

Chapter 42.3, Novation Agreements

[Reference: FAR 42.12]

Overview

This section provides a comprehensive model novation agreement that covers more aspects of novation agreements than you will find in the FAR. Not all of the issues addressed in the model agreement will be found in every situation, but you should be aware that such issues may arise and use the model as a starting point for your situation.

Background

The following model novation agreement provides some "lessons learned" from recent negotiations necessitated by the sale of a corporation whose wholly owned subsidiaries were prime contractors at several major DOE sites. These negotiations involved a foreign entity, which was one of the partners in the purchase.

This transaction was complicated and required resolving many issues, not all of which are encountered in a standard FAR novation. The issues included: (1) Foreign Ownership, Control, or Influence; (2) Security Control Agreements; (3) Performance Guarantees; and (4) a Transition Agreement. Some of the issues discussed in the model should be considered in every novation situation, some will not apply to every situation, and some will be especially important to consider when a foreign entity is a party in the novation.

The model novation agreement involves a transferor, five transferees, two guarantors that provide corporate guarantees, and one guarantor (a corporate parent) that provides a performance guarantee. It includes the novation agreement, a transition agreement, and numerous company guarantees, corporate guarantees, evidence of authority to bind, and a performance guarantee. The transferor is ABC Corporation. The transferees are XYZ1 through XYZ5 companies (sometimes collectively referred to as "the transferee"). The guarantors that provide corporate guarantees are DFG1 Corporation and DFG2 Group. The guarantor that provides a performance guarantee is DFG2A Corporation, the corporate parent of DFG2 Group.

Attachment

The EXHIBIT B - Bills of Sale and Assignments that are listed in the index are not included in this model agreement.

The security control agreements referenced throughout the model agreement as attachments 1 and 2 to Exhibit C (the Transition Agreement) are not included. Security control agreements are often required when the novation involves contract performance

with access to classified facilities, materials, or information. In these situations the contracting officer must consider the nature of the new organization. If there is a foreign ownership interest, the novation must include a security control agreement, the purpose of which is to establish the limits of the involvement of the foreign interest in the operation of the contract, recognizing the demands of DOE's Foreign Ownership Control and Influence process. In doing so it should expressly deal with the makeup of the new entity's board of directors, processes for appointment, and its operation, controls over access, DOE remedies, the process and effect of termination, among other matters.

ATTACHMENT 1
NOVATION AGREEMENT

between

UNITED STATES DEPARTMENT OF ENERGY

and

ABC CORPORATION,

XYZ1 COMPANY,

XYZ2 COMPANY,

XYZ3 COMPANY,

XYZ4 COMPANY,

XYZ5 COMPANY,

DFG1 CORPORATION, and

DFG2 GROUP INC.

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NOVATION AGREEMENT

The ABC Corporation, a corporation duly organized and existing under the laws of (state) with its principal office in (location) (referred to as the "Transferor"); XYZ1 Company, wholly-owned by DFG1 Corporation; XYZ2 Company, owned by XYZ1 Company and DFG2 Group Inc.; XYZ3 Company owned by DFG2 Group Inc.; XYZ4 Company, owned by XYZ1 Company; and XYZ5 Company, owned by XYZ2 Company (each of XYZ1 Company, XYZ2 Company, XYZ3 Company, XYZ4 Company, XYZ5 Company hereby individually referred to as "Transferee" and collectively as "Transferees");

DFG1 Corporation and DFG2 Group Inc., as guarantors of the obligations of transferees to the Government; and the United States of America, acting through the DOE ("Government" or "United States of America") enter into this Agreement as of .

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the United States Department of Energy, has entered into certain Contracts with the Transferor, as listed in Exhibit A, and incorporated in this Agreement by reference. Exhibit A shows the respective Transferee to which each Contract is novated. The term "Contracts," as used in this Agreement, means the contracts listed in Exhibit A and any other contracts between the DOE and Transferor not listed on Exhibit A on which performance has been completed, but which are not closed out on the effective date of the Agreement, and all modifications to such contracts made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts). Included in the term "Contracts" are also all modifications made on or after the effective date of this Agreement that are under the terms and conditions of the contracts listed on Exhibit A.

(2) As of the Closing Date, the Transferor has transferred to the Transferees assets of its Company by virtue of the Asset Purchase Agreements dated _____ (the "Asset Purchase Agreements"), as evidenced by the Bills of Sale and Assignments executed in connection therewith, copies of which are attached as Exhibit B.

(3) The Transferees have acquired all the assets of the Transferor that primarily relate to Transferor's businesses (other than Excluded Assets, as defined in Section 2.2(b) of the respective Asset Purchase Agreement(s) by virtue of the above-referenced transfer.

