solely or jointly.

The function of this Council is to review and evaluate new BESC IP, and consider the technical merit and commercial potential of each. The Council is intended as a forum for discussion regarding further maturation of technologies and sharing of insights about market opportunities. It may also provide recommendations to the IP owners regarding filing of patent applications. This forum will serve as a communications means and a clearing house for distribution of information about BESC inventions

throughout the team. The decision to commit resources for patent filing will remain with the owning institution(s),

The progress of any patent application preparation and prosecution will be monitored by this Council. As IP strategies are developed and market analyses are conducted, this group will explore licensing leads and commercialization opportunities in the Core Technology areas. Licensing inquiries will be communicated to the Council by any BESC member who receives such expressions of interest.

ORNL will serve as coordinator for the Commercialization Council.

4. Ownership of inventions

The statutes governing disposition of title to new inventions under Government agreements will be followed:

i. The Bayh-Dole Act, 35 U.S.C. 200 et seq., requires that Universities, Non-Profits and small business who are participating under a funding agreement (as defined in the Bayh-Dole Act) will have the option to retain title to their own employees' inventions.

ii. The Federal Non Nuclear Energy Act of 1974, 42 U.S.C. 5908, will govern disposition of title for all other parties, regardless of whether they receive government funding, and it requires that the Government obtains title to new inventions unless a waiver is granted.

iii. Inventions made by employees of ORNL, NREL and Brookhaven National Laboratory will be subject to the M&O contract terms and conditions with respect to ownership of inventions made by lab employees. The M&O contract generally provides that the lab has the right to elect to retain title to inventions made by their lab employees.

5. Filing of Patent Applications

Each owner institution will protect its BESC Inventions according to its standard practices and is responsible for the costs of any domestic and foreign protection. DOE will have the right to file patent applications if the owner institution does not wish to do so, and has indicated a willingness to use its waiver authority to allow others to file in such situations.

6. IP Management

BESC will provide a simplified means for industry to negotiate licenses and other agreements relating to BESC IP (e.g., CRADA, WFO, bailment, option) by centralizing these activities with a lead institution, (normally ORNL but another BESC member may be designated as the lead by the Commercialization Council, depending on the circumstances), so as to provide a "One Stop Shop." The University of Georgia Research Foundation will be the normal lead institution for negotiating sponsored research contracts with industrial sponsors on behalf of the BESC members and will distribute funds as appropriate using normal subcontracting mechanisms.

BESC members will enter into a separate inter-institutional (IIA) licensing/royalty-sharing / commercialization agreement with ORNL for the implementation of centralized licensing and subsequent royalty distributions. The IIA will allow ORNL, or another designated lead licensing institution, to negotiate commercial licenses or sublicenses to any/all BESC IP. The IIA will also address the details of royalty distribution from the licensing of bundled or jointly owned patents. Licensing and partnering shall be conducted in a manner that maximizes benefit to the US economy and

provides fairness of opportunity with respect to third party access to lab partnering and licensing opportunities. M&O (Management and Operating) contract provisions (e.g., fairness of opportunity, US manufacturing) continue to apply to inventions of NREL, ORNL and Brookhaven.
On behalf of the IP owners, the lead licensing institution will manage all licensing matters, including contract management, licensing income distribution within BESC (according to allocation decisions made by the BESC IP/Licensing Investment Committee) and to each IP owner, and reporting. The lead licensing institution shall not license BESC IP outside of the Core Technology areas, except with the concurrence of the IP owner(s), allowing those owners to license to third parties in fields other than Core Technologies at their sole discretion.

Other activities with third parties relating to access to BESC IP (e.g., NDAs, Material Transfer Agreements, etc.) will be coordinated through the BESC Commercialization Council which will designate a lead institution as needed.

For industrial team members who intend to utilize their own IP in their own commercial activities, such IP will be available for licensing to third parties by a BESC lead licensing institution if the industrial team member is not meeting a contractually agreed to business plan to commercialize such inventions.

7. Licensing in the Core Technology areas

BESC (through ORNL or another team member who may be designated by the Commercialization Council as the lead institution for licensing) will have the capability to license BESC IP and to bail tangible research products, including biological materials, in the Core Technology areas. The lead licensing institution shall not license BESC IP outside of the Core Technology areas, except with the concurrence of the IP owner(s), allowing those owners to license to third parties in fields other than Core Technology areas at their sole discretion.

