

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. M001	3. EFFECTIVE DATE See Block 16 C.	4. REQUISITION/PURCHASE REQ. NO. N/A	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Savannah River Operations Office P.O. Box A Aiken, SC 29802	CODE MOSD	7. ADMINISTERED BY (If other than Item 6) Code		
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code) Savannah River Nuclear Solutions, LLC 6160 Woodside Executive Court Aiken, SC 29803		9.A. AMENDMENT OF SOLICITATION NO.		
		9.B. DATED (SEE ITEM 11)		
		✓ 10.A. MODIFICATION OF Contract/Order NO. DE-AC09-08SR22470		
		10.B. DATED (SEE ITEM 13) January 10, 2008		
CODE	FACILITY CODE			
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 telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT 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 telegram or letter, provided each telegram or letter 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)
N/A

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

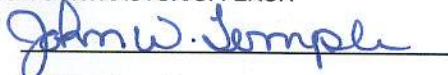
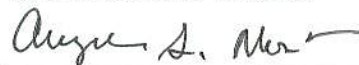
Check One	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) Mutual Agreement

E. IMPORTANT: Contractor is not, is required to sign this document and return 3 copies to the issuing office.

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

(Continued on Page 2)

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

15A. NAME AND TITLE OF SIGNER (Type or print) JOHN W. TEMPLE CONTRACTING OFFICER		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) ANGELA S. MORTON CONTRACTING OFFICER	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED 6/16/08	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 6/16/08

Block 14 “DESCRIPTION OF AMENDMENT/MODIFICATION,” continued.

The purpose of this modification is to:

1. Adjust the period of performance in the original contract - Sections B and F are changed to reflect (i) the actual award date rather than the anticipated award date specified in the Request for Proposal (RFP) and (ii) the actual performance periods and term of contract as a result of the stay of performance due to a protest of the contract award and the notice to proceed. The originally intended term (after the transition term) of a base contract period of five years and an option to extend for up to five additional years remains unchanged, except for the actual dates. As a result of adjusting the performance dates, the originally awarded fixed fee and total available fee have been reallocated to the applicable adjusted performance periods.
2. Incorporate the RFP amendments - The original contract was awarded without discussions with the incorporation of the three RFP amendments by reference. Each of the RFP amendments is hereby incorporated into the text of the contract.
3. Revise fill-in information contained in Section I clauses - I.17 and I.50.
4. Restate the contract in its entirety – As a result of the changes above, this modification is a restatement of the entire contract through modification M001. Except as provided herein, all terms and conditions of the document referenced in block 10A, remained unchanged and in full force and effect.

Attachments: B-J/w Attachments

End of Standard Form 30

PART I - THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

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PART I - THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SERVICES BEING ACQUIRED

The Contractor shall, in accordance with the terms of this Contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to, providing its best efforts so as to carry out in an efficient and effective manner all necessary and related services to manage and operate the Savannah River Site (SRS) owned by the U.S. Department of Energy (DOE) located near Aiken, South Carolina, as described in Section C, Statement of Work (SOW), or as may be directed by the Contracting Officer (CO) within the scope of this Contract.

B-2 TRANSITION COST, ESTIMATED COST, FIXED FEE, AND MAXIMUM AVAILABLE FEE

B-2.1 Transition Activities

The Total Estimated Cost for the Transition Term of the Contract is:

<u>Transition Term of the contract</u>	<u>Total Estimated Cost</u>
January 10, 2008 – January 22, 2008**	\$ *
April 25, 2008 – July 31, 2008***	

[*The estimated costs will be negotiated with the CO after contract award. The successful Offeror shall submit a proposed Transition Cost estimate to the CO for approval within 10 days after contract award. There will be no fee paid on transition costs.]

** GAO protest filed and stay of performance issued on January 23, 2008

*** Notice to proceed issued on April 25, 2008

B-2.2 Fixed Fee

The Contractor shall be paid a fixed fee of \$7,650,609 for the first six months of the base contract period August 1, 2008 – January 31, 2009.

B-2.3 Total Available Fee

- (a) The total available fee for the base period of the contract, beginning August 1, 2008, and the option period, if exercised, is shown below. The total available fee shall be made available in accordance with Section I Clause entitled, DEAR 970.5215-1 “Total Available Fee: Base Fee Amount and Performance

Fee Amount.” Since the total available fee for each period has been established below, there will be no annual negotiation of total available fee at the beginning of each fiscal year as contemplated in paragraph (b) of the above referenced clause.

PERFORMANCE PERIOD	Total Available Fee
Base Contract Period	
August 1, 2008 – January 31, 2009	\$7,650,609
February 1, 2009 – September 30, 2009	\$25,177,390
October 1, 2009 – September 30, 2010	\$50,354,780
October 1, 2010 – September 30, 2011	\$49,750,000
October 1, 2011 – September 30, 2012	\$48,950,000
October 1, 2012 – July 31, 2013	\$48,145,000
Option Period	
August 1, 2013 – September 30, 2013	\$7,890,000
October 1, 2013 – September 30, 2014	\$46,535,000
October 1, 2014 – September 30, 2015	\$45,730,000
October 1, 2015 – September 30, 2016	\$44,930,000
October 1, 2016 – September 30, 2017	\$44,211,120
October 1, 2017 – July 31, 2018	\$39,363,880
Total Fixed and Available Fee	\$458,687,779

- (b) At the end of each performance period specified above, there shall be no adjustment in the amount of the total available fee based on differences between any estimate of cost for performance of the work and the actual cost for performance of the work. Fee is subject to adjustment only under the provisions of the clause in Section I entitled, DEAR 970.5243-1 “Changes”; and, for a plus or minus 10% change in the estimated fee base of \$719,354,000 upon which the awarded contract was based.

Any adjustment in the amount of the fee under the provision of this paragraph for fees specified in paragraph B-2.3(a) above, shall take into consideration the ratio (see equation below) between the Contractor’s fee specified in paragraph B-2.3(a) above of the original contract and the maximum fees specified in Section L-3 of the Request for Proposal No. DE-RP09-06SR22470. The revised fee will be calculated in accordance with the fee policy then in effect, utilizing the adjusted fee base, while maintaining the ratio described above.

$$\frac{\text{Maximum Available Performance Fee for Applicable Year of Paragraph B-2.3(a) above}}{\$50,354,780} = \text{Ratio}$$

- (c) The CO may mutually negotiate with the Contractor additional available fee for additional work that is not covered by the available budget. The funds for such work and the associated available fee shall be funded through the Contractor's efficiencies in accomplishing the otherwise funded work. The additional work shall be performed in a safe manner that meets all necessary requirements; and the performance of the additional work shall not affect the safe, proper performance of the otherwise funded work. Any additional work shall be authorized in accordance with the provision in Section H entitled, "Work Authorization System" and the basis for earning the additional available fee shall be included in the Performance Evaluation and Measurement Plan (PEMP) in accordance with the provision in Section H entitled "Performance-Based Incentives."

B-3 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary in the clause in Section I entitled, DEAR 952.250-70 "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which DOE may legally spend for such purposes.

B-4 OBLIGATION OF FUNDS

Pursuant to the clause in Section I entitled, DEAR 970.5232-4 "Obligation of Funds," the total amount obligated by the Government with respect to this Contract is \$5,000,000.

B-5 SUPPLEMENTAL FEE PAYMENT PROVISIONS

The National Nuclear Security Administration (NNSA) and Environmental Management (EM) incentives established under this contract are contained in the PEMP. Provisions regarding payment of the incentives are included in the PEMP. Special provisions regarding payment of an incentive may also be included in the incentive itself.

B-6 KEY PERSONNEL REPLACEMENT

Unless approved in advance, in writing, by the CO, should any Key Personnel be removed, replaced, or diverted by the Contractor for reasons under the Contractor's control (other than to maintain satisfactory standards of employee competency, conduct, and integrity under the clause in Section I entitled, DEAR 970.5203-3 "Contractor's Organization") within the first two years of performance from the effective date of the contract (SF 33, Block 2); or for a replacement Key Person within two years of being placed in the position, the Contractor shall forfeit \$1,000,000 in fee if said Key Person is the chief executive or Savannah River National Laboratory (SRNL) director, and \$500,000 in fee for each occurrence with all other Key Personnel.

B-7 SINGLE FEE

If the Contractor is part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in this Contract fee structure and separate additional subcontractor fee for teaming partners shall not be considered an allowable cost under the contract. If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit earned by such entity shall not be considered an allowable cost under this contract.

B-8 ALLOWABILITY OF SUBCONTRACTOR FEE (Amendment 002)

The subcontractor fee restriction in Paragraph B-7 above does not apply to members of the Contractor's team that are: (1) small business(es); or (2) protégé firms as part of an approved Mentor-Protégé relationship under the clause in Section L entitled, DEAR 952.219-70 "DOE Mentor-Protégé Program."

B-9 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES -- FACILITY MANAGEMENT CONTRACTS (JAN 2004) ALTERNATE II [JAN 2004] [DEVIATION]

(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 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 232.1A~~ [DOE Manual 231.1-2, Occurrence Reporting and Processing of Operations Information] requirements; or internal oversight of ~~DOE Order 440.1A~~ [10 CFR 830, 10 CFR 835, 10 CFR 850, and 10 CFR 851] requirements. (*Deviation*)
 - (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.

PART I - THE SCHEDULE

SECTION C

DESCRIPTION/SPECIFICATION/WORK STATEMENT
DESCRIPTION OF WORK AND SERVICES

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PART I - THE SCHEDULE

SECTION C

DESCRIPTION/SPECIFICATION/WORK STATEMENT
DESCRIPTION OF WORK AND SERVICES

STATEMENT OF WORK

C-1 GENERAL INFORMATION

C-1.1 Introduction

This Performance-Based Management Contract (PBMC) is for the management and operation of the Savannah River Site (SRS) and those activities as specified in this Statement of Work (SOW). The definition of a Management and Operating (M&O) contract can be found at FAR 17.6 and DEAR 917.6.

The SRS is a 310-square mile DOE industrial facility located in Aiken, Allendale, and Barnwell Counties in South Carolina. SRS is dedicated to environmental management cleanup, developing and deploying technologies to support the cleanup mission, providing capability for supporting the enduring nuclear weapons stockpile, and processing and storing nuclear materials in support of U.S. nuclear non-proliferation efforts. DOE's Office of Environmental Management (EM) is the landlord for the SRS and responsible for cleanup missions and the Savannah River National Laboratory (SRNL). The SRNL is a Federally Funded Research and Development Center (FFRDC) established in accordance with FAR Part 35 and operated under this M&O contract. The National Nuclear Security Administration (NNSA) is responsible for supporting the nuclear weapons stockpile programs and nonproliferation activities on the Site.

This contract reflects the application of performance-based contracting approaches and techniques which emphasize results and minimize "how to" performance descriptions. The Contractor has the responsibility for total performance under the contract, including determining the specific methods for accomplishing the work effort, performing quality control, and assuming accountability for accomplishing the work under the contract. Accordingly, this PBMC provides flexibility, within the terms and conditions of the contract, to the Contractor in managing and operating SRS activities.

C-1.2 Scope of Work - General

Under this PBMC, the Contractor shall furnish the necessary personnel, facilities, equipment, materials, supplies, and services (except those provided by the Government) to accomplish the Scope of Work. The Scope of Work under this

PBMC is comprehensive in that the Contractor shall perform all necessary technical, operational and management functions to manage and operate SRS and perform the missions assigned to the Site. This encompasses all on-going SRS missions and activities as described in Section C-3 as well as any new activities or missions that may be assigned during the term of the contract. This PBMC includes such areas as infrastructure management and maintenance; human resource management including critical skills recruitment and retention; environmental management and remediation; health, safety and security systems; and, purchasing and other administrative systems.

Under this PBMC, the Contractor shall develop and implement innovative approaches and adopt practices that foster continuous improvement in accomplishing the missions of the Site. DOE expects the Contractor to produce effective and efficient business and technical management structures, systems, and operations that maintain high levels of safety and quality in accomplishing the work required under this contract. The Contractor shall conduct all work in a manner that is fiscally responsible, optimizes productivity, minimizes waste, and fully complies with all applicable laws, regulations, and terms and conditions of the contract.

The Contractor shall challenge the status-quo and existing paradigms in formulating and implementing safe, high quality, timely, and cost-effective programs and operations at SRS. The Contractor shall use subcontracting (fixed-price is preferred when appropriate) and other innovative methods of accomplishing this Scope of Work consistent with the most efficient and effective means of performance. The Contractor shall tailor the application of contract requirements to the work being performed to be cost effective while safely accomplishing all work in a manner that minimizes risk and fully complies with all compliance agreements, pollution abatement programs, and permit requirements (as required by the clause in Section I entitled, DEAR 970.5204-2 "Laws, Regulations and DOE Directives"). The Contractor shall implement a comprehensive and integrated contractor assurance system in accordance with DOE Order 226.1, Implementation of Department of Energy Oversight Policy.

Safe performance of work is an integral part of mission accomplishment at SRS and shall be integrated as a core value into all activities. The Contractor shall systematically integrate safety, security, and environmental protection into management and work practices at all levels so that missions are accomplished while protecting the public, the worker, and the environment. This is to be accomplished through effective integration of safety management into all facets of work including planning and execution and a rigorous feedback and improvement process. The Contractor shall use integrated safety management functions to structure all work activities. These functions include: define the Scope of Work; analyze the hazards; develop and implement hazard controls; perform work within controls; and, provide feedback and continuous improvement. These functions are to be applied on a continuous cycle and tailored to the work activity. The Contractor shall implement recommendations from other organizations [such as the

Defense Nuclear Facilities Safety Board (DNFSB), and state and federal regulatory agencies] which are accepted by DOE and directed by the Contracting Officer (CO). Compliance with Environment, Safety and Health (ES&H) requirements is a precondition of operations and the earning of fee.

The Contractor shall integrate and manage the safe and effective operation and maintenance of existing and new facilities under their cognizance at SRS to meet the general management goals and performance objectives of this Scope of Work. The Contractor shall use systems engineering techniques to integrate the resources and activities of SRS. The Contractor is responsible for integrating and executing all work under this contract, including but not limited to, management of its personnel and subcontractors at all tiers. The Contractor shall perform in accordance with the terms and conditions herein provided and in accordance with such direction and instruction which the CO or his/her designated representatives of SR and/or NNSA-Savannah River Site Office (SRSO) may provide the Contractor, in writing, in accordance with the clause in Section I entitled, "Technical Direction." All work shall be conducted in accordance with the principles of DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets. The Contractor shall use its expertise and best commercial practices and industry standards in all matters pertaining to the performance of this contract consistent with the provisions of the contract and any direction from the CO.

C-1.3 General Performance Expectations

The general management goals and performance objectives for SRS, as contemplated by the Government Performance and Results Act, are outlined in the SRS EM Program Project Execution Plan (PEP), the SRS Ten-Year Site Plan (March 2006), the NNSA SRSO FY2007 Limited Ten Year Site Plan, and the SRNL Strategic Plan, as revised and updated from time to time. General performance expectations are also defined in this section and in the Work Authorization documents which are incorporated by reference into this contract in accordance with the clause in Section H entitled "Work Authorization System."

This SOW reflects DOE's overarching expectations for contractor performance. Specific performance work statements and measures, and performance expectations, will be established on an annual or multi-year basis, as appropriate. DOE-SR and NNSA Performance Evaluation and Measurement Plans (PEMP) will be established after contract award to define the performance expectations, incentives, measures, and evaluation processes.

The general performance expectations for the conduct of work under this contract include, but are not limited to:

- (a) All work under this Contract shall be conducted in a manner that will assure the safety and health of employees and the public, be protective of the

environment, safeguard classified information, and protect special nuclear materials.

(b) The Contractor shall:

- establish and maintain a culture of continuous improvement;
- plan strategically in an environment of changing budgets and technical and regulatory requirements;
- implement effective integrated safety, environmental, and security management processes;
- integrate cyber security into all management and work practices, and implement and comply with the applicable DOE Program Cyber Security Plan;
- ensure products and services meet or exceed customer expectations through an integrated and effective Quality Assurance Program;
- use an earned value management system for projects to track progress and increase cost effectiveness;
- maintain and manage to an accurate multi-year performance baseline;
- implement an interface management plan to ensure seamless provision of landlord services to other site tenants;
- establish a culture of scientific inquiry and technical inquisitiveness;
- conduct activities using a project management approach;
- maintain and enhance community, regulatory, and stakeholder relationships;
- maintain scientific and technical expertise and depth to manage activities through the life of a program while maintaining the ability to address emerging mission needs;
- use innovative technologies to reduce costs and improve performance;
- use competition to select subcontractors to provide quality supplies and services to achieve the best value to the government;
- increase cost effectiveness through the use of innovation, commercial practices and industry involvement;
- use benchmarking to compare performance at SRS against best-in-class government and industry organizations and implement improvements;
- implement effective work planning and control and feedback and improvement systems for all activities;
- maintain facilities and assets needed to accomplish assigned missions; and,
- use a disciplined system of management and internal business controls to assure safeguarding of government funds and assets.