- (4) Each Transferee has assumed all obligations and liabilities of the Transferor under the Contracts novated to it by virtue of the above-referenced transfer.
- (5) Each Transferee is in a position to fully perform all obligations that may exist under the Contracts novated to it.
- (6) It is consistent with the Government's interest to recognize each Transferee as the successor party to the Contracts novated to it.
- (7) By letter, dated _____, Transferor filed evidence of the above-referenced transfer with the Government, including one copy each, as applicable, of the documents listed in Federal Acquisition Regulation 42.1204(e)(2).
- (8) XYZ1 company and XYZ2 company and the Government will enter into appropriate change-of-name agreements pursuant to FAR 42.1205 for the contracts held by the XYZ4 company and XYZ5 company, with such contracts additionally subject to the Transition and Security Control Agreements executed by the Transferees and the Government.

(b) IN CONSIDERATION OF THESE FACTS AND SUBJECT TO THE TERMS AND CONDITIONS OF THE TRANSITION AGREEMENT, INCLUDING THE SECURITY CONTROL AGREEMENTS, THE PARTIES AGREE THAT, BY THIS AGREEMENT -
--

- (1) The Transferor confirms the above-referenced transfer to the Transferees, and waives, on behalf of itself but not on behalf of the Transferees, any claims and rights against the Government that it now has or may have in the future in connection with the Contracts.
- (2) Each Transferee agrees to be bound by and to perform each of the Contracts novated to it in accordance with the terms and conditions contained in those Contracts. Each Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under those Contracts novated to it as if the Transferee were the original party to the Contracts.
- (3) The appropriate Transferee shall notify DOE prior to carrying out any change of ownership or control in DFG2 Group's ownership interest or control of XYZ1 company or XYZ2 company or of their operating subsidiaries. If DOE determines that the change will require an amendment of the FOCI mitigation plan for either company, the parties agree that the change of ownership interest or control shall not be effected prior to receipt of the written approval of the DOE. Any such amendment of the FOCI mitigation plan shall be acted on by the DOE as quickly as practical under the circumstances.
- (4) Each Transferee ratifies all previous actions taken by the Transferor with respect to the Contracts novated to it, with the same force and effect as if the action had been taken by

the Transferee.

(5) The Government recognizes each Transferee as the Transferor's successor in interest in and to the Contracts novated to such Transferee. Each Transferee by this Agreement becomes entitled to all rights, title, and interest of the Transferor in and to the Contracts novated to it as if the Transferee were the original party to the Contracts. Following the effective date of this Agreement, the term "Contractor," as used in the Contracts, shall refer to the Transferee to which the Contract is novated.

(6) Each Transferee will perform the Contracts novated to it consistent with the terms of the Transition Agreement, including the Security Control Agreements applicable to XYZ1 company and XYZ2 company, which are provided in Exhibit C.

(7) The Exhibits to this Agreement are considered integral parts of the Agreement.

(8) Except as expressly provided in this Agreement, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor or of the Transferor or a Transferee (or Transferees) against the Government.

(9) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the Contracts, shall be considered to have discharged those parts of the Government's obligations under the Contracts. All payments and reimbursements under a Contract made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee to which the Contract was novated, and shall constitute a complete discharge of the Government's obligations under the respective Contract, to the extent of the amounts paid or reimbursed. Nothing herein shall be construed as a waiver of the right of a Transferee to pursue and prosecute claims previously asserted by Transferor under a Contract novated to the Transferee, or the right of the Transferee to assert any pre-transfer claim which accrued to but was unasserted by Transferor under a Contract novated to the Transferee; provided, however, that any such pre-transfer claim was not waived or released by Transferor by operation of law (including the conduct of the parties), or mutually resolved expressly by settlement or otherwise by the Transferor and the Government as evidenced by a written instrument executed prior to the effective date of this Agreement.

(10) The Transferor and each Transferee agree that the Government is not obligated to pay or reimburse the Transferor or a Transferee for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the Contracts.

(11) The Transferor guarantees payment of all liabilities and the performance of all

obligations that the Transferee (i) assume pursuant to and as of the effective date of this Agreement; or (ii) may undertake in the future should the Contracts be modified under their terms and conditions; provided, however, that such future modifications are within the current scope of work and current periods of performance, including any existing contract options which provide the DOE the unilateral right to extend the term of a Covered Contract. The Transferor waives notice of, and consents to, such future modifications which are guaranteed by Transferor pursuant to the terms of this paragraph (b)(11)(ii).