For licensing of any BESC IP in these Core Technology areas the following licensing principles will apply:

a) Credible business plans shall be required for all commercial licensing. Before executing any license agreement for a field of use within the Core Technologies, the lead licensing institution will evaluate the capabilities of the potential licensee, and the company must demonstrate that it has the expertise and capital needed to further the development of the technology and successfully bring the technology to market in the fields of use in which a license would be granted. BESC will obtain information about the potential licensee's plan for the commercialization of the BESC IP through BESC's independent research, discussions or meetings with the potential licensee, and/or a formal business plan. BESC IP in Core Technologies will be licensed on a non-exclusive basis when, in the reasonable judgment of the lead licensing institution, this allows the technology to be adopted most successfully by the market. BESC will license IP to companies only in the fields of use (FOU) in which the company is capable and committed to bringing the technology to market, saving other FOUs for additional licensees; alternatively, BESC may include a provision for mandatory sublicensing of BESC IP to reasonably ensure that various applications can be commercialized rather than remaining fallow.

b) All potential licensees requesting any degree of exclusivity for BESC IP must demonstrate their capability to successfully bring the technology to market. For any license negotiated on behalf of BESC that grants exclusive rights in BESC IP in any field of use in a Core Technology area, the licensee must agree to and meet diligence (performance) requirements marking the development and successful market introduction of the technology. If a

company fails to meet diligence requirements, it will be given a reasonable opportunity to comply and the lead licensing institution will negotiate substitute diligence provisions and amend the license. If the licensee is not able to meet these requirements, the license will be reduced to a nonexclusive license or be terminated.

c) For BESC IP which is within the Core Technologies, BESC members agree that they will not enter into or be subject to any future agreements with third parties which provide preferential licensing of BESC IP to any third party without prior approval by DOE.

8. Licensing Revenue Allocations

Each BESC member institution that is an IP owner of licensed BESC IP is entitled to a percentage of any royalties or other income from such licenses. BESC members agree that for licenses of BESC Inventions in the Core Technology areas a percentage of licensing income as set forth below, will be allocated by BESC for the support of scientific research or education to further the efforts of BESC at the BESC member institutions.

Licensing income from each license in Core Technology areas will be distributed annually as follows ("BESC Distribution"):

a) A standard 15% administrative fee will go to the lead licensing institution to offset the cost of license administration.
b) Next, licensing income is used to reimburse IP owners for patent expenses; Until the licensing income reaches $200,000, the balance of licensing income after expenses will be distributed to IP owner(s). (if there are several co-owners of IP in a license this distribution will be made in a proportionate way as specified in the IIA)
c) After licensing income reaches $200,000, 60% of net licensing income received thereafter (after above expenses) is sent to BESC, per DOE requirement; allocation of these funds to BESC member institution for biofuels-related research is determined by the BESC IP Licensing/Investment Committee.
d) The remaining 40% of net licensing income is distributed to the IP owner(s); and
e) any royalty sharing with inventors is made from that remaining 40%.
f) Any remaining net licensing income may be used by the BESC member institution in accordance with its own policies, subject to restrictions in its M&O contract, Bayh-Dole, etc.
g) The disposition of royalties or other income, including liquidated equity, set forth in c), d) and e) above, remains in effect so long as BESC Funding continues. If the BESC no longer exists due to lack of DOE funding, or for any other termination of BESC, then the special allocation of funds in c), d) and e) is no longer applicable.

Licensing income includes fees (such as license issue fees, license maintenance or milestone fees), royalties, and liquidation of any equity received for the license grant, but for the purpose of clause c) above, does not include reimbursement of patent costs by licensees. Furthermore, for purposes of the BESC Distribution, if BESC grants two or more licenses to a specific company for members of the same patent family (i.e., an initial patent application and any subsequent application claiming priority to that application, such as conversions, continuations or divisionals, or any patents issuing thereon), the licensing income from those licenses will be aggregated for the purposes of the $200,000 threshold set forth in clause c). Where the BESC member institution owning such equity has an official policy specifying the time for liquidation of such equity, that official policy shall apply to the timing of the liquidation of such equity. Negotiations for continued utilization of BESC will include a plan for the future management and disposition of any such remaining unliquidated equity.

The royalties described in paragraph a) which comprise the 60% utilized for the support of scientific research or education in support of BESC will be allocated to projects approved by a BESC IP/Licensing Investment Committee[1]. BESC researchers will be invited to propose scientific research and education-related tasks to which these funds may be allocated by this Committee. Allocation decisions by this Committee will be made available for review and comment by BESC team members for at least ten days for review and comment before funds are distributed. The BESC Board of Directors[2] will monitor the allocation process to assure that research proposals from the researchers employed by the intellectual property owner(s) receive higher priority for this funding.

Royalties reserved for use in support of BESC research will be tracked so that at the end of the 5 years, remaining funds can be distributed to the IP owners if the BESC contract is not renewed or if other funds to continue BESC are not secured.

9. Information Sharing

It is the intention of the BESC that the fruits of its research be widely and promptly disseminated, with a goal of maximizing the impact of the research and its long-term benefit to the U.S. and to society. Even in those situations in which protection of inventions is desirable, e.g., to induce further commercial development, or is required under specific funding obligations, such inventions are also expected to be widely and promptly disseminated.