C-1.4 Exceptions to the Scope of Work (Amendment 003)

The Scope of Work for this PBMC includes all work necessary for management, operation, maintenance, and support of DOE SRS, except as follows:

- (a) The Liquid Waste (LW) program, currently performed by the incumbent contractor, will be the subject of a separate contract, and includes:
 - Operation of the Defense Waste Processing Facility (DWPF);
 - Operation of the Deliquification, Dissolution, and Adjustment (DDA) process;
 - Operation of the Actinide Removal Process (ARP) and Modular Caustic Side Solvent Extraction Unit (MCU) until the Salt Waste Processing Facility (SWPF) is operational;
 - Operational closure of liquid radioactive waste storage tanks and evaporator;
 - Operation of the Saltstone Facility and SWPF (after construction and turnover); and
 - Management and surveillance of F and H Area Tank Farms, the Effluent Treatment Project, DWPF, DDA, ARP, MCU, and SWPF.
- (b) Natural resources and forest products management activities currently managed by the U.S. Forest Service (USFS) – Savannah River through an interagency agreement between DOE and the USFS-SR .
- (c) Cultural resources management activities currently managed by the Savannah River Archaeological Research Program through a cooperative agreement between DOE and the University of South Carolina.
- (d) Basic and applied ecological research, education activities, and outreach efforts currently managed by the Savannah River Ecology Laboratory through a cooperative agreement between DOE and the University of Georgia.
- (e) Site security currently managed under a DOE prime contract with Wackenhut Services Incorporated.
- (f) Information Management Services, which include information strategic planning, Information Systems development, systems engineering infrastructure upgrades and improvements, system integration and configuration management, desktop/WAN production (operations, Help Desk, maintenance), cyber security program management, communications infrastructure including maintenance of radios, pagers, radio towers, conferencing (video and telephone) and cellular communications.

- (g) Health and Human Services which include medical services, injury/illness recordkeeping and monitoring, and health physics instruments calibration and distribution.
- (h) Transportation and Mechanical Services which include emergency specialty equipment services, transportation services on site and off site (non-nuclear), fuel management (all types), fire protection engineering, and fire test and maintenance (outside the nuclear fence).

In accordance with the clause in Section H entitled “Withdrawal of Work,” the CO may withdraw work from the SOW during the course of this contract.

C-2 WORK AUTHORIZATION

In addition to the general requirements of this SOW, work to be accomplished under this contract is defined in accordance with the clause in Section H, entitled “Work Authorization System.” The specific work to be executed under this contract may be supplemented by formal technical direction pursuant to the clause in Section I entitled, “Technical Direction” and the clause in Section H, entitled, “Performance/Technical Direction.”

C-3 SCOPE OF WORK - MISSION AREAS

C-3.1 EM Closure Activities

(a) Soil and Water Remediation

The Contractor shall plan and safely execute a program that meets all regulatory commitments reflected in the SRS Federal Facility Agreement, Resource Conservation and Recovery Act (RCRA) permit and closure plans, settlement agreements, administrative orders, consent decrees, notices of violation(s), Memoranda of Agreements or other notices of direction from DOE and/or regulatory agencies. This includes, but is not limited to, the identification, characterization, assessment, remediation and post-closure maintenance/monitoring of soil, surface water, groundwater waste units and Deactivation and Decommissioning (D&D) residuals. The Contractor shall implement remedial actions consistent with the Area Completion Strategy. The Contractor shall develop and implement alternative long range strategies, appropriate technologies, and approaches in the refinement of Area Completion and long-term stewardship to reduce out-year baseline costs.

(b) Deactivation and Decommissioning

The Contractor shall conduct D&D of facilities and their ancillary structures as directed by DOE. The Contractor shall also dispose of structures and facilities related to these facilities, such as sheds, canopies, air conditioning

units and excess trailers.

The Contractor shall provide the overall management of the D&D program at SRS. D&D activities may include relocation of existing functions and personnel, characterization, risk analysis, evaluation of alternatives, stabilization, and final decommissioning. All D&D activities shall be conducted through an integrated approach with soil and water remediation requirements in accordance with the established regulatory interaction protocols. D&D activities, and the integrated approach within, must take into account historic properties and historic preservation requirements.

(c) Solid Waste

The Contractor shall manage the Solid Waste Program to safely and effectively prevent and/or minimize the generation of solid waste to include hazardous, low level, transuranic, mixed, and municipal sanitary wastes. The Contractor shall ensure that the handling, treatment, storage, transportation and disposal of existing "legacy" and future solid waste is environmentally sound and in compliance with DOE Directives, and applicable regulations and requirements.

The Contractor shall manage and integrate site-wide solid waste recycling, treatment, storage, disposal and transportation activities and implement waste minimization/pollution prevention initiatives. The Contractor shall also provide on-site/off-site waste generators with technical support and verification of compliance with waste acceptance criteria, including Safety Basis and Performance Assessment objectives.

(d) Nuclear Materials Management

The Contractor shall safely and effectively manage nuclear materials and facilities in accordance with applicable DOE Directives and requirements. Management of nuclear materials at SRS includes three distinct but integral functions: storage, operations, and disposition.

- (1) Storage: The Contractor shall conduct activities to place and maintain nuclear materials in a safe, secure, and stable form. These materials include spent nuclear fuel that may have originated from past operations or from U.S. and foreign research reactors. Storage shall be managed safely, securely, and efficiently to support site and DOE complex-wide consolidation and disposition missions.
- (2) Operations: The Contractor shall operate and maintain the H Canyon Complex to support stabilization and disposition of nuclear materials and spent nuclear fuel, as required by DOE. For planning purposes, DOE has assumed that H Canyon operations will contribute

approximately 300,000 gallons per year to the Tank Farm through the base contract period of both the M&O and LW contracts.

The Contractor shall maintain an effective program to facilitate safe and secure nuclear material shipments consistent with the current authorization agreement and subsequent revisions. The Contractor shall stabilize, de-inventory, and transition excess nuclear facilities and ancillary structures for D&D.

- (3) Disposition: The Contractor shall plan for and disposition nuclear material and spent nuclear fuel in coordination with the NNSA Nuclear Nonproliferation Program and other applicable DOE programs. This includes the development of capability to disposition surplus plutonium and to prepare spent nuclear fuel for geologic disposal.

C-3.2 Savannah River National Laboratory (SRNL)

SRNL's three-fold mission is to enable the success of SRS operations; to provide technical leadership for future site missions; and to utilize its technical expertise to provide vital national and regional support in achieving the broader goals of DOE and the federal government in a safe manner. SRNL shall be operated as a defined work activity within the M&O contract structure so that it will be positioned to be responsive to future DOE requirements. The vision for SRNL is to be the nation's premier applied science laboratory in Environmental Management, National and Homeland Security, and Energy Security by delivering world-class innovative performance in national defense and homeland security technologies, hydrogen technology and cleanup. To accomplish these missions and to attain this vision, the Contractor shall perform the following activities in a manner that is consistent with the SRNL Strategic Plan.

The Contractor shall increase the effectiveness of SRNL as EM's Corporate National Laboratory across the EM complex and position SRNL for transition into a financially sustaining, distinct business unit. To attain this objective, the Contractor shall operate SRNL as a defined work activity within the overall contract structure. The defined work activity shall include budget, real estate, personnel resources necessary to conduct research and development, technology transfer, operations, and maintenance, and support necessary to be obtained from other activities within the contract or from other contractors. In addition, the Contractor shall seek to diversify its customer base and funding sources for SRNL to increase efficiencies for the benefit of all of its customers.

The Contractor shall implement a strategy to maintain and enhance SRNL as a pre-eminent center for research, development, and deployment of technologies to cleanup the environmental legacy of the Nation's nuclear programs. The Contractor shall develop SRNL to be a major center for technologies to advance the nuclear fuel cycle of the future, nuclear hydrogen initiative, and civilian hydrogen

storage and related research initiatives. The Contractor shall maintain SRNL as a center for research, development, and application for tritium weapons components and key technologies for non-proliferation and international safeguards.

The Contractor shall maintain and enhance the core competencies that are necessary to support assigned and future missions of EM and NNSA programs at SRS. These core competencies include chemical and radiochemical processing, environmental science and technology, analytical chemistry, engineering specialty systems, materials science, sensor development, hydrogen and tritium science and technology, and computational science and modeling. The Contractor shall conduct a Laboratory Directed Research and Development Program in accordance with DOE policy. The Contractor shall establish SRNL as a preferred partner for industry, universities, and small businesses in developing leading edge technologies in support of industrial, economic, and educational strength of the United States. The Contractor shall develop, maintain, and fully utilize appropriate world class research and development consistent with providing for the long-term independent sustainability of SRNL. Furthermore, the Contractor shall continually seek ways to leverage program funding through partnerships and sharing costs with industry in areas of mutual benefit.

The Contractor shall conduct math, science, and education programs, to include the requirements of the Energy Policy Act of 2005, as well as support such other programs as directed by DOE.

C-3.3 NNSA Activities (Amendment 003)

(a) Tritium Operations (Defense Programs)

The Contractor shall manage Tritium Operations as a defined, severable work activity within the M&O contract structure so that it will be positioned to be responsive to any future direction within the NNSA Nuclear Weapons Complex.

The Contractor shall conduct the operations of the Tritium Facilities to:

- Support the nuclear weapons stockpile by safely providing tritium and non-tritium loaded reservoirs to the Department of Defense in accordance with NNSA guidance and direction;
- Extract tritium from irradiated Tritium-Producing Burnable Absorber Rods;
- Support the Stockpile Stewardship Program through reservoir surveillance operations;
- Conduct a Plant Directed Research and Development Program to retain and recruit individuals with critical skills, maintain core competencies required for current and future technical missions, increase industrial and university partnerships to enhance technical capabilities;

- Maintain the Tritium Facilities in a safe, secure and responsive operating condition; and
- Operate the NNSA Tritium operations and activities as a defined, severable cost center within the M&O contract structure, to include budget, real estate, personnel resources necessary to conduct operations and required maintenance, and support to be obtained from other activities within the M&O contract or from other contractors.

(1) Directed Stockpile Work (DSW)

The Contractor shall conduct DSW activities, such as processing tritium and inert reservoirs and associated components, in support of the Reliable Replacement Warhead (RRW) activities and Life Extension Programs (LEPs) including pre-production, production, and evaluation associated with the refurbishment of the B61, W76, and W80. The Contractor shall provide Stockpile Services, and Production Support, including LEPs Stockpile Systems categories of Limited Life Component Exchange (LLCE), Reservoir Surveillance, Stockpile Laboratory Tests (SLTs), and Life Storage Program (LSP) activities. The Contractor shall process reservoirs and associated parts as necessary to support LLCE schedules per production directive requirements for the enduring stockpile. For Retired Systems, the Contractor shall unload, weld close for disposal, or manage per SLT requirements, reservoirs returned from retired weapons.

(2) Engineering Campaign

The goal of the Engineering Campaign is to provide validated engineering sciences and engineering modeling and simulation tools for design, qualification, and certification; improved surety technologies; radiation hardening design and modeling capabilities; microsystems and microtechnologies; component and material lifetime assessments; and predictive aging models and surveillance diagnostics. The subprograms of the Engineering Campaign are Enhanced Surety, Weapons Systems Engineering Assessment Technology, Nuclear Survivability, and Enhanced Surveillance. In support of the Enhanced Surveillance subprogram, the Contractor shall develop methods for surveillance of tritium reservoirs and other gas transfer system components.

(3) Readiness Campaign

- (i) In support of the Tritium Readiness subprogram, the Contractor shall operate the Tritium Extraction Facility (TEF) as an integrated part of the Tritium Facilities. The TEF provides the capability to receive and extract tritium-containing gases from tritium producing

burnable absorber rods to provide sufficient tritium to support stockpile requirements.

(ii) In support of the Advanced Design and Production Technologies (ADAPT) subprogram, the Contractor shall conduct site-specific ADAPT projects, such as:

- The Reservoir Development project;
- The Tritium Processing project;
- The Metal Alloy project;
- The Automated Reservoir Management System (ARMS) Replacement project; and
- Support the ADAPT Technology Investment projects, Thrust Areas project and the Program Management Control project across the NWC.

(4) Readiness in Technical Base and Facilities (RTBF)

The Contractor shall conduct RTBF work to maintain the tritium facilities and infrastructure in a state of readiness in support of DSW missions, including LEPs, Stockpile Services, and Production Support. The Contractor shall conduct preventive, predictive, and corrective maintenance of process and infrastructure equipment/facilities. ES&H activities shall be conducted to ensure the well being of tritium and other site workers, the public, and the environment. The Contractor shall conduct Material Recycle and Recovery, which involves recovery and purification of tritium, deuterium, and helium-3 gases from reservoir recycle gas, hydride storage vessel, and facility effluent-cleanup systems. The Contractor shall perform physical maintenance of various shipping containers, and conduct operational and technical activities related to Pressure Vessels.

(b) Nuclear Nonproliferation Programs

The Contractor shall provide services in support of the Nuclear Nonproliferation Programs at SRS. The Contractor shall support both new facilities development activities and program mission support activities as specified below.

(1) Pit Disassembly and Conversion Facility (PDCF): The PDCF will be used to disassemble classified nuclear weapons components and convert nuclear material to feedstock for the Mixed Oxide (MOX) Fuel Fabrication Facility. The Contractor scope includes Title II and Title III Engineering Support, Design Authority, Design Responsibility for some facility components, Construction Management and/or Construction Management Support, Startup Testing, and Facility Operation; however,

PDCF Startup Testing and Facility Operation are expected to occur after the contract period.

- (2) Mixed Oxide Fuel Fabrication Facility (MFFF): The MFFF will be used to manufacture MOX fuel assemblies for use in commercial nuclear power reactors. For the MFFF and MOX program, the Contractor shall provide Title II and Title III Engineering Support with some regulatory and site interface support work
- (3) Waste Solidification Building (WSB): The Waste Solidification Building sub-project will provide a disposition path for MFFF and PDCF liquid radioactive waste streams, e.g., MFFF High Alpha waste stream, MFFF Stripped Uranium waste stream, and PDCF Laboratory liquid waste stream. The Contractor shall provide Title II and Title III Engineering (rather than engineering support), Construction Management, Startup Testing, and Facility Operation
- (4) Highly Enriched Uranium (HEU) Blend Down Project: The United States declared over 174 metric tons (MT) of HEU surplus to defense needs. The Uranium Program includes disposition of the Off-Specification HEU material from SRS to the Tennessee Valley Authority (TVA). These materials include solutions processed from both irradiated and unirradiated fuel as well as HEU ingots. The Contractor shall blend, load and ship the Low Enriched Uranium material. The Contractor shall prepare ingots for shipment directly to the TVA fuel manufacturer.
- (5) The Contractor shall also provide scientific, technical, program, and project expertise to support the following programs:
 - (i) International (Nonproliferation) Programs: The overall mission of Defense Nuclear Nonproliferation international programs is to detect, prevent, and reverse the proliferation of weapons of mass destruction while promoting nuclear safety worldwide. The Contractor shall support NNSA and its other contractors in executing these programs by providing the necessary scientific, engineering and programmatic experts, e.g. nuclear material protection, control, and accountability; nuclear safeguards; emergent threats; export controls; and nuclear verification activities.
 - (ii) Foreign Research Reactor (FRR) Fuel Program: The Contractor shall assist foreign entities with arranging shipments and supporting shipping activities, be responsible for receipt and storage of spent nuclear fuel at SRS, and perform offsite radiological support activities.

(c) Radiological Assistance Program (RAP)

The Contractor shall support NNSA in executing the RAP within DOE Region 3, which encompasses the states of Alabama, Florida, Georgia, North Carolina, and South Carolina. The mission of RAP is to provide a deployable, tailored capability to assist other Federal, State, Tribal and local agencies, as well as private businesses and individuals, in responding to offsite incidents involving nuclear/radiological materials. RAP responds to a variety of incidents, including those involving fixed facilities, transportation events, lost or stolen sources, nuclear weapons, and terrorist use or threatened use of nuclear/radioactive materials. The Contractor shall maintain the plans, procedures, trained personnel, and calibrated equipment necessary to accomplish the RAP mission. In addition, the Contractor shall support RAP by providing teams, with rotating on-call duties, such that one team is continuously ready for deployment.

C-3.4 Landlord Services and Site Support (Amendment 003)

The Contractor shall execute assigned landlord responsibilities and provide a range of services to other organizations doing work on the SRS. This section includes ES&H; Engineering and Construction; Operations Support; and Business Services.

(a) ES&H

(1) Sitewide ES&H Program

The Contractor shall conduct a comprehensive ES&H program that provides for the protection of workers, the public, and the environment. The Contractor shall include provisions for the protection of human health and safety and the environment in all activities for which it has contractual responsibilities. The Contractor shall implement and continuously improve the existing ES&H program and shall conduct its activities in full compliance with ES&H requirements per the contract clauses in Section H entitled “Environment, Safety and Health” and Section I entitled “Laws, Regulations, and DOE Directives” and “Integration of Environment, Safety and Health into Work Planning and Execution.” The Contractor shall include, as a minimum, the following disciplines as part of its ES&H program:

- Nuclear safety (including criticality safety);
- Occupational, industrial, and construction safety;
- Industrial hygiene;
- Quality Assurance;
- Radiation protection;
- Hazardous material management;

- Environmental Management System;
- Environmental permitting and compliance (including NEPA);
- Environmental monitoring;
- Pollution prevention and waste minimization;
- Technical training and qualification;
- Conduct of operations and occurrence reporting; and
- Radiological assistance and/or support for emergency response.