(12) Transferor's only guarantee obligations with respect to the project and the project are the separate guarantee obligations issued in connection with the performance of contracts at those sites. Notwithstanding anything to the contrary contained in this Agreement, nothing in this Agreement shall increase or modify Transferor's obligations beyond those stated in the separate guarantees issued by Transferor in connection with the performance of contracts the project and the project. Nor shall anything in this Agreement, or any technical change in corporate identity stemming from name changes anticipated in paragraph (a)(8), alter or diminish Transferor's obligations in connection with performance of contracts on referenced project(s) as stated in those separate guarantees.

(13) If any of the facts set out in (a) above are materially inaccurate, the Government may, in its sole discretion, rescind this Agreement and take whatever other remedies are available to it under applicable law. The rights of the Government to pursue other remedies beyond rescission shall, with respect to the Transferor, be limited to the remedies available to the Government based on any inaccuracies made by the Transferor in connection with this Agreement; provided, however, that the Government's rights against the Transferor under this paragraph (b)(13) shall expire one year from the effective date of this Agreement.

(14) This Agreement, including its attachments, will be appended to each Contract through a modification to such Contract, and the provisions of this Agreement will apply to each such Contract as necessary to implement this Agreement.

(15) Nothing in this Agreement shall relieve the Transferor or any Transferee from compliance with any Federal law or regulation.

(16) The Contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA

By

Title

ABC CORPORATION

By

Title

[Corporate Seal]

XYZ1 Company

By

Title

[Seal]

XYZ2 Company

By

Title

[Seal]

XYZ3 Company

By

Title

[Seal]

XYZ4 Company

By

Title

[Seal]

XYZ5 Company

By

Title

[Seal]

DFG1 Corporation

By

Title

[Seal]

DFG2 GROUP INC.

By

Title

[Seal]

Certificate

I, , certify that I am the Secretary of ABC Corporation and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this day of , 19 .

By

[Corporate Seal]

Certificate

I, , certify that I am the Secretary of XYZ1 Company, and that this Agreement was duly signed for and on behalf of this company by authority of its governing body and within the scope of its company powers.

Witness my hand and the seal of this company this day of , 19 .

By

[Seal]

Certificate

I, , certify that I am the Secretary of XYZ2 Company, and that this Agreement was duly signed for and on behalf of this company by authority of its governing body and within the scope of its company powers.

Witness my hand and the seal of this company this day of , 19 .

By

[Seal]

Certificate

I, , certify that I am the Secretary of XYZ3 Company, and that this Agreement was duly signed for and on behalf of this company by authority of its governing body and within the scope of its company powers.

Witness my hand and the seal of this company this day of , 19 .

By

[Seal]

Certificate

I, , certify that I am the Secretary of XYZ4 Company, and that this Agreement was duly signed for and on behalf of this company by authority of its governing body and within the scope of its company powers.

Witness my hand and the seal of this company this day of , 19 .

By

[Seal]

Certificate

I, , certify that I am the Secretary of XYZ5 Company, and that this Agreement was duly

signed for and on behalf of this company by authority of its governing body and within the scope of its company powers.

Witness my hand and the seal of this company this day of , 19 .

[Seal]

Certificate

I, , certify that I am the Secretary of DFG1 Corporation, and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this company this day of , 19 .

By

[Seal]

Certificate

I, , certify that I am the Secretary of DFG2 Group, and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this company this day of , 19 .

By

[Seal]

EXHIBIT A - Active DOE Contracts

DOE Contract #	Transferee(1)	Contract Value	Contracting Officer	Address/Telephone
DE-AC				
DE-AC				
DE-AC				
DE-AC				

EXHIBIT A - Inactive (Completed But Not Yet Closed) DOE Contracts

DOE Contract #	Transferee	Contract Value	Contracting Officer	Address/Telephone
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DE-AC

DE-AC
DE-AC
DE-AC
DE-AC

DE-AC
DE-AC
DE-AC
DE-AC
DE-AC
DE-AC
DE-AC
DE-AC
DE-AC

Note: The contracts listed in this Exhibit A constitute all contracts presently known to Transferor, whether active or inactive, between DOE and the Transferor. If an additional contract or contracts are subsequently identified which are not set forth in Exhibit A, Transferor and Transferee agree that Transferor and Transferee will cooperate and work with DOE to add such contracts to Exhibit A and to accomplish any actions reasonably required by DOE, Transferor or Transferee.

EXHIBIT C TRANSITION AGREEMENT

This Agreement entered into this day of by and between:
the United States Department of Energy (hereinafter, DOE);

XYZ1 Company, wholly-owned by DFG1 Corporation; XYZ2 Company, owned by XYZ1 Company and DFG2 Group Inc.; XYZ3 Company owned by DFG2 Group Inc.; XYZ4 Company, owned by XYZ1 Company; and XYZ5 Company, owned by XYZ2 Company (each of XYZ1 Company, XYZ2 Company, XYZ3 Company, XYZ4 Company, XYZ5 Company hereby individually referred to as "Transferee" and collectively as "Transferees"); and

DFG1 Corporation and DFG2 Group Inc., as guarantors of the obligations of transferees to the Government.