All BESC Team Members have executed a mutual NDA to be able to interact fully with each other. Technical data will also be shared appropriately with the other two Bioenergy Research Centers (JBEI and GLBRC) and with any DOE advisory committee assisting with the evaluation of BESC activities. Subject to DOE approval, a list will be mutually developed of the types of data first produced by the BESC that must be immediately released to the public.

To facilitate the mutual exchange of reagents and biological materials among BESC researchers, a master Materials Transfer Agreement will be implemented. Individual transactions for exchange of reagents and other biological materials will be documented electronically using secure information technology.

BESC team members agree to have safeguards in place to manage personal and organizational conflicts of interest that may arise from the licensing of BESC IP.

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[1] The BESC IP/Licensing Investment Committee consists of the BESC Program Director, the leads in each of the Scientific Focus Areas, and a representative of each IP owner whose IP was licensed in the Core Technologies.

[2] The BESC Board of Directors (BOD) consists of representatives of the executive leadership of BESC institutional members plus a group of up to three internationally known R&D leaders with extraordinary entrepreneurial records of achievement, or biotechnology industry leaders. This BOD serves (1) to approve BESC strategic directions and annual project and budget plans, (2) to approve annual performance goals for the BESC leadership team and to evaluate the performance of the team, and (3) to support BESC leadership in managing effective interfaces with translational and applied R&D, technology transfer, and commercialization.

10. **Reporting to DOE**

Each BESC member institution shall require its researchers to report all inventions in a manner consistent with reporting of other intellectual property resulting from federally funded research. No later than sixty (60) days from receipt of disclosure, each BESC member institution shall disclose to BESC, through the BESC Commercialization Council, all BESC inventions, software, and tangible research products resulting from BESC Funding.

ORNL will report all such invention disclosures to DOE promptly, along with information about any BESC technology transfer transactions that the team members may have had. IP management and technology transfer activities of the BESC in the Core Technology areas are subject to DOE appraisal.

Accepted by:

BESC Member Institution: **UT-Battelle, LLC (managing the Oak Ridge National Laboratory)**

JAH By: _____
Casey Porto, Director of Technology Transfer

Date: 11-1-07

Appendix J - Sensitive Foreign Nations Controls

Pursuant to the Clause 952.204-71, *Sensitive Foreign Nations Controls,* this Attachment sets forth the requirements the contractor shall comply with under this contract. (Reference DOE Order 142.3A, or superseding directives.)

Foreign National access to DOE sites, programs, information and technologies will be approved provided the access is needed to support the program objectives of DOE and/or objectives of U.S. national interests.

(a) Definitions

Assignee - A foreign national who has been approved to access a DOE site, information, or technology for a period of more than 30 consecutive calendar days.

Foreign National -A person born outside the jurisdiction of the United States, is a citizen of a foreign government, and has not been naturalized under U.S. law.

Host - The DOE or DOE contractor employee responsible for the day-to-day activities associated with the visit or assignment.

Indices Checks -A procedure whereby a request is made to appropriate U. S. Government agencies to determine whether information exists on a particular foreign national.

Legal Permanent Resident (LPR) - One who has the right to reside permanently and work in the United States. An LPR may also be known as a permanent resident alien or Green Card holder.

Nonsensitive Country National - A foreign national who was born in, is a citizen of, is employed by, or represents a government, company, organization, or institution that is located in a country not on the Sensitive Countries List or the Terrorist Countries List.

Security Plan - A security plan is required to address specific site security concerns relating to foreign national visits or assignments.

Sensitive Countries List- A list of countries to which particular consideration is given for policy reasons during the DOE internal review and approval process for visits and assignments by foreign nationals. Countries may appear on the list for national security, nuclear nonproliferation, or terrorism support reasons. Those countries can be found here, https://ornl.sharepoint.com/sites/csp/Pages/SensitiveCountryList.aspx

Sensitive Visit/Assignment- A visit/assignment will be considered sensitive if:

- Sensitive Country (Citizen or Birth)
- Sensitive Subject/Sensitive Areas
- Secured Facilities (Limited Area, Protected Area, Material Access Area or Exclusion Area)
- Represent a company, business, organization or institute from countries identified as sensitive.

Sensitive Country National - A foreign national who was born in, is a citizen of, or is employed by a government, employer, institution or organization, of a sensitive country.

Visit - Access by a foreign national for 30 calendar days or less.

(b) Prior Approvals Relating to Foreign Nationals

(1) Foreign visits and assignments pertaining to DOE programs must be in accordance with DOE Order 142.3A, or superseding directives and other DOE policies furnished in writing to the contractor. All visits and assignments must be approved in advance by the DOE Approval Authority.

(2) Sensitive visits or assignment requests must be submitted in accordance with DOE Order 142.3A in advance in order to allow time for an indices check to be completed.

(3) Non-sensitive visits or assignment requests must be submitted 5 days in advance.

(c) The contracting parties will provide notice to each other when either becomes aware of a change in the Sensitive Countries List and cooperate to keep the List updated.