As part of its overall performance assurance program, the Contractor shall implement a sitewide ES&H program, including the assumption, management, improvement, and integration of an Integrated Safety Management System (ISMS), that not only covers the Contractor's organizations but also other organizations performing work for the Contractor via subcontracts and other agreements at SRS. The Contractor shall manage the overall site ES&H program which shall be followed by all site contractors, subcontractors, vendors, and suppliers, as required by their individual contracts or agreements; however, the Contractor shall only be responsible for compliance of its operations and those of its subcontractors and not responsible for the performance or compliance of other contracts over which it possesses no direct contractual relationship. In managing the Site ES&H program, the Contractor shall work with and coordinate with other Site organizations and contractors to ensure consistent programs are implemented at SRS to realize efficiencies and cost savings for the overall Site. The Contractor shall provide appropriate support, as needed, in emergency situations. The Contractor shall also provide ES&H support to others when directed by DOE; this may include activities such as onsite and offsite environmental analysis and assisting in the preparation of required regulatory information.

The Contractor shall implement and maintain a set of requirements to ensure the protection of human health and safety and the environment. In the event the Contractor becomes out of compliance, appropriate action to protect human health and safety and the environment shall be taken until compliance is reestablished. When activities are not in compliance with appropriate requirements, the Contractor shall accept notices of violations or fines in accordance with the provisions of the contract clause in Section H entitled "Contractor Acceptance of Notices of Violations/Fines and Penalties." Although the Contractor shall not be responsible for ES&H compliance of other site contractors with which it does not possess a direct contractual relationship, the Contractor shall report to DOE any known or suspected performance of other site contractors which is not in compliance with the site ES&H program requirements.

The Contractor shall work effectively with other site contractors, subcontractors, and external organizations (e.g., the DNFSB, South Carolina Department of Health and Environmental Control, Environmental Protection Agency) to maintain and improve ES&H performance at SRS. The Contractor shall ensure ES&H excellence in their subcontractor performance and flow-down of all applicable requirements to their subcontractors. The Contractor shall consider ES&H performance as an evaluation factor in the selection of subcontractors performing work in Government owned or leased facilities.

The Contractor shall periodically evaluate the site ES&H program for effectiveness by using management and independent assessments, monitor ES&H performance continuously by the use of ES&H performance indicators, and effect continued ES&H improvement in a cost-effective manner. The Contractor shall use these tools and others identified in its contractor assurance system in the implementation of DOE Order 226.1, Implementation of Department of Energy Oversight Policy.

(2) Development and Maintenance of Nuclear Safety Documentation

As part of the overall Site ES&H program, the Contractor shall be responsible for implementing a program that will ensure that nuclear safety requirements are implemented consistently across SRS and for periodically evaluating the program's effectiveness. The Contractor shall comply with 10 CFR 830 which includes the safety basis and quality assurance requirements for contractors and operators of Hazard Category 1, 2, and 3 DOE nuclear facilities to develop and maintain a safety basis and to perform work in accordance with the safety basis. The major components of the safety basis for a nuclear facility include the Documented Safety Analysis, the Technical Safety Requirements, and an Unreviewed Safety Question process.

The Contractor shall ensure that facilities that contain many different types of hazards are addressed in a systematic and integrated way. A hazardous facility's safety basis is its specific safety strategy. The Contractor shall operate facilities in accordance with the DOE approved safety basis.

(b) Engineering and Construction

The Contractor shall perform engineering, design, and construction management as needed for its activities within this Scope of Work and for other SRS activities as directed by the CO. The Contractor shall use appropriate contracting mechanisms for design and construction services, with

a preference for fixed-price, performance-based contracting to the maximum extent practicable. DOE reserves the right to assign design and construction management responsibility for individual projects to organizations other than the Contractor.

The Contractor shall perform the following for its activities and for other activities as directed by the CO.

(1) Engineering, Design and Technical Services. The Contractor shall provide or procure centralized engineering services to implement programs for:

- Planning and integrating all activities related to engineering, design, procurement, and construction services;
- Architect-engineering services in accordance with South Carolina Code of Laws Title 40 as required to support design activities;
- Engineering automation to include assumption of maintenance of, and improvements to, the existing SRS computer based engineering, design, and construction support systems, which include CAD (Intergraph Microstation) and 3-D modeling capability (Intergraph PDS);
- Systems engineering;
- Configuration management;
- Suspect parts;
- All Site geotechnical activities including associated analysis and engineering;
- Nuclear Safety engineering to include criticality engineering;
- Pressure protection to include the capability to satisfy the ASME “R” and “U” stamp requirements;
- Natural phenomena hazards mitigation engineering;
- Engineering document control;
- Process and Control engineering;
- Geographic Information Services;
- A systematic project management system which provides cost estimating, scheduling, and change control systems for establishment and maintenance of an appropriate technical baseline;
- Non-destruction testing and examination services;
- Fire protection system design and engineering;
- Welding training and certification program for on-site activities which may include unique and exotic materials and processes; and
- Quality assurance and control services to support various site activities that are based on but not limited to International Building

Code, ISO 9000, Six Sigma, and ASME NQA-1.

(2) Construction Management Services. The Contractor shall provide or procure:

- Construction services as required to meet contract requirements;
- Capabilities for maintenance and repair of facilities, heavy equipment, and infrastructure;
- Services to assume, revise, implement, and maintain an effective construction safety program;
- Construction services that satisfy the South Carolina Code of Laws Title 40 requirements for construction contractors and managers;
- Construction and fabrication services for existing and new equipment, and existing contaminated equipment; and
- Maintenance services for large portable equipment customarily used in providing construction and transportation services.

(3) Integration Services. The Contractor shall implement, maintain, and/or enhance the following for its activities and for other activities as directed by the CO:

- A Conduct of Engineering and Construction program;
- Engineering and construction, and site standards;
- Designs that properly reflect all customer/engineering/ construction interfaces and requirements;
- A centralized and standardized specification system similar to industry;
- A centralized final technical document review system that applies to all site final design and/or final technical documents prior to release for solicitation;
- Other construction related services, such as schedule coordination to avoid conflict with other projects; construction site orientation; safety program monitoring; utility service coordination; security badging; determination of progress payments for work accomplished; change management; and management of construction goods and services; and
- Cost, technical, and schedule performance measures in subcontracts.

(c) Operations Support

The Contractor shall implement site-wide programs and coordinate their implementation with all site organizations. The Contractor shall provide technical support for all its activities and operations. The Contractor shall also provide technical support for other organizations as directed by the CO or

as requested by other organizations and approved by the CO. Except as otherwise directed by the CO, services to other contractors generally do not extend to within their facilities or areas under the control of other tenant organizations. These services include, but are not limited to:

- Infrastructure maintenance (e.g., roads, bridges, dams, parking lots, and grounds) except as controlled by other tenant organizations;
- Maintenance and repair of facilities and equipment;
- Operation of utility systems including water, sewage, electrical and steam distribution;
- Transportation and traffic management;
- Receiving, inspection, and distribution;
- Nuclear materials safeguards and accountability;
- Emergency operations;
- Emergency preparedness and response (including coordination with outside agencies)
- Site training;
- Technical and analytical laboratory operations;
- Site Safeguards and Security (excludes physical security and law enforcement services);
- Personnel security and badging;
- Facility and site use planning; and
- Historic Preservation.

(d) Business Services

(1) The Contractor shall provide general planning, management and administrative services for all its activities and for other organizations as directed by the CO. Business services include, but are not limited to:

- Strategic planning, program planning, and long and short range planning;
- Procurement;
- Accounting, budgeting and financial management;
- Personnel administration;
- Labor relations;
- Employee concerns;
- Information resources management, development, and operation;
- Real and personal property management;
- Legal;
- Internal Oversight (internal audit and contracts audit);

- Public Affairs; and
 - Other administrative services.
- (2) The Contractor shall provide project costs in a manner that enables input into the DOE Environmental Cost Analysis System (ECAS) database.

C-4 INTERFACES WITH OTHER SITE USERS

Within 60 days after the start of transition, the Contractor shall develop, for CO approval, an SRS Interface Management Plan (IMP) to identify and manage all site interfaces and to provide site landlord services to DOE, NNSA, DOE/NNSA contractors, and tenant entities engaged in onsite activities. The Contractor SRS-IMP will become part of the contract as Section J, Appendix N. The Plan will also incorporate contractors and subcontractors to these entities, as directed by the CO. The Contractor shall be responsible for developing and implementing a plan for interfacing and integrating activities with other site contractors and tenant entities consistent with DOE technical direction. These services shall be provided in accordance with existing or newly developed memoranda of understanding or other appropriate agreements. Services may be provided by the Contractor on a cost recoverable basis as approved by the CO.

C-5 WORK FOR OTHERS/TECHNOLOGY TRANSFER

The Contractor shall conduct the Work for Others program consistent with this contract and applicable DOE Directives. All Work for Others activities shall be approved in advance, in writing, by the CO.

The Contractor shall perform Technology Transfer activities in accordance with the clause in Section I entitled DEAR 970.5227-3 “Technology Transfer Mission.” The Contractor shall identify technology transfer opportunities to share with industry. The Contractor shall routinely, as a matter of conducting business, identify and evaluate technologies that are potential candidates for commercial exploitation. Upon CO approval, the Contractor shall establish industry partnerships that will allow the appropriate sharing of technologies using all means allowable under the Stevenson-Wydler Technology Innovation Act of 1980.

C-6 RESPONSIBILITIES FOR SPONSORSHIP, MANAGEMENT AND ADMINISTRATION OF CONTRACTOR EMPLOYEE PENSION AND OTHER BENEFITS PLAN

The Contractor shall be the main sponsor of the multiple employer pension plan, herein referred to as the Plan, for Incumbent Employees (and retired plan participants) with responsibility for management, administration, funding, coordinating contributions from other plan sponsors and maintaining the qualified status of the plan. The Contractor shall also sponsor and be responsible for management and administration of welfare benefit plans for Incumbent Employees. In addition, the Contractor shall sponsor and be responsible for management and administration of the pension and medical benefit plans

for Non-Incumbent Employees. The requirements associated with these responsibilities are set forth in section H.14, Employee Compensation: Pay and Benefits.

Although the Contractor will be the main sponsor of the Plan, it will only be responsible for funding pension contributions for Incumbent Employees working under this Contract. The contractor for the Liquid Waste contract and other DOE prime contractors will also be participating sponsors of the Plan. These contractors will be responsible for pension contributions for employees employed under their respective contracts.

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PACKAGING AND MARKING

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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:

- Identifies the contract number under which the item is being delivered; and
- Identifies the contract requirement or other instruction which requires the delivered item(s).

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SECTION E

INSPECTION AND ACCEPTANCE

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SECTION E

INSPECTION AND ACCEPTANCE

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

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

E-2 ACCEPTANCE

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

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SECTION F

DELIVERIES OR PERFORMANCE

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PART I - THE SCHEDULE

SECTION F

DELIVERIES OR PERFORMANCE

F-1 TERM OF CONTRACT

This Contract shall be effective as specified in Block No. 28-Award Date, of Standard Form 33 and shall continue up to and including July 31, 2013, unless sooner terminated according to its terms. The Contract may be extended in annual increments, or portions thereof, for up to an additional period of five years of performance in accordance with the clause in Section F entitled "Option to Extend the Term of the Contract".

The period for the transition from the incumbent Contractor to the Contractor shall begin on the date of award and extend for a period of approximately 90 days until such time that transition activities are complete and the Contracting Officer (CO) notifies the Contractor of the date the Contractor shall assume responsibility for the complete statement of work. The transition term shall be for the transition activities identified in Section J, Appendix A, Transition Plan.

F-2 PRINCIPAL PLACE OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations, with the principal location of performance being the Savannah River Site near Aiken, South Carolina.

F-3 STOP-WORK ORDER (FAR 52.242-15) (AUG 1989) (ALTERNATE I) (APR 1984)

- (a) The CO may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period for 90 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 CO shall either:
- Cancel the stop-work order; or
 - Terminate the work covered by the order as provided in the Termination Clause of the 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 CO 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 CO decides the facts justify the action, the CO 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 CO 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 CO shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

F-4 OPTION TO EXTEND THE TERM OF THE CONTRACT (Amendment 002)

- (a) Consistent with FAR 52.217-9, "Option to Extend the Term of the Contract," the Government may extend the term of this Contract by written notice to the Contractor not less than 30 days prior to the end of the period of performance, provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 12 months before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) The total duration of this Contract shall not exceed ten years, not including the transition period.

F-5 EXERCISE OF OPTION(S)

The DOE has included an option to extend the term of this Contract in order to demonstrate the value it places on quality performance. The DOE has provided a mechanism for continuing a contractual relationship with a successful Contractor that performs at a level which meets or exceeds quality performance expectations as communicated to the Contractor, in writing, by the CO or designated representative. When deciding whether to exercise the option, the CO will consider the quality of the Contractor's performance under this Contract.

The Option Periods, from 08/01/13 through 07/31/18, may be for a period(s) of one year up to five years. The CO will determine the duration of the option period(s) at the time of written notification to the Contractor. The total term shall not extend beyond 07/31/18.

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SECTION G

CONTRACT ADMINISTRATION DATA

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PART I - THE SCHEDULE

SECTION G

CONTRACT ADMINISTRATION DATA

G-1 TECHNICAL AND ADMINISTRATIVE CORRESPONDENCE

To promote timely and effective administration under this Contract, the Contractor shall be subject to the following procedures:

(a) Technical and Administrative Correspondence

Technical and administrative correspondence concerning performance of this Contract shall be addressed to the responsible officials designated in SR Manual 300.1.1B, Chapter 1, Section 1.1, SR Functions, Responsibilities and Authorities Procedure, using the latest published edition.

(b) Contractual Correspondence/Matters

Correspondence involving contractual matters will be addressed to the CO responsible for administration of this contract. The CO for DOE is TBD, Office of Contracts Management. This individual shall be primarily responsible for all contractual actions required to be taken by the Government under the terms of this contract.

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

(c) DOE Contracting Office

The CO's address is: U.S. Department of Energy
Savannah River Operations Office
Office of Contracts Management
P.O. Box A
Aiken, SC 29802

- (d) To promote timely and effective administration all correspondence submitted to the CO shall contain a subject line commencing with the contract number as illustrated below:

“SUBJECT: CONTRACT NO. DE-AC09-06SR22470, (insert subject topic after Contract Number, e.g., “Request for subcontract placement approval”)”

A copy of all correspondence addressed to the CO shall be provided to the Manager, SR, at the mailing address stated in paragraph (c) above.

G-2 DOE PATENT COUNSEL

The Patent Counsel is the Contractor’s focal point for items concerning patent, intellectual property, technology transfer, copyright, open source, licenses, and technical data issues. Correspondence being sent to the DOE Patent Counsel should be addressed to:

U.S. Department of Energy
Savannah River Operations Office
ATTN: Patent Counsel
Office of Chief Counsel
P.O. Box A
Aiken, SC 29802

G-3 DOE ORGANIZATIONAL PROPERTY MANAGEMENT OFFICER

The Contractor may use the Organizational Property Management Officer as a point of contact for guidance and assistance involving property requirements. The CO shall be contacted for any matter which involves a change in any of the expressed terms and conditions of the contract. Correspondence being sent to the Organizational Property Management Officer should be addressed to:

U.S. Department of Energy
Savannah River Operations Office
ATTN: Organizational Property Management Officer
P.O. Box A
Aiken, SC 29802

G-4 CONTRACTOR CONTACT

The Contractor shall identify to the SR CO the contracting contact who has the authority and is responsible for managing, administering, and negotiating changes to the terms and conditions of this contract, as well as executing contract modifications on behalf of the contractor.

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H-1 ACCESS TO DOE-OWNED OR LEASED FACILITIES

- (a) The performance of this contract requires that employees of the Contractor have physical access to DOE-owned or leased facilities. The Contractor understands and agrees that DOE has a prescribed process with which the Contractor and its employees must comply in order to receive a security badge that allows such physical access. The Contractor shall propose employees whose background offers the best prospect of obtaining a security badge approval for access. This clause does not control requirements for an employee obtaining a security clearance.
- (b) The Contractor shall assure:
- Compliance with procedures established by DOE in providing its employees with any forms directed by DOE;
 - Employees properly complete any forms;
 - Employees submit the forms to the person designated by the CO;
 - Employees cooperate with DOE officials responsible for granting access to DOE-owned or leased facilities; and
 - Employees provide additional information requested by those DOE officials.
- (c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee's application for a security badge is or will be denied, the Contractor shall promptly identify and submit the appropriate forms for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any contractor claim against DOE.
- (d) The Contractor shall return to the CO, or designee, the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Contractor's employee(s) upon:
- Termination of this Contract;
 - Expiration of this Contract;
 - Termination of employment on this Contract by an individual employee; or
 - Demand by DOE for return of the badge.

- (e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE-owned or leased facilities.

H-2 ACCOUNTING FOR PERFORMING ENTITY

All financial data and planning of the entities comprising the performing entity, as identified below, shall be provided for at the same level of detail required of the prime Contractor. All actual financial data shall be included with the prime Contractor's input to the Financial Information System by the dates established by DOE. Actual manpower data will also be reported in a form and manner acceptable to DOE.

H-3 RESERVED (Amendment 003)

H-4 APPLICATION OF SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351) TO THE PERFORMING ENTITY

- (a) The Service Contract Act of 1965 is not applicable to this contract. In accordance with the clause in Section I 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.
- (b) The Contractor and the CO shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts to be awarded by the Contractor. 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" and forward it to the CO or his designee to obtain a wage determination.