The Parties agree:

I. COVERED CONTRACTS

This Agreement provides the terms and conditions incident to DOE's recognition and acceptance of the novation, as applicable, of the contracts listed in Paragraph I.A through I.E below (hereinafter, "Covered Contracts"). The novation of the Covered Contracts is a result of the acquisition of assets of ABC Corporation by XYZ1 Company, XYZ2 Company, and XYZ3 Company.

A. Paragraph II.A of the TERMS AND CONDITIONS applies to any contract (or subcontract thereunder) novated to the Transferee that requires both a DOE facility security clearance and a foreign ownership, control or influence determination.

B. Paragraphs II.B-E of the TERMS AND CONDITIONS apply to:

1. Contract No.

C. Paragraph II.F of the TERMS AND CONDITIONS applies to Contract No.

D. Paragraph II.G of the TERMS AND CONDITIONS applies to Contract No. DE-AC

E. Paragraphs II.H - K of the TERMS AND CONDITIONS apply to any DOE contract (or subcontract thereunder) covered by the Novation Agreement, which identifies the Transferee to which each Contract listed thereon is novated.

II. TERMS AND CONDITIONS

A. FOREIGN OWNERSHIP, CONTROL OR INFLUENCE

1. Consistent with the terms of the Security Control Agreements applicable to XYZ1 Company and XYZ2 Company contained in Attachments 1 and 2 appended hereto, each Transferee agrees that under the Covered Contracts novated to it no access to classified information or special nuclear material will be provided to foreign national employees of DFG2 Group or U.S. citizens under the control or influence of DFG2 Group or any parent or subsidiary organization thereof, except as may be permissible under the National Industrial Security Policy ("NISP") and applicable U.S. Government laws and regulations, or specifically authorized in writing by an authorized official of the DOE.

2. The Transferees shall collectively pay DOE the one-time sum of \$50,000 as compensation for the additional costs to be incurred by the Government in the

implementation and surveillance of the attached Security Control Agreements applicable to XYZ1 Company and XYZ2 Company.

3. a. If a Transferee or any of its operating subsidiaries violates materially or attempts to violate materially the Security Control Agreement applicable to XYZ1 Company and XYZ2 Company or the Plans referenced therein and such violation is found by the Government in a Final Decision of the Contracting Officer to have occurred, such Transferee shall be liable for any and all actual costs incurred by the Government in investigating and resolving such violation or attempted violation, whether or not such violation or attempted violation was intentional or unintentional. Further, such Transferee shall be liable for any and all actual damages to the Government, found by the Government in a Final Decision of the Contracting Officer, resulting from such violation or attempted violation. The Government may collect any such damages by any legal means available to it, including withholding or offset.

3. b. Any material violation of the Security Control Agreement applicable to XYZ1 Company and XYZ2 Company or Plans referenced therein, which is caused by personnel performing under any of the above identified Covered Contracts may be considered a performance deficiency under the terms of the Covered Contract(s) performed by the violating Transferee and, in addition to other remedies available to the Government, may be addressed under the award fee provision, or other fee provision, of the said Covered Contract(s) and may be considered a material breach of the said Covered Contract(s) for purposes of contract termination for default.

3. c. Compliance by a Transferee and its operating subsidiaries with the Security Control Agreement or Plans referenced therein in the case of XYZ1 Company and XYZ2 Company may be a factor in the decision of the Contracting Officer to exercise an option to extend the term of performance by the Transferee under one or more of the Covered Contracts performed by the Transferee.

3. d. In the event that the Transferee disputes a Final Decision of the Contracting Officer in connection with sections 3a through 3c above, Transferee may file an appeal, suit or claim under the Disputes clause applicable to the Covered Contract involved and pursue action under the Contract Disputes Act (41 U.S.C. 601-613).

4. Each Transferee with respect to a site will accept the existing security plans required by DOE for such site under the Covered Contract(s) novated to such Transferee and will submit the Visitor Control Plans and Technology Control Plans required by the Security Control Agreement directly to the sites at which performance of the above-referenced contracts are being performed.

B. SITE STABILITY

It is the desire of the DOE and Transferees to ensure the continuity of operations under the

Covered Contracts and to minimize any potential disruption that might otherwise accompany the acquisition and management changeover. Accordingly, Transferee agree that, as a consequence of the change in ownership of the ABC Corporation's assets and operating subsidiaries, Transferee will in the performance of Covered Contracts novated to them until completion of a Covered Contract or five years from the date of this Agreement, whichever is less:

1. Except as contemplated in Paragraph B.3., make no changes to pay and benefits systems in existence on the Closing Date of the acquisition; any subsequent proposals for modifications of such systems shall be handled in accordance with the terms and conditions of the underlying Covered Contracts.
2. Except as may be provided in the Covered Contracts, make no change in the site contractor's management team, as identified under the respective Covered Contract clauses entitled "KEY PERSONNEL," without the advance approval of the DOE. The foregoing provisions of this Paragraph B.2. notwithstanding, if immediate removal or suspension of any member of the management team is deemed necessary by the Transferee employing such person to prevent actual or possible violation of any statute or regulation or actual or possible damage to such Transferee, or as a result of the gross negligence or willful misconduct of such person, such person may be removed or suspended at once, although DOE shall be notified prior to or concurrently with such action. Any proposed change in management for which approval is sought shall be acted on by the DOE as quickly as practical under the circumstances.
3. Implement, without change, the pension plans in existence on the date of the acquisition at the subject sites consistent with the requirements of the respective Covered Contracts.

C. INTELLECTUAL PROPERTY-RIGHTS TO INVENTIONS

Intellectual property rights of Transferee and rights of Transferee to inventions shall be in accordance with the terms of the Covered Contracts novated to it. In view of the Novation Agreement among ABC Corporation, the Transferees, and the Government, any patent waivers involving the Covered Contracts remain in effect.

D. BUSINESS COOPERATION

The DOE and each Transferee acknowledge the importance of fostering a working environment where scientific, technical and business innovation and lessons learned are shared among the sites operated by the respective Transferees and, except where proprietary information is involved, among other sites in the DOE complex. The DOE and each Transferee further recognize that the exchange of ideas and systems solutions among scientists, engineers and administrators at and among the sites and with colleagues within the Transferees' organizations is vital to the success of the scientific, engineering and administrative work performed by the Transferees. Finally, the DOE and Transferees

recognize their role in ensuring that the overall costs of operating the Covered Contracts are minimized by reducing duplication of activities among the DOE sites, sharing resources and applications of business solutions, and resolving common problems in a collaborative manner. Accordingly, the DOE and Transferees agree, subject to the Security Control Agreements, to work collaboratively with each other, and other DOE contractors to achieve these objectives.

E. CORPORATE GUARANTEE

By execution of the attached Corporate Guarantees (Attachments 3, 4, and 5) by duly authorized representatives of the Transferees, each of the Transferees guarantees the performance of the Covered Contracts novated to it or to a subsidiary of it by execution of the attached Corporate Guarantees. By execution of the attached Corporate Guarantees (Attachments 6 and 7) DFG1 Corporation and DFG2 Group also guarantee the performance of the Covered Contracts. DFG2A Corporation, as parent corporation to DFG2 Group, has executed a Performance Guarantee Agreement guaranteeing the performance of the DOE contracts novated to Transferees. A copy of such Performance Guarantee Agreement and of the resolution of the Board of Directors of DFG2A Corporation authorizing execution of the agreement are appended as Attachment 15.

The terms of this Transition Agreement shall not provide the Parties with any rights against the Transferor (as Transferor is defined in the Novation Agreement).

F. ORGANIZATIONAL CONFLICT OF INTEREST

By virtue of the acquisition by the Transferees, the appearance of an Organizational Conflict of Interest (OCI) exists in relation to the subcontract between XYZ4 Company and DFG2 HIJ Corporation, Subcontract No. . This condition is a concern because XYZ4 Company is a subsidiary of Transferee XYZ1 Company and (a) a member of the Board of Directors of Transferee XYZ1 Company is a DFG2A Corporation employee; and (b) DFG2A Corporation has a passive economic interest in Transferee XYZ1 Company. In order to mitigate the potential for an OCI condition to occur, the Transferee XYZ1 Company and its operating subsidiary, XYZ4 Company, have taken the following actions which have been reviewed and approved by DOE:

1. The Transferee XYZ1 Company has executed a Board of Directors Resolution barring the DFG2A Corporation Director from any participation in matters involving the subcontract DFG2 HIJ Corporation;
2. The Transferee XYZ1 Company agrees that any modifications to Subcontract No. will be reviewed and approved by the cognizant DOE Contracting Officer prior to implementation; and
3. XYZ4 Company has modified its OCI Compliance Plan: (a) to clearly identify this

condition; (b) place restrictions on employee conduct to preclude the exchange of procurement sensitive or other "inside" or restricted information relevant to XYZ4 Company and DFG2 HIJ Corporation subcontract actions or other transactions which seek competitive response from other parties; and (c) provide for employee reporting of any violations, or potential violations, to the XYZ4 Company Ethics Counsel and to DOE.