H-5 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS

- (a) Existing contractual agreements entered into by the predecessor contractor will be assumed by the Contractor upon the effective date of assumption of full responsibility under this contract. The contractual agreements shall include all (1) subcontracts and purchase orders; (2) agreements with domestic and foreign research organizations; (3) agreements with universities and colleges; and (4) any other similar agreements.
- (b) The terms and conditions of these contractual agreements, as they exist when assumed, shall remain in full force and effect unless modified by the Contractor and the vendor/subcontractor.

H-6 COMPLIANCE WITH INTERNET PROTOCOL, VERSION 6 (IPv6), IN ACQUIRING INFORMATION TECHNOLOGY (IT)

- (a) This contract may involve the acquisition of IT that uses Internet Protocol (IP) technology. The Contractor agrees that (1) all deliverables that involve IT that use IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product management available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor agrees to (1) obtain the CO's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008; and (3) have IPv6 technical support for development and implementation and fielded product management available.
- (b) Should the Contractor find that any future statements of work or specifications provided to the Contractor do not conform to the IPv6 standard, it must notify the CO of such nonconformance and act in accordance with instructions of the CO.
- (c) The Contractor shall identify an employee to act as a liaison with the DOE HQ Chief Information Officer where needed. The Contractor shall also refrain from waiving any requirement unless the waiver has been approved in advance in writing/email by the CO. The Contractor shall provide a copy of any waiver to the CO within 45 days of its execution.

H-7 CONFIDENTIALITY OF INFORMATION

- (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 CO in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies; or

- (4) Information which the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the CO, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge, or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the 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 CO.
- (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 subcontracts.
- (f) Technical data is addressed in Section I, DEAR 970.5227-2 – Rights in Data-Technology Transfer (DEC 2000) (DEVIATION).

H-8 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION(S) AND FINES AND PENALTIES

- (a) The Contractor shall accept, in its own name, notices of violation(s) (NOV) and fines and penalties if issued directly to the Contractor by Federal or State regulators 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 governed by the clause in Section I entitled, DEAR 970.5232-2 "Payments and Advances." The Contractor shall notify the CO immediately when it receives service from the regulators of NOV's and fines and penalties. If an NOV or a fine/penalty is provided to the Contractor and the Contractor is not responsible for the cited function under this contract, the Contractor shall immediately notify the Government and the regulator. Any NOV's, fines or penalties associated with any act or failure to act before the Contractor assumed responsibility for the site shall be processed in accordance with the clause in Section I entitled, DEAR 970.5231-4 "Pre-existing Conditions."
- (b) The Contractor shall respond to all NOV's, fines and penalties issued directly to the Contractor and may conduct negotiations with the regulators. DOE will be fully integrated into these negotiations. However, the Contractor shall not make any

commitments or offers to regulators which would bind the Government in any form or fashion, including monetary obligations, without receiving written concurrence from the CO or their authorized representative (who shall be the SR Chief Counsel regarding fines and penalties) 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.

H-9 RESERVED

H-10 DEFENSE NUCLEAR FACILITIES SAFETY BOARD (DNFSB)

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

H-11 DISCRIMINATION IN EMPLOYMENT

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder. Additionally, the Contractor shall comply with all other laws such as, but not limited to, Title VII, 42 U.S.C. Section 2000e, et.seq.

H-12 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE

In the event of a termination for default or termination for convenience, DOE may take possession of all technical information, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary for design, construction, operation, cleanup and closure activities associated with the SOW, subject to the clause in Section I entitled, DEAR 970.5227-2 "Rights in Data – Technology Transfer" of this contract. Technical information includes, but is not limited to, designs, operation manuals, flowcharts, software, work progress reports, and any other information necessary for design, construction, operation, cleanup and closure activities associated with the M&O SOW.

Upon request, the Contractor agrees to grant to the Government an irrevocable, nonexclusive, paid-up license in and to any intellectual property, including any technical information and limited rights data, which are owned or controlled by the Contractor, at

any time through completion or termination of this contract and which are necessary for the continued design, construction, operation, cleanup and closure activities associated with the SOW, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license to future contractors for the design, construction, operation, cleanup and closure activities associated with the SOW. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed.

In addition, the Contractor will take all necessary steps to assign permits, authorizations, and any licenses in any third party intellectual property for the design, construction, cleanup and closure activities associated with the SOW to DOE or such other third party as DOE may designate.

The obligations under this clause are not dependent upon any payments by the Government. The obligations arise immediately upon the request of the CO.

H-13 ELECTRONIC SUBCONTRACTING REPORTING SYSTEM (DOE ACQUISITION LETTER 2006-01 DATED 10/27/05)

- (a) The Offeror's subcontracting plan shall assure that Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports are submitted under the Electronic Subcontract Reporting System (eSRS), including all sub tiers.
- (b) The contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702.

H-14 EMPLOYEE COMPENSATION: PAY AND BENEFITS

- (a) Human Resources Compensation Plan

The Contractor shall submit by close of contract transition, a *Human Resources Compensation Plan* demonstrating how the Contractor will comply with the requirements of this Contract. The *Human Resources Compensation Plan* shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

- (b) 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 including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and

DEAR 970.3102-05-6; "Compensation for Personal Services" (Total Compensation System"). DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Human Resources Compensation Plan as approved by the Contracting Officer.

(c) Appraisals of Contractor Performance

DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review.

(d) 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)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation.
- (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.
- (4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in paragraph (f) below.

(e) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; 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.

(1) Incumbent Employees are the employees who hold regular appointments, excluding discretionary incumbent management personnel as defined in Section H-57(b), with the Washington Savannah River Company (WSRC) performing entity as of date of award.

(A) Pay. Subject to Section H-57 below, the Contractor shall provide equivalent pay to Incumbent Employees as compared to pay provided by WSRC performing entity for at least the first year of the term of the Contract.

(B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by WSRC. Comparability of the total benefit package shall be determined by the CO in his/her sole discretion.

Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law. The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, for Incumbent Employees and retired plan participants, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans. 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) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

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

- (i) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the total compensation system.
- (ii) Any proposed major compensation program design changes prior to implementation.
- (iii) An Annual Compensation Increase Plan (CIP).
- (iv) Individual compensation actions for the Key Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan.
- (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).

(B) The Contracting Officer's approval of individual compensation actions will be required only for the chief executive officer, laboratory director, and all other named key personnel, as identified by the Contracting Officer.

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

- (i) Voluntarily separates, resigns or retires from 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.

(D) 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.

(f) 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 for either Incumbent Employees or Non-Incumbent Employees until the Contracting

Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.

- (2) Cost reimbursement for Incumbent Employee and Non-Incumbent 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 as part of its performance self assessment described in paragraph (d) (4) above and in calculating the cost of benefits under existing benefit plans. 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.
 - (A) An Employee Benefits Value Study (Ben-Val), every two years each for Incumbent and Non-Incumbent Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Incumbent and Non-Incumbent 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 each for Incumbent and Non-Incumbent Employees that analyzes the Contractor's employee benefits cost for Incumbent and Non-Incumbent Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey 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.
- (5) When the average total benefit per capita cost or total benefit cost 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 are above the per capita cost range or total

benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.

- (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.
 - (7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
 - (8) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
 - (9) Cost reimbursement for 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.
- (g) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- (1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the IRC and ERISA.
 - (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable laws and regulations.
 - (3) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
 - (4) 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 which provides credit for service not performed under a DOE cost-reimbursement contract.
 - (5) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the Contracting Officer with the following information within nine months of the last day of the current pension plan year.

- (A) Copies of IRS forms 5500 with schedules; and
 - (B) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
- (6) Prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources Compensation Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.
- (A) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and,
 - (B) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
 - (C) The Contractor shall not terminate any pension plan without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.

H-15 EMPLOYEE CONCERNS PROGRAM

The Contractor shall submit an implementation plan to the CO for approval within 90 days of contract award that describes an Employee Concerns Program (ECP) that implements all programmatic requirements in DOE Order 442.1A, and DOE Guide 442.1-1, Employee Concerns Program, and all superseding versions. Guidance for preparation of an ECP Plan is provided in Section J, Appendix I.

H-16 ENVIRONMENT, SAFETY, AND HEALTH (ES&H)

- (a) The Offeror shall comply with the existing System Description Document created by the predecessor contractor in accordance with the clause in Section I entitled, DEAR 970.5223-1 "Integration of Environmental, Safety, and Health into Work Planning and Execution." The Contractor shall submit an update to the existing Integrated Safety Management System (ISMS) Description Document within 120 days of contract award and thereafter each year on September 1, for the following fiscal

year. Any changes to the ISMS Description Document after the CO's or designee's initial approval, shall be approved by the CO or designee.

- (b) The initial update of the ISMS Description Document shall include any revisions to those ES&H Plans/Programs (i.e., Quality Assurance Plan, Radiation Protection Plan, Worker Safety and Health Program, Environmental Management System, etc.) approved by DOE as required by the clause in Section I entitled, DEAR 970.5204-2 "Laws, Regulations, and DOE Directives."
- (c) This Contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract, except with respect to facilities/activities for which separate Authorization Agreement(s) are necessary. Authorization Agreements are to be used to establish, document, and control the safety requirements and other parameters for Category 2 nuclear facilities and other facilities as directed by the CO to ensure adequate protection of the workers, the public, and the environment. Updates and changes to any approved Authorization Agreements(s) shall be subject to CO approval.

H-17 ENVIRONMENTAL JUSTICE

The Contractor shall embrace the principles of Environmental Justice by complying with all applicable environmental regulations and by focusing on nondiscrimination in its programs that affect human health and the environment. The Contractor shall assist the Department in complying with the principles of Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) on Environmental Justice.

H-18 ENVIRONMENTAL PERMITS AND APPLICATIONS

- (a) In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor shall sign Resource Conservation and Recovery Act (RCRA) permits and applications as co-operator. DOE shall sign RCRA permits and applications as co-operator and owner if such signature is required by law or Regulatory Agency. The Contractor and other Site Contractors shall sign all other permits and applications as required by law or Regulatory Agency.
- (b) To clarify the resulting obligations under the Contract, the parties agree to the following:
 - (1) DOE agrees that the Contractor shall not incur any liability above and beyond that contemplated by the Contract by reason of the Contractor's execution of environmental permits.

- (2) 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. In no event shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.
 - (3) 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.
- (c) The Contractor will be responsible for interfacing with other Site Contractors, as appropriate, when it pertains to permit applications, environmental monitoring, environmental reporting, and regulatory interactions. DOE will be fully integrated into these processes. Environmental monitoring, reporting, inspection, and control requirements will be defined in either the facility-specific permits issued by the state or in site-wide DOE-approved plans.
 - (d) The Contractor will be responsible for reviewing and approving deliverables related to Site-wide permits, permit-related plans, and exemption packages developed pursuant to State and Federal environmental regulations, and for forwarding the applications to the state for final approval, as appropriate. For each permit associated with this work-scope, the Contractor will perform the necessary calculations, prepare required reports, design drawings and application forms, security screening of information, and submit the documentation to DOE for review and, when applicable, approval.
 - (e) The Contractor shall sample all release and emission points, as defined in the applicable permits or as directed by DOE, to support environmental monitoring programs. The Contractor shall monitor impacts on site-wide environmental media. The Contractor shall ensure that environmental monitoring data is collected pursuant to standards and procedures stipulated in the permit and/or applicable regulations. The Contractor shall ensure that all analytical data is collected and analyzed according to applicable methods and standards, and that field and laboratory quality controls and measures are implemented according to applicable standards stipulated in the facility permit. The Contractor shall provide to DOE environmental monitoring data to support operating permits, for which the Contractor has responsibility.

H-19 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

- (a) Unless otherwise directed by the CO, the Contractor shall, during the Transition Period, conduct a joint reconciliation of the incumbent contractor's property inventory covering all items of Government property. Any discrepancies from the

existing inventory records shall be reported to the CO. This information will be used to provide a baseline in accordance with the clause in Section I entitled DEAR 970.5245-1, "Property."

- (b) All real and personal property, including material and facilities, currently assigned to the incumbent contractor to perform workscope included in this contract will be provided to the Contractor. During the transition period, an inventory of such property in the DOE Facilities Information Management System, Federal Inventory System, and applicable incumbent contractor property databases will be provided to the Contractor. Specifically, the following Property Acceptance requirements will be implemented.
 - (1) The Contractor shall conduct and complete a full inventory of all special nuclear material and accept full accountability for that special nuclear material during the transition period.
 - (2) The Contractor shall accept, at the end of transition, transfer of accountability for the remaining government-owned property (real and personal) not covered under paragraph (1), based on existing inventory records, on an "as-is, where-is" basis, and complete a formal inventory of all other nuclear material and non-nuclear material within 120 calendar days after the transition period. As the formal inventories are completed, the Contractor shall assume responsibility and liability for subsequent losses and damages.

H-20 HOME OFFICE EXPENSES

Home office expenses, whether direct or indirect, relating to activities of the Contractor are unallowable, except as otherwise specifically provided in the Contract or specifically agreed to in writing by the CO consistent with DEAR 970.3102-3-70, "Home Office Expenses."

H-21 LABOR RELATIONS

- (a) 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.
- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective

bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which 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 other benefit plans.

- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) 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, 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.

H-22 LITIGATION MANAGEMENT PROCEDURES

- (a) The Contractor [including any entities named in paragraph (a) of the provision in Section H entitled "Recognition of Performing Entity"] shall prepare a Management of Litigation Procedures which shall be submitted to the CO or designee for approval within 60 days after the effective date of the contract, and shall be updated thereafter as required.
- (b) The SR Chief Counsel is the authorized designee of the CO for approval of this Plan.
- (c) Reasonable litigation and other legal expenses are allowable when incurred in accordance with the DOE approved contractor legal management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable by law or the provisions of this contract.

H-23 LOBBYING RESTRICTIONS

- (a) The Contractor shall not commit any funds obligated on this award to 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 applicable statute and regulation.
- (b) Any travel associated with legislative monitoring must be approved in advance by the CO.

H-24 NUCLEAR MATERIAL FACILITY OPERATIONS

- (a) The activities under this Contract include the operation of nuclear material facilities. The Contractor recognizes that such operations involve the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the Contractor shall exercise a degree of care commensurate with the risk involved.
- (b) As used in this clause, the term "Nuclear Materials" is a collective term which includes source material, Special Nuclear Material, and those other materials to which, by direction of DOE and/or NNSA, the provisions of DOE's Directives regarding the control of Nuclear Materials, which have been or may be furnished to the Contractor by DOE and/or NNSA, apply. The Contractor shall accept existing procedures and, in a manner satisfactory to the CO, propose revised, as appropriate, accounting and measurement procedures, maintain current records and institute appropriate control measures for Nuclear Materials in its possession commensurate with the national security and DOE policy. The Contractor shall make such reports and permit such inspections as DOE and/or NNSA may require with reference to nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.
- (c) Transfers of Nuclear Materials shall only be made with the prior written approval of the CO, or authorized designee. Nuclear Materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this contract. The Contractor shall be responsible for the control of such Nuclear Materials in accordance with applicable DOE Directives regarding the control of Nuclear Materials, which have been or may be issued to the Contractor by DOE and/or NNSA, and shall make a part of each purchase order, subcontract, and other commitment involving the use of Nuclear Materials for which the Contractor has accountability, which it enters into under this contract, appropriate terms and conditions for the use of Nuclear Materials and the responsibilities of the subcontractor or vendor regarding control of Nuclear Materials. In the case of fixed-price purchase orders, subcontracts, or other commitments involving the use of Nuclear Materials for which the Contractor has accountability, the terms and conditions with respect to Nuclear Materials shall also identify who has the financial responsibilities, if any, regarding such items as losses, scrap recovery, product recovery, and disposal.

H-25 OPEN COMPETITION AND LABOR RELATIONS IN MANAGEMENT AND OPERATING AND OTHER MAJOR FACILITIES CONTRACTS (DEC 2002)

"Labor organization," as used in this clause, shall have the same meaning it has in 42 U.S.C 2000e (d).

- (a) Unless acting in the capacity of a constructor on a particular project, the Contractor shall not:
 - (1) Require bidders, offerors, contractors, or subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, i.e., project labor agreements, that apply to construction projects(s) to this contract; or
 - (2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for refusing to become or remain signatories or to otherwise adhere to project labor agreements for construction project(s) relating to this contract.
- (b) When the Contractor is acting in the capacity of a constructor, i.e., performing a substantial portion of the construction with its own forces, it may use its discretion to require bidders, offerors, contractors, or subcontractors to enter into a project labor agreement that the Contractor has negotiated for that individual project.
- (c) Nothing in this clause shall limit the right of bidders, offerors, contractors, or subcontractors to voluntarily enter into project labor agreements.

H-26 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN

Within 120 calendar days after the effective date of the contract, the Contractor shall submit to the CO for approval an Organizational Conflict of Interest (OCI) Management Plan. The Plan shall describe an aggressive program to self-identify conflicts of interest, avoid conflicts of interest and facilitate the mitigation of actual conflicts of interest and shall be periodically updated as required during the term of the contract. The Plan shall be consistent with the clause in Section I entitled, DEAR 952.209-72 “Organizational Conflicts of Interest,” and include the following:

- (a) The procedures for identifying and evaluating past, present, and anticipated contracts of the Contractor, its related entities and the entities named in the provision in Section H entitled “Performing Entity,” and their related entities;
- (b) The procedures the Contractor will utilize to identify conflicts;
- (c) The procedures for reporting actual or potential conflicts of interest to the CO;
- (d) The procedures the Contractor will utilize to oversee, implement, and update the OCI Plan, to include assigning responsibility for management, oversight and compliance to an individual in the Contractor’s organization with full authority to implement the Plan;

- (e) The procedures for ensuring all DOE required representations and certifications and factual analyses are timely submitted to DOE for approval;
- (f) The procedures for protecting agency information that could lead to an unfair competitive advantage if disclosed, collecting disclosure agreements covering all individuals, subcontractors, and other entities with access to agency-sensitive information, and physical safeguards, if necessary;
- (g) The procedures for OCI training and self-education of employees, as well as the frequency of recertifications; and
- (h) The enforceable disciplinary mechanisms to be used by the Offeror.