G. FINANCIAL RESPONSIBILITY FOR COSTS

Each Transferee shall be financially responsible for any costs incurred by the Transferee directly or indirectly as a result of the above-referenced acquisition. Such costs shall be deemed unallowable costs for purposes of reimbursement under DOE contracts.

H. AUTHORITY

Each of the Transferees and each of DFG1 Corporation and DFG2 Group represent and warrant that the person executing this Agreement on its behalf is authorized to bind said contracting entity and they have provided the documents set forth in Attachments 8 through 14 as evidence of such authority, as well as the authority of the person signing the Corporate Guarantees to bind respectively the Transferee. The Performance Guarantee Agreement (and authorizing Board Resolution) of DFG2A Corporation is set forth in Attachment 15.

I. DOE NOTIFICATION/APPROVAL

The parties shall notify DOE prior to carrying out any change in DFG2 Group's ownership interest or control of XYZ1 Company or XYZ2 Company or of their operating subsidiaries. If DOE determines that the change will require an amendment of the FOCI mitigation plan for either company, the parties agree that the change shall not be effected prior to receipt of the written approval of the DOE. Any such amendment shall be acted on by the DOE as quickly as practical under the circumstances.

J. U.S. GOVERNMENT EXPORT CONTROL LAWS AND REGULATIONS

Transferee agrees that any intellectual property, technology, services, equipment, or materials owned by ABC Corporation and transferred to the Transferee will not be transferred to a non-U.S. entity except in compliance with U.S. government export control laws and regulations, including, but not limited to, the following:

applicable provisions of Chapters 10 and 11 of the Atomic Energy Act, as amended, as implemented by export regulations promulgated by the Nuclear Regulatory Commission at 10 CFR Part 110;
sections 57(b), 127, 128 and 129 of the Atomic Energy Act, as amended, as implemented by Department of Energy regulations at 10 CFR Part 810;
applicable provisions of the Export Administration Act and the Department of Commerce

regulations at 15 CFR Parts 730-799; and Section 721 of Title VII of the Defense Production Act of 1950, as amended, and the regulations promulgated thereunder at 31 CFR Part 800.

In witness whereof, the parties have executed this Agreement in several counterparts on the day and year first above written.

U.S. Department of Energy

By:

Title:

XYZ1 COMPANY

By:

Title:

XYZ2 COMPANY

By:

Title:

XYZ3 COMPANY

By:

Title:

XYZ4 COMPANY

By:

Title:

XYZ5 COMPANY

By:

Title:

DFG1 Corporation

By:

Title:

DFG2 Group

By:

Title:

Attachments

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Corporation

Attachment 1

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SECURITY CONTROL AGREEMENT
APPLICABLE TO XYZ2 Company

[To Be Inserted Here]

Attachment 2
Page 1 of

SECURITY CONTROL AGREEMENT
APPLICABLE TO XYZ1 Company

[To Be Inserted Here]

Attachment 3

COMPANY GUARANTEE
of XYZ1 Company

In consideration of and in order to induce the United States Department of Energy ("Government" hereinafter) to approve both the Transition Agreement, to which this COMPANY GUARANTEE is appended, and the Novation Agreement, to which the Transition Agreement, in turn, is an Exhibit and part, XYZ1 Company, a limited liability

company formed under the laws of Delaware ("Guarantor" and "Transferee" hereinafter), hereby unconditionally guarantees to the Government the full and prompt payment and performance of all obligations and liabilities accrued and executory, which Transferee or its subsidiary XYZ4 Company presently or hereafter may have to the Government under the provisions of any Covered Contract, as the term "Covered Contracts" is defined by the Transition Agreement, novated to Transferee or to XYZ4 Company.

In witness thereof, Guarantor has caused this COMPANY GUARANTEE to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on this day of

, 1999.

XYZ1 Company

By

Title

(SEAL)

Attachment 4

COMPANY GUARANTEE
of XYZ2 Company

In consideration of and in order to induce the United States Department of Energy ("Government" hereinafter) to approve both the Transition Agreement, to which this COMPANY GUARANTEE is appended, and the Novation Agreement, to which the Transition Agreement, in turn, is an Exhibit and part, XYZ2 Company, a limited liability company formed under the laws of Delaware ("Guarantor" and "Transferee" hereinafter), hereby unconditionally guarantees to the Government the full and prompt payment and performance of all obligations and liabilities accrued and executory, which Transferee or its subsidiary XYZ5 Company presently or hereafter may have to the Government under the provisions of any Covered Contract, as the term "Covered Contracts" is defined by the Transition Agreement, novated to Transferee or to XYZ5 Company.

In witness thereof, Guarantor has caused this COMPANY GUARANTEE to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on this day of

, 1999.

XYZ2 Company

By

Title

(SEAL)

Attachment 5

COMPANY GUARANTEE
of XYZ3 Company

In consideration of and in order to induce the United States Department of Energy ("Government" hereinafter) to approve both the Transition Agreement, to which this COMPANY GUARANTEE is appended, and the Novation Agreement, to which the Transition Agreement, in turn, is an Exhibit and part, XYZ3 Company, a limited liability company formed under the laws of Delaware ("Guarantor" and "Transferee" hereinafter), hereby unconditionally guarantees to the Government the full and prompt payment and performance of all obligations and liabilities accrued and executory, which Transferee presently or hereafter may have to the Government under the provisions of any Covered Contract, as the term "Covered Contract" is defined by the Transition Agreement, novated to Transferee.

In witness thereof, Guarantor has caused this COMPANY GUARANTEE to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on this day of

, 1999.

XYZ3 Company

By

Title

(SEAL)

Attachment 6

CORPORATE GUARANTEE
of DFG1 Corporation

In consideration of and in order to induce the United States Department of Energy

("Government" hereinafter) to approve both the Transition Agreement, to which this CORPORATE GUARANTEE is appended, and the Novation Agreement, to which the Transition Agreement, in turn, is an Exhibit and part, DFG1 Corporation, a corporation formed under the laws of Delaware ("Guarantor" hereinafter), hereby unconditionally guarantees to the Government the full and prompt payment and performance of all obligations and liabilities accrued and executory, which Transferees XYZ1 Company, XYZ2 Company, XYZ4 Company, and/or XYZ5 Company presently or hereafter may have to the Government under the provisions of any Covered Contract, as the term "Covered Contracts" is defined by the Transition Agreement, novated to any such Transferee.

In witness thereof, Guarantor has caused this CORPORATE GUARANTEE to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on this day of

, 1999.

DFG1 Corporation

By

Title

(SEAL)

See Attachment 7

CORPORATE GUARANTEE
of DFG2 Group

In consideration of and in order to induce the United States Department of Energy ("Government" hereinafter) to approve both the Transition Agreement, to which this CORPORATE GUARANTEE is appended, and the Novation Agreement, to which the Transition Agreement is an Exhibit and part, DFG2 Group., a corporation formed under the laws of Delaware ("Guarantor" hereinafter), hereby unconditionally guarantees to the Government the full and prompt payment and performance of all obligations and liabilities accrued and executory, which Transferees XYZ1 Company, XYZ2 Company, XYZ3 Company, XYZ4 Company, and/or XYZ5 Company presently or hereafter may have to the Government under the provisions of any Covered Contract, as the term "Covered Contracts" is defined by the Transition Agreement, novated to any such Transferee.

In witness thereof, Guarantor has caused this COMPANY GUARANTEE to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on this day of

, 1999.

DFG2 Group

By

Title

(SEAL)

Attachment 8

EVIDENCE OF AUTHORITY TO BIND
THE TRANSFEREE FOR XYZ1 Company

CERTIFICATE

I, , certify that I am the Secretary of XYZ1 COMPANY and certify further that the TRANSITION AGREEMENT and the COMPANY GUARANTEE, appended to the TRANSITION AGREEMENT, were both duly signed for and on behalf of this company by authority of its governing body and within the scope of its company powers. Witness my hand and the seal of this company this day of , 1999.

By

Company Secretary

[SEAL]

Attachment 9

EVIDENCE OF AUTHORITY TO BIND
THE TRANSFEREE FOR XYZ2 Company

CERTIFICATE

I, , certify that I am the Secretary of XYZ2 COMPANY and certify further that the TRANSITION AGREEMENT and the COMPANY GUARANTEE, appended to the TRANSITION AGREEMENT, were both duly signed for and on behalf of this company

by authority of its governing body and within the scope of its company powers.
Witness my hand and the seal of this company this day of , 1999.

By

Company Secretary

[SEAL]

Attachment 10

EVIDENCE OF AUTHORITY TO BIND
THE TRANSFEREE FOR XYZ3 Company

CERTIFICATE

I, , certify that I am the Secretary of XYZ3 COMPANY and certify further that the TRANSITION AGREEMENT and the COMPANY GUARANTEE, appended to the TRANSITION AGREEMENT, were both duly signed for and on behalf of this company by authority of its governing body and within the scope of its company powers.

Witness my hand and the seal of this company this day of , 1999.