(Note: This Plan is in addition to the procedures required by the clause in Section I entitled, DEAR 970.5227-3 “Technology Transfer Mission.”)

H-27 PERFORMANCE BASED MANAGEMENT AND OVERSIGHT

- (a) Performance-based management shall be the key enabling mechanism for establishing the DOE-Contractor expectations on oversight and accountability. DOE expectations (outside of individual program performance and requirements of laws and regulations) and performance targets shall be established through the Performance Evaluation and Measurement Plan (PEMP). This PEMP shall establish the expected strategic results in the areas of mission accomplishment, stewardship and operational excellence. Mission performance, stewardship and operational goals shall be established by agreement with DOE. Contractor self-assessment, third party certification, and Contractor and DOE independent oversight, as appropriate, shall be the primary means for assessing stewardship and operational performance. Routine DOE oversight of Contractor performance will be conducted in accordance with DOE Order 226.1, Implementation of DOE Oversight Policy.
- (b) The Contractor shall propose to the CO within five months after award, an SR EM Contract Performance Baseline and a performance based incentive program including proposed incentives and associated fee amounts, within the total fee amounts specified in paragraph B-2.3(a) above. The incentives may be annual incentives and/or multi-year incentives covering up to the entire balance of the base term of the contract. The CO will consider the proposed incentive program in establishing the Performance Evaluation and Measurement Plan required by the clause in Section I entitled, DEAR 970.5215-1 “Total Available Fee: Base Fee Amount and Performance Fee Amount.”

The performance-based management system shall be the primary vehicle for addressing issues associated with performance expectations. In the event of a substantive performance shortfall in any area, the appropriate improvement expectations and targets will be incorporated into the PEMP and tracked through

self-assessment and independent oversight, as appropriate.

- (c) Compliance with applicable Federal, State and local laws and regulations, and permits and licenses, shall be primarily determined by the cognizant regulatory agency and DOE will primarily rely upon the determination of the external regulators in assessing Contract compliance. DOE oversight will be achieved through periodic assessments at the management system level, including review of Contractor self-assessments and assessments by independent third parties.

H-28 PERFORMANCE BASED INCENTIVES

- (a) Performance-Based Management System. This Contract is a management and operating performance-based contract, which holds the Contractor accountable for performance. This Contract uses clearly defined standards of performance consisting of performance objectives in relation to award fee and performance-based incentives as described in this Contract Clause with measures and targets for each area agreed to in advance on a fiscal-year basis and incorporated into the Performance Evaluation and Measurement Plan (PEMP). The Parties agree to continuously improve upon these standards of appraising Contractor performance.
- (b) Performance Evaluation and Measurement Plan (PEMP). A PEMP developed by the CO, with Contractor input, shall document the process by which the Contractor's performance will be evaluated. The Parties will strive to reach mutual agreement on expected business, operational and technical performance and will work together to develop performance objectives, performance-based incentives and associated measures and targets tied to key end products and NNSA/DOE strategic goals and objectives. In the event the parties fail to agree on the requirements, the CO reserves the unilateral right to make the final decision on all performance objectives and performance incentives (including the associated measures and targets) used to evaluate Contractor performance. The PEMP shall be finalized, whether bilaterally or unilaterally, prior to the start of an appraisal period. Only the CO may revise the PEMP, consistent with the Contract statement of work, during the appraisal period of performance. No changes will be made to the PEMP with less than 60 days remaining in the appraisal period.
- (c) Contractor Appraisal Self-Assessment Report. If requested by the CO, an annual self-assessment report shall be prepared by the Contractor of its performance against the performance objectives and incentives contained in the PEMP and other significant factors as determined by the Contractor and CO. The annual self-assessment shall be submitted within five-working days after the end of the appraisal period.

- (d) Determination of Performance Incentives Fee
- (1) DOE/NNSA shall, at the conclusion of each specified appraisal period, evaluate the Contractor's performance for all Performance Incentive requirements.
 - (2) The Performance Incentive fee determination will be made in accordance with the PEMP. The determination as to the amount of Performance Incentive fee earned is a unilateral determination made by the Fee Determination Official (FDO).
 - (3) The Contractor shall be promptly advised in writing of the amount and the basis of the Performance Incentive fee determination.
 - (4) Performance Incentive fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (e) Schedule. The CO shall issue the Fee Determination Official's final total available fee amount earned determination in accordance with the schedule set forth in the PEMP or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the CO of the Contractor's self-assessment or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and CO agree. If the CO 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 CO and the Contractor) after such completion.
- (f) Fee. The maximum fees allocated for payments to the Contractor for the performance of the work under this Contract are set forth in Part I, Section B, of the Schedule. The Performance Incentives fee earned is available for payment in accordance with the clause in Section I entitled, DEAR 970.5232-2 "Payments and Advances." There shall be no adjustment in the amount of the Contractor's fee by reason of differences between any estimate of cost for performance of the work under this Contract and the actual cost of performance of that work.

H-29 PERFORMANCE GUARANTEE

The Contractor is required by other provisions of this Contract to organize a separate corporate entity to perform the work under the Contract and shall be totally responsible for all Contract activities. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance as evidenced by the Performance Guarantee Agreement incorporated in the Contract in Section J, Appendix G. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one

organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the Contractor. 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 CO.

H-30 PERFORMANCE/TECHNICAL DIRECTION

- (a) This provision supplements the clause in Section I entitled, DEAR 952.242-70 "Technical Direction."
- (b) In addition to those functions specifically reserved throughout this Contract for the CO, the CO shall be the sole authority for assignment or modification of work authorization documents, approval and modification of PBIs, establishment of work priorities, and directing work requiring the expenditure of funds which have been obligated for performance of this Contract.
- (c) The CO's Representative(s) will be designated by the CO by letter and will represent the CO in the technical phases of the work. A copy of this designation letter shall be furnished to the Contractor. The COR (s) is authorized to provide technical direction in accordance with the clause in Section I entitled, DEAR 952.242-70 "Technical Direction." The COR is not authorized to change any of the terms and conditions of this contract, including the Statement of Work. Changes in any of the terms and conditions of the contract shall be made only by the CO by written modification(s) to the contract.
- (d) The Contractor shall only accept Technical Direction if provided in writing by an appointed COR and if within terms of the SOW or a work authorization document. Technical Direction shall not authorize the Contractor to exceed the total funds obligated on the Contract or any estimated cost or delay in delivery in a work authorization document. It is expected that there will be full and open communication between the functional counterparts of DOE and the Contractor's organization.
- (e) Performance/Technical Direction does not:
 - Authorize the contractor to exceed the funds obligated on the Contract;
 - Authorize any increased cost or delay in delivery;
 - Entitle the Contractor to an increase in fee; or
 - Change any of the terms or conditions of the Contract.
- (f) (1) The Contractor shall promptly comply with each duly issued Performance Direction unless the Contractor reasonably believes that the Performance Direction violates this clause. If the Contractor believes the Performance Direction violates this clause, the Contractor shall suspend implementation of the Performance Direction and promptly notify the CO of its reasons for

believing that the Performance Direction violates this clause. Oral notification to the CO shall be confirmed in writing within ten days of the oral notification.

- (2) The CO will determine if the Performance Direction is within the SOW and work authorization document. This determination will be issued in writing and the Contractor shall promptly comply with the CO's direction. If it is not within the SOW or work authorization document, the CO may issue a change order pursuant to the clause in Section I entitled, DEAR 970.5243-1 "Changes."

H-31 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS

- (a) DOE Policy 141.1, Department of Energy Management of Cultural Resources, and Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the CO the existence of any antiquities so discovered. The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes. Furthermore, all wildlife must be protected except for management programs approved by the CO.
- (b) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.
- (c) The Contractor shall implement an historic preservation program in accordance with the National Historic Preservation Act of 1966 (as amended) and the SR Cultural Resources Management Plan.

H-32 PRIVACY ACT SYSTEMS OF RECORDS (SOR)

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the clause in Section I entitled, FAR 52.224-2 “Privacy Act.”

DOE System No.	Title
DOE-05	Personnel Records of Former Contractor Employees (This SOR shall include the records of all former employees who previously worked for any predecessor contractors at SRS)
DOE-10	Worker Advocacy Records
DOE-11	Emergency Operations Notifications Call List
DOE-15	Intelligence Related Access Authorization
DOE-33	Personnel Medical Records (Present and former DOE employees, Contractor Employees, and other persons at SRS receiving routine, periodic, and emergency medical examination or treatment.)
DOE-35	Personnel Radiation Exposure Records (Past and present DOE and Contractor employees and other persons having access to SRS)
DOE-38	Occupational and Industrial Accident Records (DOE and Contractor employees and other persons having access to SRS and having accidents at SRS, or individuals involved in accidents with DOE or Contractor employees.)
DOE-43	Personnel Security Clearance Files
DOE-45	Weapon Data Access Control System (DOE, DOD, or other Government agency employees, Government Contractors, consultants, and other persons requiring access to classified weapons data or SRS nuclear weapons program facilities.)
DOE-48	Security Education and/or Infraction Reports
DOE-50	Personnel Assurance Program (PAP) (DOE or Contractor employees or individuals under the SRS Plant PAP.) Records of medical examination results and PAP-related training records.
DOE-51	Employee and Visitor Access Control System (DOE and Contractor employees and other individuals working at or visiting SRS.)
DOE-52	Access Control Records of International Visits, Assignments and Employment
DOE-75	Call Detail Records
DOE-77	Physical Fitness Test Records
DOE-81	Counterintelligence Administrative and Analytical Records and Reports
DOE-84	Counterintelligence Investigative Records
DOE-88	Epidemiologic and Other Health Studies, Surveys and Surveillances

The above list shall be revised from time to time by mutual agreement between the Contractor and the CO as may be necessary to keep it current. Such changes need not be formally incorporated before the annual Contract update modification, but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in Paragraph (a)(1) of the clause in Section I entitled, FAR 52.224-2 “Privacy Act.”

In performing its functions under this contract, the Contractor shall neither request nor utilize social security numbers as a personal identifier of Federal employees unless required to do so by law or regulation, DOE Order, or as agreed to in writing by the CO.

H-33 PROVISIONAL PAYMENT OF INCENTIVE FEE

- (a) A provisional payment is a payment of fee made for partial completion of an incentive. Provisional payments must be repaid in whole or in part, as determined by the CO, if the incentive is not successfully completed.
- (b) Payments may be made based upon completion of milestones or any other methodology as set forth in the PEMP and its supporting documentation. Provisional payments may be made as identified in paragraph (a) above.
- (c) If the Contractor fails to fully accomplish an incentive for which it has received milestone completion or provisional payments, the CO will determine if the Contractor is to refund all or part of the provisional fee it has received. Any refund made shall include interest. Interest will be paid at the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which any unearned payments were made.

H-34 QUALITY ASSURANCE SYSTEM

The Contractor shall maintain and enhance a formal Quality Assurance Program approved by DOE as required by the clause in Section I entitled, DEAR 970.5204-2 “Laws, Regulations, and DOE Directives.” Any subcontracts in support of the Contractor’s work shall require subcontractors to comply with applicable elements of the Contractor’s approved Quality Assurance Program or the subcontractor’s program(s) as approved by the Contractor.

H-35 RECOGNITION OF PERFORMING ENTITY

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

The performing entity is Savannah River Nuclear Solutions, LLC (SRNS). This entity is comprised of:

Fluor Federal Services, Inc.
Honeywell International, Inc.
Newport News Shipbuilding and Drydock Company

- (b) Accordingly, the Contractor and the Government agree that:

The Contractor shall take no action to replace the components of the Offeror named in (a) above without the prior written approval of the CO.

H-36 REPORTING REQUIREMENTS (For NNSA Reporting)

- (a) Work Breakdown Structure (WBS). Except as provided for elsewhere in the contract, the WBS, as approved by the CO, shall provide the basis for all reports required under this subsection. The WBS shall be derived from the SOW and shall otherwise conform to any implementation guidance which may be provided by the CO.
- (b) Periodic Plans and Reports. The Contractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the CO. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the CO. Where specific forms are required for individual plans and reports, the CO shall provide such forms to the Contractor. The plans and reports expected to be submitted by the Contractor are described generally as follows:
- (1) General Management Reports narratively summarize schedule, labor, and cost plans and status, and provide explanations of status variances from plans.
 - (2) Schedule/Labor Cost Reports provide information on schedule, labor and cost plans and status.
 - (3) Performance Measurement Reports provide information regarding budgeted cost versus actual cost, schedule performance against milestones and estimated cost at completion.
 - (4) Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.
 - (5) Plans and reports shall be prepared by the Contractor in such a manner as to provide for:
 - consistency with the Contract Statement of Work, the work authorization documents, the approved WBS, and the existing accounting structure; and
 - correlation of data among the various plans and reports.
- (c) Changes in Work Effort. The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the CO, as provided for in the Work Authorization System. During performance of this contract, the Contractor shall update and/or change, as

appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the SOW or work authorization documents. The Contractor's reporting system shall be able to provide for the following at the work authorization document level, or such lower level, as specified by the CO.

- (1) Incorporate contractual changes affecting estimated cost, schedule, and other relevant terms and conditions of the contract, in a timely manner;
 - (2) Reconcile estimated costs for those elements of the WBS identified in the Contract as either priced line items or discrete work authorization documents, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:
 - Changes to the authorized work; and,
 - Internal replanning in the detail needed by management for effective control;
 - (3) Prohibit retroactive changes to records pertaining to work performed that will change previously-reported costs except for correction of errors and routine accounting adjustments;
 - (4) Prevent revisions to the Contract estimated costs except for Government-directed or approved changes to the contractual effort; and
 - (5) Document, changes to the performance measurement baseline and, on a timely basis, notify the CO of such changes.
- (d) The Contractor agrees to provide the CO, or designated authorized representatives, access to information and documents comprising the Contractor's reporting system described in (b) above.
- (e) The Contractor shall include the requirements of subparagraphs (b) and (d) in all subcontracts that are cost-reimbursement type of contracts when:
- The value of the subcontract is greater than \$2 million, unless specifically waived by the CO, or
 - The CO determines prior to award that the contract/subcontract effort is, or involves, a critical task related to the Contract.

H-37 REPRESENTATIONS AND CERTIFICATIONS

The Representations, Certifications, and Other Statements of Offeror for this Contract as completed by the Contractor and dated 06/06/07, are hereby incorporated in this Contract by reference.

H-38 RESPONSIBLE CORPORATE OFFICIAL

Notwithstanding the Section H provision entitled "Performance Guarantee," the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: John Hopkins

Position: President

Company: Fluor Federal Services, Inc.

H-39 RIGHTS TO SUBCONTRACTOR PROPOSAL DATA

Except as otherwise authorized by the CO, the Contractor, pursuant to FAR 27.409(s), shall include the clause in Section I entitled, FAR 52.227-23 "Rights to Proposal Data (Technical) (JUNE 1987)," in any subcontract awarded based on consideration of a technical proposal.

H-40 SEGREGATION OF COSTS

- (a) Whenever the contract contains a provision for an incentive for a portion of the work effort under the contract, the Contractor shall maintain separate accounts, by work authorization directive or other suitable accounting procedure, of all incurred segregable, direct costs of work, allocable to the work effort directly related to the incentive arrangement.
- (b) The Contractor shall maintain all such accounts, required pursuant to the paragraphs above, in accordance with the clauses in Section I entitled, DEAR 970.5204-3 "Access to and Ownership of Records" and DEAR 970.5232-3 "Accounts, Records and Inspection," of this contract; but, in no case, for a period of less than three years following the Government's determination of the applicable incentive fee.

H-41 SEPARATE CORPORATE ENTITY

The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent company(s). 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 CO.

H-42 SMALL BUSINESS SUBCONTRACTING PLAN

The Small Business Subcontracting Plan with goals, submitted by the Contractor consistent with the provisions of the clause in Section I entitled, FAR 52.219-9 "Small Business Subcontracting Plan," and approved by the CO, is incorporated into this Contract as Appendix C in Section J. Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual" subcontracting plan which shall establish subcontracting goals. The annual plan shall be reviewed for approval by the CO and upon approval are incorporated into this Contract by reference as a material part of the contract.

H-43 SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

The Contractor shall provide in accordance with DOE requirement, a Special Financial Institution Account Agreement which shall be in place prior to assuming full responsibility for the performance of the contract. This agreement shall be included as Section J, Appendix B.

H-44 STOP WORK AND SHUT DOWN AUTHORITY - ENVIRONMENT, SAFETY AND HEALTH

- (a) Definition: Stop Work - The suspension of a specific activity or activities by the CO or authorized designee based upon the determination or observation of conditions which are immediately dangerous to the life or health of the workers, the public, or the environment or for any other reason determined to be in the best interests of the Government from an ES&H perspective. Stop-Work Orders for non-ES&H reasons shall be in accordance with the clause in Section F entitled, FAR 52.242-15 "Stop-Work - Alternate I (APR 1984)."
- (b) The CO, or authorized designee, may at any time during the performance of this contract issue a stop-work order and shutdown facility operations or stop work on specific activities of the Contractor or any Subcontractor, in accordance with the following:
 - (1) The CO shall notify the Contractor, in writing, of any noncompliance with applicable ES&H requirements which come to the attention of the CO. After receipt of such notice, the Contractor shall immediately take corrective action, consistent with the work authorization provisions of Section H entitled, "Performance/Technical Direction." In the event that the Contractor fails to take corrective action, the CO or authorized designee may, without prejudice to any other legal or contractual rights of DOE, issue a written order stopping all or any part of the work; thereafter, a start order for resumption of the work

may be issued at the discretion of the CO in accordance with applicable DOE Directives, if any. 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.

- (2) If at any time during performance of the contract work, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the health or safety of individuals or the environment, the CO or authorized designees may, without prejudice to any other legal or contractual rights of DOE, issue a verbal order, to be immediately confirmed in writing before departing the incident site, stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the CO in accordance with applicable DOE Directives, if any. 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.
- (c) Duly appointed DOE Facility Representatives; Deputy Managers; Assistant Managers; NNSA-SRSO Deputy Manager and Director of Operations; and the Director, OSSES are authorized designees of the CO for the purposes set forth in this clause. Other authorized designees shall be approved through the process described in the clause in Section H entitled, "Performance/Technical Direction."
- (d) The Contractor shall include this clause, modified appropriately to include Contractor Representatives, in all subcontracts containing the clause in Section I entitled, DEAR 970.5204-2 "Laws, Regulations, and DOE Directives."

H-45 SUBCONTRACTOR SELECTION

The Contractor shall establish in its purchasing system, developed as required by the clause in Section I entitled, DEAR 970.5244-1 "Contractor Purchasing System," procedures for evaluating the ES&H records of companies submitting offers/bids/proposals for performing subcontract work in Government-owned or leased facilities under this contract. The procedures shall provide for evaluation of ES&H indicators (e.g., workers' compensation costs, injury/illness incidence rates, lost workday incidence rates, property damage, fire loss rates, experience modification rate, etc.), as appropriate, for the work to be performed and identify the threshold(s) for selection.

H-46 SUBCONTRACTS

Prior to the placement of subcontracts and in accordance with the clause in Section I entitled, DEAR 970.5244-1 "Contractor Purchasing System," the Contractor shall ensure that any required prior notice and description of the subcontract is given to the CO and any required consent is received. Except as may be expressly set forth therein, any consent by the CO to the placement of subcontracts shall not be construed to constitute

approval of the Subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any Subcontractor privity of contract with the Government.

H-47 SUPPORT TO OTHER SITE CONTRACTORS

- (a) The Contractor shall provide timely and quality technical, logistical and administrative support to other site contractors in accordance with the SRS Interface Management Plan to be developed by the Contractor and subordinate controlling agreements to be developed or modified as required during the transition period. Costs shall be planned and budgeted by the Contractor based on input provided by requesting site contractors. The methodology for funds transfer shall be developed in accordance with DOE policies. The contractor shall attempt to provide non-programmed support to the other contractors based on the availability of its resources and charged in accordance with DOE financial policies.
- (b) The Contractor shall coordinate and integrate the technical, logistical and administrative support needed by other contractors with those contractors to ensure adherence to established schedules and baselines by both contractors. Other site contractors requiring programmed, or non-programmed, support shall identify their requirements in a timely manner and shall utilize the Contractor's processes and procedures.
- (c) The other site contractor's obligation to utilize programmed support from the Contractor is contingent upon the Contractor providing the services in a timely manner at an acceptable level of performance. In the event that the Contractor violates this clause in any material and significant way, that is, that the Contractor's interference or lack of cooperation with another DOE contractor causes or substantially contributes to that other contractor's inability to produce timely deliverables, the CO may reduce the Contractor's fee by no more than five percent (5%) of the total amount of fee earned by the Contractor for the performance evaluation period in which the action occurred.

H-48 NO THIRD PARTY BENEFICIARIES

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-49 RESERVED

H-50 TRANSITION TO FOLLOW-ON CONTRACT

The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this contract. It is therefore understood and further agreed in recognition of the above:

That at the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits.

After selection by the Government of any successor Contractor, the Contractor and such successor Contractor shall jointly prepare mutual detailed plans for phase-out and phase-in operations. Such plans shall specify a training and orientation program for the successor Contractor to cover each phase of the scope of work covered by the contract. A proposed date by which the successor Contractor will assume responsibility for such work shall be established. The Contractor shall assume full responsibility for such work until assumption thereof by the successor Contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the CO's direction and approval.

This clause shall apply to subcontracts as approved by the CO.

The Contractor shall be reimbursed for all reasonable phase-in and phase-out costs, i.e., costs incurred within the agreed period after contract expiration that result from phase-in and phase-out operations.

H-51 TYPE OF CONTRACT

This is a performance based contract for the management of a DOE facility governed by the provisions of FAR 17.6 and DEAR 917.6. It is a cost-reimbursement contract with provisions for a general performance fee and performance incentives as provided for in the clause in Section I entitled, DEAR 970.5215-1 "Total Available Fee: Base Fee Amount And Performance Fee Amount."

H-52 UNCLASSIFIED CONTROLLED INFORMATION (UCI)

Documents originated by the Contractor or furnished by the Government to the Contractor in connection with this Contract may contain UCI, including Unclassified Controlled Nuclear Information (UCNI) (as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended), and Personal Identifying Information (PII).

The Contractor shall protect such information from unauthorized dissemination in accordance with DOE Regulations and Directives.

H-53 WITHDRAWAL OF WORK

- (a) The CO reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another Government contractor or to have the work performed by Government employees.
- (b) DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C “Description/Specifications/Work Statement” to be removed (de-scoped) from the contract in order to contract directly for the specific work activities.
- (d) If withdrawn work has been authorized under an annual work authorization directive, the work shall be terminated in accordance with the procedures in the clause in Section I entitled, FAR 52.249-6 “Termination.” If work has not been authorized under a work authorization directive and there is no impact on the Contractor’s staffing, the fee amount set forth in the Schedule shall be equitably adjusted, under the clause in Section I entitled DEAR 970.5243-1, “Changes.” If the Contractor’s staffing is impacted, the work shall be terminated in accordance with the procedures in the clause in Section I entitled, FAR 52.249-6 “Termination.”
- (e) If any work is withdrawn by the CO, the Contractor agrees to fully co-operate with the new entity performing the work and to provide whatever support is required pursuant to the clause in Section I entitled, DEAR 952.242-70 “Technical Direction.”

H-54 WORK AUTHORIZATION SYSTEM

- (a) Prior to the start of each Fiscal Year, DOE shall provide the Contractor program execution guidance in sufficient detail to develop an estimated cost, scope, and schedule. The Contractor shall submit to the CO or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work to be performed during the next Fiscal Year.
- (b) The Contractor and DOE shall mutually establish a budget of estimated costs, detailed description of work, and schedule of performance for each task at level 3 or as otherwise specified by the CO. The established description of work, estimated costs, and schedule of performance shall be incorporated into work authorization directives. Work authorization directives, signed by the Contractor and issued by the CO are incorporated by reference into this Contract. If agreement cannot be reached on the scope, schedule, and estimated cost for the work authorization directives, the

CO shall issue unilateral work authorization directives pursuant to this clause which may be appealed under the clause in Section I entitled, FAR 52.233-1 "Disputes."

- (c) No activities shall be authorized and no costs incurred until either the CO has issued work authorization directives or the CO has issued direction concerning continuation of activities.
- (d) The work authorization directives authorizing the Contractor to proceed with performance shall be provided to the Contractor by the CO. Each work authorization directive so issued will include, as a minimum, the following:
- Authorization number and effective date;
 - Description of work;
 - Estimated cost (and estimated cost for the work to be performed under this authorization if the work authorization directive performance schedule exceeds the current contract);
 - Appropriate performance objectives, schedule, and milestone dates;
 - Cost, schedule, and all other reporting requirements;
 - Date of issue;
 - Contractor's signature; and
 - CO's signature.
- (e) Technical Direction. Government direction of the performance of all work authorized for performance under this Contract shall be in accordance with the clause in Section I entitled, DEAR 952.242-70 "Technical Direction" and the provision in Section H entitled, "Performance/Technical Direction."
- (f) Modification of Work Authorization Directives. The CO may at any time and without notice issue changes to the work authorization directives within the SOW of the Contract requiring additional work, or directing the omission of, or changes to, the work. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (b) of this clause shall be submitted by the Contractor in accordance with paragraphs (a) and (b) of this clause. In addition, the Contractor shall notify the CO immediately whenever the cost incurred to date plus the projected cost to complete the work on any work authorization directive is expected to exceed or underrun the estimated cost by ten percent of the work authorization directive. In this case, the Contractor shall submit a proposal for a change in the work authorization directive in accordance with paragraphs (a) and (b) of this clause.
- (g) Expenditure of Funds and Incurrence of Cost. The performance of work and the incurrence of cost in the execution of the SOW of this Contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work

shall be governed by the clause in Section I entitled, DEAR 970.5232-4 "Obligation of Funds."

- (h) Order of Precedence. This clause is of lesser order of precedence than the clauses in Section I entitled, DEAR 970.5232-4 "Obligation of Funds," and DEAR 970.5232-2 "Payments and Advances." The Contractor is not authorized to incur costs on any work authorization directive which is not in compliance with the other terms and conditions of this Contract.
- (i) In the event there is a conflict between the requirements of this subsection and Section J, Appendix E, "List B/Applicable DOE Directives and Orders," as amended, the Contractor shall obtain guidance from the CO.
- (j) Responsibility to achieve Environment, Safety, Health, and Security Compliance. Notwithstanding the other provisions of this subsection, the Contractor has, in the event of an emergency, authority to take corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the CO within 24 hours after such action was initiated and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraph (a) and (b) of this subsection.

H-55 RESERVED

H-56 WORKERS' COMPENSATION INSURANCE

- (a) The Contractor shall maintain workers' compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the CO and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.
- (b) The Contractor shall obtain a service-type insurance policy that endorses the Department of Energy Incurred Loss Retrospective Rating Insurance Plan unless a different arrangement is approved by the CO.
- (c) The Contractor shall submit to the CO an annual evaluation and analysis of workers' compensation cost as a percent of payroll in comparison with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the CO. The Contractor's self evaluation shall discuss:
 - Periodic audits of claims servicing units; and,
 - The reasonableness of self-insurance reserves and methods and assumptions used to closeout claims or losses to present value.

- (d) The Contractor, if it is a state institution covered under a corporate workers' compensation arrangement, shall provide the CO with a copy of the account statements including deposits, earnings, payments, losses, and administrative fees by the Contractor's financial institution on no less than an annual basis.
- (e) 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-57 WORKFORCE TRANSITION

- (a) Right of First Refusal. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees as defined in paragraph H-14(e) who, as of the date of Contract award, are in good standing and who hold regular appointments and are engaged in performance of work within the scope of work under this Contract. Individuals who hold regular appointments are individuals who are employed for an indefinite duration, with either a full-time work schedule of at least 40 hours per week, or a part-time work schedule of fewer than 40 hours per week, but more than 20 hours per week.
- (b) Discretionary Incumbent Management Employees Excepted. It is the Contractor's prerogative to establish its own management structure. Therefore, the right of first refusal set forth in paragraph H-57(a) above is not applicable to Discretionary Incumbent Management Employees. Discretionary Incumbent Management Employees are individuals permanently assigned to the positions listed in Section L, Attachment E. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion.
 - (1) For those positions listed in Section L, Attachment E, any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.
 - (2) Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

H-58 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

- (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 Savannah River Site (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-59 COST REPORTING

Costs incurred in performance of this contract shall be reported in compliance with the Environmental Cost Element Structure (ECES), ASTM International Designation E: 2150-04 and in a format ready for incorporation into DOE's Environmental Cost Analysis System (ECAS) database. The cost estimate format and elements of the Performance Measurement Baseline shall be compatible with the ECES, ASTM International Designation E: 2150-04. The analysis of funds expenditure shall include a report of monthly and cumulative costs of performance by cost element in a format compatible with ECES and ready for incorporation into the ECAS database by DOE.

PART II – CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

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PART II – CONTRACT CLAUSES

SECTION I

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FEDERAL ACQUISITION REGULATION (FAR) CLAUSES

I.1 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

<u>Federal Acquisition Regulations</u>	http://www.arnet.gov/far/
<u>Federal Acquisition Forms</u>	http://www.gsa.gov/forms/farnumer.htm
<u>Department of Energy Acquisition Regulations</u>	http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/ <i>or</i> http://farsite.hill.af.mil/vfdoe1.htm

NOTICE – SECTION I CLAUSES INCORPORATED BY REFERENCE

The references cited herein are from the FAR (48 CFR Chapter 1) and the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9). The following FAR and DEAR clauses are hereby incorporated by reference:

- FAR 52.203-3 GRATUITIES (APR 1984)**
- FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**
- FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**
- FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**
- FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**
- FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**
- FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2005)**
- FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)**
- FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (JUL 2006)**

- FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (NOV 2006)**
- FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JAN 2005)**
- FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000)**
- FAR 52.215-8 ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT (OCT 1997)**
- FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)**
- FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)**
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- FAR 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)**
- FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (OCT 1999)**
- FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**
- FAR 52.222-3 CONVICT LABOR (JUNE 2003)**
- FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JULY 2005)**
- FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**
- FAR 52.222-26 EQUAL OPPORTUNITY (APR 2002)**
- FAR 52.222-29 NOTIFICATION OF VISA DENIAL (JUNE 2003)**
- FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAME ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**
- FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)**

- FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELGIBLE VETERANS (DEC 2001)**
- FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)**
- FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003) Alternate I (AUG 2003)**
- FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)**
- FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**
- FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**
- FAR 52.224-2 PRIVACY ACT (APR 1984)**
- FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAR 2005)**
- FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATIONS (JUN 2000)**
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- FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**
- FAR 52.234-4 EARNED VALUE MANAGEMENT SYSTEM (JULY 2006) (AMENDMENT 001)**
- FAR 52.236-8 OTHER CONTRACTS (APR 1984)**
- FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**
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- FAR 52.242-13 BANKRUPTCY (JULY 1995)**
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- FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2006)**
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**FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES
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FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR) CLAUSES

**DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR
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DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)

DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

**DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN
1997) ALTERNATE I**

**DEAR 952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY)
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DEAR 952.219-70 DOE MENTOR PROTÉGÉ PROGRAM (MAY 2000)

**DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL
RADIATION EXPOSURE RECORDS (APR 1984)**

DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

**DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE
(JUNE 1997)**

**DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS
(DEC 2000) (DEVIATION)**

DEAR 970.5208-1 PRINTING (DEC 2000)

**DEAR 970.5217-1 WORK FOR OTHERS PROGRAM (NON-DOE FUNDED
WORK) (JAN 2005)**

**DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS
MANAGEMENT AND OPERATING CONTRACTS
(DEC 2000)**

DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000)

**DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND
HEALTH INTO WORK PLANNING AND EXECUTION
(DEC 2000)**

DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)

**DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE
SITES (DEC 2000)**

**DEAR 970.5223-5 DOE MOTOR VEHICLE FLEET FUEL EFFICIENCY
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DEAR 970.5226-2	WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)
DEAR 970.5226-3	COMMUNITY COMMITMENT (DEC 2000)
DEAR 970.5227-4	AUTHORIZATION AND CONSENT (AUG 2002)
DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)
DEAR 970.5227-6	PATENT INDEMNITY-SUBCONTRACTS (DEC 2000)
DEAR 970.5227-7	ROYALTY INFORMATION (DEC 2000)
DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002)
DEAR 970.5229-1	STATE AND LOCAL TAXES (DEC 2000)
DEAR 970.5232-1	REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)
DEAR 970.5232-5	LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)
DEAR 970.5232-6	WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000)
DEAR 970.5232-7	FINANCIAL MANAGEMENT SYSTEM (DEC 2000)
DEAR 970.5232-8	INTEGRATED ACCOUNTING (DEC 2000)
DEAR 970.5235-1	FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER SPONSORING AGREEMENT (DEC 2000)
DEAR 970.5242-1	PENALTIES FOR UNALLOWABLE COSTS (DEC 2000)
DEAR 970.5243-1	CHANGES (DEC 2000)

NOTICE – SECTION I CLAUSES INCORPORATED BY FULL TEXT

The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9). Note: The titles and page locations of the **clauses incorporated by full text** are as follows:

I.2 FAR 52.202-1 Definitions (July 2004) (As Modified by DEAR 952.202-1)

- (a) *Head of Agency* means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.
- (b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

- (c) The term *DOE* means the Department of Energy, *FERC* means the Federal Energy Regulatory Commission, and *NNSA* means the National Nuclear Security Administration.
- (d) The term *Senior Procurement Executive* means, for DOE:
 - Department of Energy – Director, Office of Procurement and Assistance Management, DOE;
 - National Nuclear Security Administration – Administrator for Nuclear Security, NNSA; and
 - Federal Energy Regulatory Commission – Chairman, FERC.

I.3 FAR 52.204-1 Approval of Contract (Dec 1989)

This contract is subject to the written approval of the DOE Procurement Executive or his/her designee and shall not be binding until so approved.

I.4 FAR 52.208-8 Required Sources for Helium and Helium Usage Data (Apr 2002)

(a) *Definitions.*

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

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

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

(b) Requirements.