By

Company Secretary

[SEAL]

Attachment 11

EVIDENCE OF AUTHORITY TO BIND
THE TRANSFEREE FOR XYZ4 Company

CERTIFICATE

I, , certify that I am the Secretary of XYZ4 COMPANY and certify further that the TRANSITION AGREEMENT was duly signed for and on behalf of this company by authority of its governing body and within the scope of its company powers.

Witness my hand and the seal of this company this day of , 1999.

By

Company Secretary

[SEAL]

Attachment 12

EVIDENCE OF AUTHORITY TO BIND
THE TRANSFEREE FOR XYZ5 Company

CERTIFICATE

I, , certify that I am the Secretary of XYZ5 COMPANY and certify further that the TRANSITION AGREEMENT was duly signed for and on behalf of this company by authority of its governing body and within the scope of its company powers.
Witness my hand and the seal of this company this day of , 1999.

By

Company Secretary

[SEAL]

Attachment 13

EVIDENCE OF AUTHORITY TO BIND
DFG1 CORPORATION

CERTIFICATE

I, , certify that I am the Secretary of DFG1 CORPORATION and certify further that the TRANSITION AGREEMENT and the CORPORATE GUARANTEE, appended to the TRANSITION AGREEMENT, were both duly signed for and on behalf of this company by authority of its governing body and within the scope of its corporate powers.
Witness my hand and the seal of this corporation this day of , 1999.

By

Corporate Secretary

[SEAL]

Attachment 14

EVIDENCE OF AUTHORITY TO BIND
DFG2 GROUP

CERTIFICATE

I, , certify that I am the Secretary of DFG2 Group and certify further that the TRANSITION AGREEMENT and the CORPORATE GUARANTEE, appended to the TRANSITION AGREEMENT, were both duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this day of , 1999.

By

Corporate Secretary

[SEAL]

Attachment 15

Page 1 of 5

PERFORMANCE GUARANTEE AGREEMENT
of DFG2A Corporation

(and Authorizing Board Resolution)

Attachment 15 consists of the Performance Guarantee Agreement of DFG2A Corporation (pages 2 and 3); the certification regarding execution of said agreement by said corporation (page 4); and certification regarding the adoption by the Board of Directors of DFG2A Corporation of the Resolution authorizing execution of said agreement (page 5).

Attachment 15

Page 2 of 5

PERFORMANCE GUARANTEE AGREEMENT
of DFG2A Corporation

(and Authorizing Board Resolution)

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into the Novation and Transition Agreements related to the transfer of ABC Corporation's business to Transferees, the undersigned, DFG2A Corporation (Guarantor), a corporation incorporated in the with its principal place of business at , 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 the 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, reorganizations, 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)

Attachment 15

Page 3 of 5

PERFORMANCE GUARANTEE AGREEMENT
of DFG2A Corporation

(and Authorizing Board Resolution)

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

this day of , 1999.

DFG2A Corporation

By:

(SEAL)

Title:

Attachment 15

Page 4 of 5

PERFORMANCE GUARANTEE AGREEMENT
of DFG2A Corporation

(and Authorizing Board Resolution)

CERTIFICATE

I, , certify that I am the Secretary of DFG2A Corporation and that the Performance Guarantee Agreement was duly signed on behalf of said corporation by pursuant to the authorization of the Board

Name of Officer and Title

of Directors of said corporation and within the scope of the corporation's powers.

Witness my hand and seal of this corporation this day , 1999.

By

Secretary

(SEAL)

Attachment 15

Page 5 of 5

PERFORMANCE GUARANTEE AGREEMENT
of DFG2A Corporation

(and Authorizing Board Resolution)

Certificate re Board Resolution

I, , certify that I am the Secretary of DFG2A Corporation and that on the day of , 1999, the Board of Directors of such corporation, at a meeting of said Board, did adopt the following Resolution:

BE IT RESOLVED that the Board of Directors approves execution of the Performance Guarantee Agreement requested by the United States Department of Energy ("DOE") in connection with DOE's review, approval and execution of the Novation Agreement and Transition Agreement with respect to the transfer of ABC Corporation's business to Transferees and that the Board of Directors authorizes

Name of Officer and Title

to execute said Performance Guarantee Agreement on behalf of the corporation.

Witness my hand and seal of this corporation this day of , 1999.

By

Secretary

(SEAL)

1. In the case of DOE contracts currently held by XXXXXXXX operating subsidiaries, such subsidiaries will be merged into mirror-image LLC subsidiaries of ABCDE, as applicable, with the result that the contract will be transferred by operation of law to the LLC subsidiary of the applicable transferee. The contracts to be transferred in such manner

include without limitation,

a. Contract No. DE-AC_____ withABCDE.