- (1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.
- (2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier—
 - (i) The name of the supplier;

- (ii) The amount of helium purchased;
 - (iii) The delivery date(s); and
 - (iv) The location where the helium was used.
- (c) *Subcontracts*. The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

I.5 FAR 52.211-15 Defense Priority and Allocation Requirement (Sept 1990)

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

I.6 FAR 52.215-13 Subcontractor Cost or Pricing Data—Modifications (Oct 1997)

- (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 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 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 cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), 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 cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

I.7 FAR 52.215-18 Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions (July 2005)

- (a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.
- (b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205-6(o)(5) of the FAR. When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.
- (c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

I.8 FAR 52.217-8 Option to Extend Services (Nov 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days of expiration.

I.9 FAR 52.222-20 Walsh-Healey Public Contracts Act (Dec 1996)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**I.10 FAR 52.223-3 Hazardous Material Identification and Material Safety Data
(Jan 1997) Alternate I (July 1995)**

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (<i>If none, insert "None"</i>)	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 paragraph (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.
- (4) 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.
- (5) 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.11 FAR 52.223-11 Ozone-Depleting Substances (May 2001)

- (a) *Definition.* "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—
 - (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
 - (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

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

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

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

I.12 FAR 52.223-12 Refrigeration Equipment and Air Conditioners (May 1995)

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.

I.13 FAR 52.225-1 Buy American Act - Supplies (JUN 2003) (Deviation)

Buy American Act—Supplies (June 2003)

- (a) *Definitions.* As used in this clause—
“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;
or
- (2) An end product manufactured in the United States, if 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.

“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) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- (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 delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

I.14 FAR 52.225-8 Duty-Free Entry (Feb 2000)

- (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 \$10,000 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 \$10,000 may be imported into the customs territory of the United States.

I.15 FAR 52.225-9 Buy American Act—Construction Materials (Jan 2005)

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

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

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete

systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

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

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if 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.

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

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

(b) Domestic preference.

- (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. 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 the construction material or components listed by the Government as follows:

NONE

- (3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—
- (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination of inapplicability of the Buy American Act.
- (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
 - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

- (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

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

Foreign and Domestic Construction Materials Price Comparison			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1</i>			
Foreign construction material			
Domestic construction material			
<i>Item 2</i>			
Foreign construction material			
Domestic construction material			
<p><i>[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</i></p> <p><i>[Include other applicable supporting information.]</i></p> <p><i>[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]</i></p>			

**I.16 FAR 52.227-10 Filing of Patent Applications—Classified Subject Matter
(Apr 1984)**

- (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 agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

I.17 FAR 52.227-23 Rights to Proposal Data (Technical) (June 1987)

Except for data contained on pages (none), it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the “Rights in Data—General” clause contained in this contract) in and to the technical data contained in the proposal dated 06/06/07, upon which this contract is based.

**I.18 FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax
(Apr 2003) (As modified by DEAR 970.2904-1)**

- (a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.
- (b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.
- (c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the:

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

- When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the U.S. Department of Energy and the New Mexico Taxation and Revenue Department.
- (d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.
 - (e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
 - (f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.
 - (g) The U.S. Department of Energy may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department

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

- (h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.
- (i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

I.19 FAR 52.239-1 Privacy or Security Safeguards (Aug 1996)

- (a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.
- (b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.
- (c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

I.20 FAR 52.247-1 Commercial Bill of Lading Notations (Apr 1984)

If 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 _____ [*name the specific agency*] 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 _____ [*name the specific agency*] 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. _____. This may be confirmed by contacting _____
[*Name and address of the contract administration office listed in the contract*].

I.21 FAR 52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit (June 1997)

- (a) (1) In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the United States will assume freight charges that were paid—
- (i) By the Contractor under a cost-reimbursement contract; and
 - (ii) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (2) Cost-reimbursement Contractors shall only submit for audit those CBL's with freight shipment charges exceeding \$50.00. Bills under \$50.00 shall be retained on-site by the Contractor and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (b) The Contractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the:

General Services Administration
ATTN: FWA
1800 F Street, NW
Washington, DC 20405.

The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

- (c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

- (d) A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show—
 - (1) The name and address of the Contractor;
 - (2) The contract number including any alpha-numeric prefix identifying the contracting office;
 - (3) The name and address of the contracting office;
 - (4) The total number of bills submitted with the statement; and
 - (5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

I.22 FAR 52.249-6 Termination (Cost-Reimbursement) (May 2004) Modified by DEAR 970.4905-1 (Dec 2000)

- (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 paragraph (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 paragraph (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 paragraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation as supplemented in subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor—
 - (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
 - (2) The amount finally determined on an appeal.

- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted—
- (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

I.23 FAR 52.251-1 Government Supply Sources (Apr 1984) (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. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Property," shall apply to all property acquired under such authorization.

I.24 FAR 52.252-4 Alterations in Contract (Apr 1984)

Portions of this contract are altered as follows:

I.25 FAR 52.252-6 Authorized Deviations in Clauses (Apr 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

I.26 DEAR 952.204-2 Security Requirements (MAY 2002)

- (a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter 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 types or categories of matter proposed for retention, the reasons for the retention of the matter, 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 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 requirements of DOE in effect on the date of award.
- (c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

- (e) *Definition of formerly restricted data.* The term "*Formerly Restricted Data*" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, 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) *Security clearance of personnel.* The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (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 safeguard any classified information 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, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)
- (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 Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. 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 safeguard any classified information or special nuclear material.
- (4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 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.
- (5) 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 FOCI 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 FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.27 DEAR 952.204-71 Sensitive Foreign Nations Controls (APR 1994)

- (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.

I.28 DEAR 952.215-70 Key Personnel (DEC 2000)

- (a) The personnel listed below or elsewhere in this contract [See Attachment to Section J] 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.

I.29 DEAR 952.217-70 Acquisition of Real Property (APR 1984)

- (a) Notwithstanding any other provision of the contract, the prior approval of the contracting officer shall be obtained when, in performance of this contract, the contractor acquires or proposes to acquire use of real property by:
 - (1) Purchase, on the Government's behalf or in the contractor's own name, with title eventually vesting in the Government.
 - (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
 - (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the contracting officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.30 DEAR 952.235-71 Research Misconduct (JUL 2005)

- (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 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.31 DEAR 952.242-70 Technical Direction (DEC 2000)

- (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.32 DEAR 952.247-70 Foreign Travel (DEC 2000)

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.

I.33 DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (OCT. 2005)

- (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 therefore 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.

I.34 DEAR 970.5203-1 Management Controls (DEC 2000)(CLASS DEVIATION) [DOE Acquisition Letter 2005-04, 11/02/2004]

- (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 activities. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and activities 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 activities, 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 that result from audits of business, financial, or management controls performed by its internal audit activity and any other audit activity.
- (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.
 - (c) On an annual basis, the Contractor through an officer at a level above the Chief Executive, shall submit an assurance to the Contracting Officer that the system of management controls, including all systems revised in accordance with the clause of this Contract, entitled, "Application of DOE Contractor Requirements Documents," is

adequate to assure that the objectives of the management system are being accomplished and that the system and controls are effective and efficient.”

**I.35 DEAR 970.5203-2 Performance Improvement and Collaboration (MAY 2006)
(Amendment 001)**

- (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.36 DEAR 970.5203-3 Contractor's Organization (DEC 2000)

- (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) Control of employees. The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the contracting officer may require, with the approval of the Secretary of Energy, the contractor to remove the employee from work under the contract. This includes the right to direct the contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.
- (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.37 DEAR 970.5204-1 – Counterintelligence (DEC2000) (DEVIATION)

- (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; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- (b) **(DEVIATION)** The Contractor shall comply with requirements established by the SR Counterintelligence Officer. The SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Contractor employees traveling to foreign countries or interacting with foreign nationals. The Contractor shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Contractor employees who have traveled to foreign countries or interacted with foreign nationals. The contractor shall coordinate Counterintelligence Awareness training activities with the SR Counterintelligence Officer. The Contractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the SR Counterintelligence Officer; and provide 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.38 DEAR 970.5204-2 Laws, Regulations, and DOE Directives (DEC 2000)
(Amendment 003)**

- (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) 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, 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.39 DEAR 970.5204-3 Access to and Ownership of Records (JUL 2005)

- (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 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 the contract.
- (b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause.]
 - (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, except for those records described by the contract as being maintained in Privacy Act systems of records.
 - (2) Confidential contractor financial information, 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, Accounts, Records, and Inspection, 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. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered 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.
- (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. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

- (g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
 - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
 - (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
 - (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.40 DEAR 970.5215-1 Total Available Fee: Base Fee Amount and Performance Fee Amount (DEC 2000) ALTERNATE II (DEC 2000) ALTERNATE IV (DEC 2000)

- (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 the Manager, Savannah River Operations Office, 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, and 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 thirty (30) 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.41 RESERVED

I.42 DEAR 970.5215-4 Cost Reduction (DEC 2000)

- (a) General. It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the contracting officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.
- (b) Definitions. Administrative cost is the contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

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

DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

- (1) a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated

target cost of performing an effort as negotiated and the actual allowable cost of performing that effort; or

- (2) a design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the contracting officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.
- (c) Procedure for submission of CRPs.
- (1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:
 - (i) Current Method (Baseline)-A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative, and supporting documentation.
 - (ii) New Method (New Proposed Baseline)-A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.
 - (iii) Feasibility Assessment-A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.
 - (2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:
 - (i) The proposed contractual arrangement and the justification for its use; and
 - (ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.
- (d) Evaluation and Decision. All CRPs must be submitted to and approved by the contracting officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:

- (1) Pose a risk to the health and safety of workers, the community, or to the environment;
 - (2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;
 - (3) Require a change in other contractual agreements;
 - (4) Result in significant organizational and personnel impacts;
 - (5) Create a negative impact on the cost, schedule, or scope of work in another area;
 - (6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and
 - (7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.
- (e) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the contracting officer. The contracting officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:
- (1) Result in net savings (in the sharing period if a design, process, or method change);
 - (2) Not reappear as costs in subsequent periods; and
 - (3) Not result in any impairment of essential functions.
- (f) The failure of the contracting officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.
- (g) Adjustment to Original Estimated Cost and Fee. If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.
- (h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

- (i) Validation of Shared Net Savings. The contracting officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net shared savings.
- (j) Relationship to Other Incentives. Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.
- (k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

I.43 DEAR 970.5226-1 Diversity Plan (DEC 2000)

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 an Appendix in Section J. 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.44 DEAR 970.5227-2 Rights in Data -- Technology Transfer (Jul 2006) (DEVIATION)

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

- (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (h) of this clause.
 - (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (i) of this clause.
 - (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
 - (7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.
 - (8) Open Source Software, as used in this clause, means computer software that is distributed under a license in which the user is granted the rights to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).
- (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 specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

- (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
 - (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause ("Rights in Limited Rights Data") or paragraph (i) of this clause ("Rights in Restricted Computer Software"); and (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE 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, provided the data requirements of this Contract have been met as of the date of the private use of such data; and
 - (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.
- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE 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.

(c) Copyright (General).

- (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.
- (2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) Copyrighted Works (Scientific and Technical Articles).

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

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States

Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

- (3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.
- (e) Copyrighted Works (Other Than Scientific and Technical Articles and Data Produced under a CRADA).

The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

- (1) Contractor Request to Assert Copyright.
 - (i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:
 - (A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes;
 - (B) The program under which it was funded;
 - (C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement;
 - (D) Whether the data is subject to export control;
 - (E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period; and

- (F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's 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 by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial competitiveness, (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs. 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 under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.
- (2) DOE Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor.

- (3) Permission for Contractor to Assert Copyright.
- (i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause:
 - (A) An abstract describing the software suitable for publication;
 - (B) The source code for each software program; and
 - (C) The object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.
 - (ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.
 - (iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.
 - (iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the

Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

- (v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of [17 U.S.C. 401](#) or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by (insert name of Contractor) under Contract No. with the Department of Energy. For (period approved by DOE Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. 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)

- (vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) 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)(A) of this clause. Before licensing under this subparagraph (vi), 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."

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

(f) Open Source Software.

The Contractor may release computer software first produced by the Contractor in the performance of this Contract under an open source software license. Such software shall hereinafter be referred to as Open Source Software or OSS, subject to the following:

(1) Obtain Program Approval.

(i) The Contractor shall ensure that the DOE Program or Programs that have provided funding (Funding Source) to develop the software have approved the distribution of the software as OSS. The funding Program(s) may provide blanket approval for all software developed with funding from that Program. However, OSS release for any one such software shall be subject to approval by all other funding Programs which provide a substantial portion of the funds for the software, if any. If approval from the funding Program(s) is not practicable, DOE Patent Counsel may provide approval instead. For software jointly developed under a CRADA or User Facility, authorization from the CRADA Participant(s) or User Facility User(s), as applicable, shall be additionally obtained for OSS release.

(ii) If the software is developed with funding from a federal government agency or agencies other than DOE, then authorization from all the funding source(s) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency. However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If majority approval from such federal government agency(s) is not practicable, DOE Patent Counsel may provide approval instead.

(2) Assert Copyright in the OSS. Once the Contractor has obtained Funding Source approval in accordance with subparagraph (1) of this section, copyright in the software to be distributed as OSS, may be asserted by the Contractor, or, for OSS developed under a CRADA or User Facility, either by the Contractor, CRADA Participant, or User Facility User, as applicable, which precludes marking such OSS as Protected Information.

(3) Form DOE F 241.4 for OSS to ESTSC. The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE) to DOE's Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.

(4) OSS Record. The Contractor must maintain a record, available for inspection by DOE, of software distributed as OSS. The record shall contain the following information: (i) name of the computer software (or other identifier), (ii) an

abstract with description or purpose of the software, (iii) evidence of the funding Program's or source's approval, (iv) the planned or actual OSS location on the Contractor's webpage or other publicly available location (see subparagraph (5) below); (v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered; (vi) the type of OSS license used; and (vii) release version of the software for OSS containing derivative works. Upon request of Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the record.

- (5) Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible as an open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, or other industry standard means.
- (6) Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property may periodically issue guidance on OSS licenses. Each Contractor created OSS license, must contain, at a minimum, the following provisions:
 - (i) A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and
 - (ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (10) below). This provision might allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.
- (7) Collection of administrative costs is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.
- (8) Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled Technology Transfer Mission (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties as set forth elsewhere in this clause is not modified by this section.
- (9) Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original

OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews of the derivative versions.

- (10) Determine if Trademark Protection for the OSS is Appropriate. DOE Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the Program or the Contractor may want to seek trademark protection. If the OSS is protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.
 - (11) Government License. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.
 - (12) Availability of Original OSS. The object code and source code of the original OSS developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is publicly available. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.
- (g) Subcontracting.
- (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by [48 CFR 927.401](#) through [927.409](#), the clause entitled, "Rights in Data -- General" at [48 CFR 52.227-14](#) modified in accordance with [927.409\(a\)](#) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at [48 CFR 52.227-16](#), Additional Data Requirements, shall be included in subcontracts in accordance with [48 CFR 927.409\(h\)](#). The Contractor shall use instead the Rights in Data -- Facilities clause at [48 CFR 970.5227-1](#) in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed

equipment for such plants or facilities that are managed or operated under its contract with DOE.

- (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, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If restricted computer software is delivered with the copyright notice of [17 U.S.C. 401](#), the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished -- rights reserved under the Copyright Laws of the United States."

(j) Relationship to Patents.

Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

I.45 DEAR 970.5227-3 Technology Transfer Mission (Deviation-July 2006) (Alternate I (Deviation-July 2006). As prescribed in [48 CFR 970.2770-4\(b\)](#))

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 Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

(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) Privately funded technology transfer means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.
- (c) Allowable Costs.
- (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended ([15 U.S.C. 3710](#)). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the contracting officer.
 - (2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance -- Litigation and Claims" of this contract.
- (d) Conflicts of Interest -- Technology Transfer.

The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the

conduct of its technology transfer activities. These procedures shall apply to 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) Inform employees of and require conformance with standards of conduct and integrity in connection with research involving nonfederal sponsors and for CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;
- (2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;
- (3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;
- (4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;
- (5) Conduct DOE-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;
- (9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements; and
- (10) Notify DOE prior to the Contractor's evaluating a technical proposal for funding 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 in its licensing and assignments of Intellectual Property, the Contractor shall give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its decisions involving licensing and assignment of 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 a proposed licensee or an assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement;
- (B) in licensing or assigning any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights; and
- (C) if the proposed licensee, assignee, or parent of either type of entity is subject to the control of a foreign company or government, the Contractor, with the assistance of the Contracting Officer, in considering the factors set forth in paragraph (B) herein, may rely upon the following information; (1) U.S. Trade Representative Inventory of Foreign Trade Barriers, (2) U.S. Trade Representative

Special 301 Report, and, (3) such other relevant information available to the contracting officer. The Contractor should review the U.S. Trade Representative web site at: <<http://www.ustr.gov>> for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a complete and informed decision.

- (2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause is likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.
 - (3) The Contractor agrees to be bound by the provisions of [35 U.S.C. 204](#) (Preference for United States industry).
- (g) Indemnity -- Product Liability.

In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

- (h) Disposition of Income.
- (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the 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.

- (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.
- (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 package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the 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 or sensitive under Section 148 of the Atomic Energy Act ([42 U.S.C. 2168](#)). 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 shall be provided to the contracting officer on or before October 1st of each year.

(m) Oversight and Appraisal.

The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. 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;
- (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.
 - (iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.
- (4) Work for Others and User Facility Programs.
- (i) Work for Others (WFO) and User Facility Agreements (UFAs) are 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., WFO 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 WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE 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 Work for Others 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 preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee --

(1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect

the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) Technology Transfer in Other Cost-Sharing Agreements.

In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(p) Technology Partnership Ombudsman.

(1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the 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.

(q) Inapplicability of Provisions to Privately Funded Technology Transfer Activities.

Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity -- Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor of this clause are intended to apply

to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

(End of clause)

**I.46 DEAR 970.5227-10 Patent Rights-Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor (AUG 2002)
ALTERNATE I**

(a) Definitions.

- (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (2) Exceptional circumstance subject invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under *35 U.S.C. 202(a)(ii)* and in accordance with 37 CFR 401.3(e).
- (3) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (*7 U.S.C. 2321 et seq.*).
- (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (*26 U.S.C. 501(c)*) and exempt from taxation under section 501(a) of the Internal Revenue Code (*26 U.S.C. 501(a)*) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- (6) Patent Counsel means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.
- (7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (8) Small business firm means a small business concern as defined at section 2 of Pub. L. 85-536 (*15 U.S.C. 632*) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government

procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, are used.

- (9) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, *7 U.S.C. 2401(d)*) shall also occur during the period of contract performance.
 - (10) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.
- (b) Allocation of Principal Rights.
- (1) Retention of title by the Contractor. Except for exceptional circumstance subject inventions, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and *35 U.S.C. 203*. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
 - (2) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.
 - (i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:
 - (A) uranium enrichment technology;
 - (B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and
 - (C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (*42 U.S.C. 2168*).
 - (ii) Inventions made under any agreement, contract or subcontract related to the following are exceptional circumstance subject inventions:
 - (A) DOE Steel Initiative and Metals Initiative;

- (B) U.S. Advanced Battery Consortium; and
 - (C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).
- (iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.
- (3) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [Insert Reference] to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations [*81060] under such treaties or international agreements with respect to subject inventions made after the date of the amendment.
- (4) Contractor request for greater rights in exceptional circumstance subject inventions. The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.
- (5) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.
- (6) Government assignment of rights in Government employees' subject inventions. If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304-1(d). The rights assigned to the Contractor are subject to any provision

of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee.

- (7) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have the right to retain title to any weapons related subject inventions.
- (c) Subject Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.
- (1) Subject invention disclosure. The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. The disclosure shall include a written statement as to whether the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.
 - (2) Election by the Contractor. Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be

shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

- (3) Filing of patent applications by the Contractor. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
 - (4) Contractor's request for an extension of time. Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.
 - (5) Publication Approval. During the course of the work under this contract, the Contractor or its employees may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor, approval for release or publication shall be secured from the Contractor personnel responsible for patent matters prior to any such release or publication. Where DOE's approval of publication is requested, DOE's response to such requests for approval shall normally be provided within 90 days except in circumstances in which a domestic patent application must be filed in order to protect foreign rights. In the case involving foreign patent rights, DOE shall be granted an additional 180 days with which to respond to the request for approval, unless extended by mutual agreement.
- (d) Conditions When the Government May Obtain Title.

The Contractor will convey to the DOE, upon written request, title to any subject invention-

- (1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or to elect within the specified times.
- (2) In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

- (3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.
 - (4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.
- (e) Minimum Rights of the Contractor and Protection of the Contractor's Right to File.
- (1) Request for a Contractor license. The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the contractor's business to which the invention pertains.
 - (2) Revocation or modification of a Contractor license. The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and DOE licensing regulations at 10 CFR Part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.
 - (3) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned

inventions, any decision concerning the revocation or modification of the license.

- (f) Contractor Action to Protect the Government's Interest.
- (1) Execution of delivery of title or license instruments. The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:
 - (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and
 - (ii) convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.
 - (2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
 - (3) Notification of discontinuation of patent protection. The contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
 - (4) Notification of Government rights. The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."
 - (5) Invention Identification Procedures. The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

- (6) Invention Filing Documentation. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:
 - (i) the filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
 - (ii) an executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
 - (iii) the patent number, issue date, and a copy of any issued patent claiming the subject invention.
 - (7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at *35 U.S.C. 205* and *37 CFR Part 40*.
- (g) Subcontracts.
- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
 - (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at *48 CFR 952.227-11*, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with *35 U.S.C. 202* and subparagraph (b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at *48 CFR 952.227-11*.
 - (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at *48 CFR 952.227-13*, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause.
 - (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that

nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

- (5) Subcontractor refusal to accept terms of patent clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
- (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
- (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.
- (h) Reporting on Utilization of Subject Inventions. The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.
- (i) Preference for United States Industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

- (j) March-in Rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that-
- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Special Provisions for Contracts With Nonprofit Organizations. If the Contractor is a nonprofit organization, it agrees that-
- (1) DOE approval of assignment of rights. Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.
 - (2) Small business firm licensees. It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review

discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

- (3) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.
- (l) Communications. The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.
- (m) Reports.
 - (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.
 - (2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.
- (n) Examination of Records Relating to Subject Inventions.
 - (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.
 - (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.
 - (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

- (4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

- (o) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

- (p) Atomic Energy.
 - (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

 - (2) Patent agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

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

 - (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the

contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.
- (r) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (s) Educational Awards Subject to 35 U.S.C. 212. The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.
- (t) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

NOTE: The following clause is only applicable if the Contractor is a for-profit, large business firm that has been granted an advance class waiver:

I.47 DEAR 970.5227-12 Patent Rights-Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver (AUG 2002) ALTERNATE I

- (a) Definitions.
 - (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
 - (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.
 - (3) Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).
 - (4) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

- (5) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
 - (6) Patent Counsel means DOE Patent Counsel assisting the contracting activity.
 - (7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
 - (8) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 *U.S.C.* 2401(d)) shall also occur during the period of contract performance.
 - (9) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.
- (b) Allocation of Principal Rights.
- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.
 - (2) Advance class waiver of Government rights to the Contractor. DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 *U.S.C.* 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
 - (3) Government license. With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive,

nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

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

classifications for the purpose of defining DOE exceptional circumstance subject inventions.

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

any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE employee.

- (10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.
- (c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor.
- (1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:
 - (i) the contract number under which the subject invention was made;
 - (ii) the inventor(s) of the subject invention;
 - (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
 - (iv) the date and identification of any publication, on sale or public use of the invention;
 - (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
 - (vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
 - (vii) all sources of funding by Budget and Resources (B&R) code; and

(viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

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

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

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

the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE's written request for title, the Contractor continues to retain title in that country.

- (4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.
 - (5) Termination of advance class waiver. DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.
- (e) Minimum Rights of the Contractor.
- (1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
 - (2) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non-transferable, on a case-by-case basis.
 - (3) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

- (4) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE licensing regulations.
- (f) Contractor Action to Protect the Government's Interest.
- (1) Execution and delivery of title or license instruments. The Contractor agrees to execute or have executed, and to deliver promptly to DOE all instruments necessary to accomplish the following actions:
 - (i) establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;
 - (ii) convey title in a subject invention to DOE pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or
 - (iii) enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.
 - (2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
 - (3) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.
 - (4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of

a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.

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

Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.

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

gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE agrees not to disclose such information to persons outside the Government, to the extent permitted by law.

- (i) Preference for United States Industry. Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) March-In Rights. With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE 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 that are not reasonably satisfied by the Contractor, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

- (l) Reports.
 - (1) Interim reports. Upon DOE's 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/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.
 - (2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.
- (m) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
- (n) Atomic Energy.
 - (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
 - (2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) Classified Inventions.

- (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
- (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) Examination of Records Relating to Inventions.

- (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
- (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, 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.

- (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) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.
- (s) Annual Appraisal by 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) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor.
- (u) Termination of Contractor's Advance Class Waiver. If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

I.48 DEAR 970.5228-1 Insurance-Litigation and Claims. (MAR 2002) (DEVIATION)

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed

against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

- (c)
 - (1) Except as provided in paragraph (c)(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; 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.
- (d) 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.
- (e) Except as provided in subparagraphs (g) and (h) 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 or otherwise without regard to and as an exception to the clause of this contract entitled "Obligation of Funds."

[67 FR 14871, Mar. 28, 2002]
- (f) The Government's liability under paragraph (e) 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.

- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-
- (1) Which are otherwise unallowable by law or the provisions of this contract; or
 - (2) 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.
- (h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's-

[67 FR 14871, Mar. 28, 2002]

- (1) Willful misconduct,
 - (2) Lack of good faith, or
 - (3) 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.
- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.
- (j) (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. 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 (g)(1) of this clause is not allowable.
- (4) The term "contractor's managerial personnel" is defined *in the Property clause in this contract*.

[67 FR 14871, Mar. 28, 2002]

- (k) 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 unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-
 - (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
 - (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
 - (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

**I.49 DEAR 970.5231-4 Pre-existing Conditions (DEC 2000) (ALTERNATE I)
(DEC 2000)**

- (a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before [Insert date this clause was included in contract], in conjunction with the management and operation of [Insert name of facility], shall be deemed incurred under Contract No. [Contract No. DE-AC09-96SR18500].
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

NOTE: The following clause is applicable to a management and operating contractor not previously working at the Savannah River Site:

I.50 DEAR 970.5231-4 Pre-existing Conditions (DEC 2000) (ALTERNATE II) (DEC 2000)

- (a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on [08/01/08]. 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 [08/01/08], 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.
- (c) The contractor has the duty to inspect the facilities and sites and timely identify to the contracting officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The contractor has the responsibility to take corrective action, as directed by the contracting officer and as required elsewhere in this contract.

I.51 DEAR 970.5232-2 Payments and Advances (DEC 2000) ALTERNATE II (DEC 2000) and ALTERNATE III (DEC 2000)

- (a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the contracting officer.
- (b) Payments on Account of Allowable Costs. The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When

- pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
- (c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix B. 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 therefore.
- (j) Determining allowable costs. The contracting officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.
- (k) Review and approval of costs incurred. The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (*41 U.S.C. 256*), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

**I.52 DEAR 970.5232-3 Accounts, Records, and Inspection (DEC 2000) (DEVIATION)
[DOE Acquisition Letter 2005-04, 11/02/2004]**

- (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 I 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, 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 directly pertinent records involving transactions related to this contract or a subcontract hereunder.
 - (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 General Accounting Office of any transaction under this contract.
- (i) Internal audit. The contractor agrees to establish and maintain an internal audit activity and provide the following reports:
- (1) Internal Audit Implementation Design. Within thirty (30) days of contract award and each 5th year of contract performance or upon the exercise of any contract option or the extension of the contract, the contractor shall submit to the contracting officer an Internal Audit Implementation Design to include the overall strategy for the audit activity. The Implementation Design, will describe
 - (i) the audit activity's placement within the contractor's organization including reporting requirements;
 - (ii) its size and the experience and educational standards of the audit staff;
 - (iii) its relationship to the corporate parent(s) of the contractor;
 - (iv) the standards used to audit;
 - (v) an overall audit strategy for relevant performance period 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, both pre-award and post- award of subcontracts; and
 - (viii) the schedule of peer review of the internal audit activity by other DOE contractor internal audit activities.
 - (2) Annual Audit Report. By each January 31 of the contract performance period, the contractor shall submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year and their results.
 - (3) Annual Audit Plan. By each June 30 of the contract performance period, the contractor shall submit to the contracting officer an annual audit plan that

reflects the activities to be undertaken during the next fiscal year. The contractor shall design the Annual Audit Plan to test the costs incurred and contractor management systems described in the internal audit design.

- (4) Contracting officer's satisfaction. The design of the internal audit activity submitted under subparagraph (1), the annual report submitted under subparagraph (2), and the annual audit plan submitted under subparagraph (3) shall be satisfactory to the contracting officer.

- (j) Statement of Costs Incurred and Claimed. At any time during contract performance, should the contracting officer determine that the costs incurred are unallowable to an extent to cause him or her to lose confidence in the contractor's management controls or the contractor's management systems that validate the costs incurred and claimed, the contracting officer may, in his or her sole discretion, impose conditions upon the contractor's use of the special financial institution account or use of the Statement of Costs Incurred and Claimed in whole or in part, including direction that specific types of costs be claimed by periodic vouchering. This action shall not relieve the contractor from any obligation to perform its obligations under this contract. In addition, the contracting officer may direct the contractor to pay the Government an amount equal to the unallowable costs or payments improperly made and take any other action or combination of actions provided in this contract, at law, or in equity.

I.53 DEAR 970.5232-4 Obligation of Funds (DEC 2000)

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is (See Section B). 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.54 DEAR 970.5236-1 Government Facility Subcontract Approval (DEC 2000)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer, and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

I.55 DEAR 970.5237-2 Facilities Management (DEC 2000)

Copies of DOE Directives referenced herein are available from the contracting officer.

- (a) Site development planning. The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.
- (b) General design criteria. The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, (*or superceding*) series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) of this clause. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.
- (c) Energy management. The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The

contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.

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

I.56 DEAR 970.5244-1 Contractor Purchasing System (DEC 2000) (As modified by Federal Register: January 18, 2001 (Volume 66, Number 12), Page 4616] (DEVIATION)

- (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 970.44. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to 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 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 970.3102-3-21(b).
- (f) Bonds and Insurance.
- (1) The contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of \$100,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.
 - (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).
 - (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than \$25,000, but not greater than \$100,000, the contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving

particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

- (4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

- (g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1(May 2002), as amended by AL2002-06 and 48 CFR 52.225-9 (MAY 2002), as amended by AL2002-06. The contractor shall forward determinations of nonavailability of individual items to the DOE contracting officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at \$100,000 or less.

- (h) Construction and Architect-Engineer Subcontracts.
 - (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
 - (2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."
 - (3) Prevention of Conflict of Interest.
 - (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
 - (ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
 - (iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

- (i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.
- (j) Contractor-Subcontractor Relationship. The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.
- (k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 109, and their contracts.
- (l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.
- (m) Leasing of Motor Vehicles. Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.
- (n) Acquisition of Major System (MS) Projects and Other Projects (As defined in DOE O 413.3, Program and Project Management for the Acquisition of Capital Assets). As part of the Acquisition Planning process, contractors shall conduct a make-or-buy analysis in determining whether requirements will be self-performed or subcontracted to ensure the selection of the most cost effective method.
- (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 908.71 and the Federal Property Management Regulations, 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 908.7108
- (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 vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. 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).
- (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.

NOTE: The following clause is only applicable if the Contractor is other than a non-profit organization:

I.57 DEAR 970.5245-1 Property (DEC 2000)

- (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 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 therefor, 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) Employee personal responsibility and accountability for Government-owned property;
 - (C) Full integration with the contractor's other administrative and financial systems; and

- (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
- (iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i) (2) of this clause.
- (2) Property Inventory.
 - (i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.
 - (ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- (j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the contractor's business; or
 - (2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract; or
 - (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
 - (5) A separate and discrete major task or operation in connection with the performance of this contract.
- (k) The contractor shall include this clause in all cost reimbursable subcontracts.

NOTE: The following clause is only applicable if the Contractor is a non-profit organization:

I.58 DEAR 970.5245-1 Property (DEC 2000) ALTERNATE I (DEC 2000)

- (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 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 therefor, 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) Employee personal responsibility and accountability for Government-owned property;
 - (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 Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of contract).
- (k) The contractor shall include this clause in all cost reimbursable subcontracts.

**I.59 FAR 52.234-3 Notice of Earned Value Management System - Post Award IBR
(July 2006) (AMENDMENT 001)**

- (a) The offeror shall provide documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard - 748 (current version at time of solicitation).
- (b) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.
 - (1) The plan shall—
 - (i) Describe the EVMS the offeror intends to use in performance of the contracts;
 - (ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;
 - (iii) Describe the management system and its application in terms of the EVMS guidelines;
 - (iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and
 - (v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.
 - (2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.
 - (3) The Government will review and approve the offeror's plan for an EVMS before contract award.

- (4) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard -748 guidelines.

- (c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

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

SECTION J – LIST OF ATTACHMENTS

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APPENDIX A

TRANSITION PLAN

TO BE COMPLETED AFTER AWARD

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX B

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

TO BE DETERMINED

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX C

SMALL BUSINESS SUBCONTRACTING PLAN

(Attached)

Small Business Subcontracting Plan

**For
United States Department of Energy**

Savannah River Site

Submitted by:

Savannah River Nuclear Solutions, LLC



SMALL BUSINESS SUBCONTRACTING PLAN

Contractor Name: Savannah River Nuclear Solutions, LLC

(SRNS)

Contractor Address: 6160 Woodside Executive Circle

City/State/Zip: Aiken, SC 29803

Company Phone: 803-649-5370

Fax: 803-649-5289

Solicitation Number: DE-RP09-06SR22470

Item/Service: Management and Operation of the Savannah River Site

Amount of Contract for Combined FY2007 (01Jan07 Through 30 Sep07, partial year) Through December 2011: Estimated \$ Per SF 33

Period of Contract Performance: Award thru September 2012

Type of Plan : Individual Contract Plan (All elements developed specifically for this contract and applicable for the full term of this contract.)

Company Policy Statement

"It is the policy of the United States and SRNS that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, Hubzone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, minority business concerns and woman-owned small business concerns shall have the maximum practical opportunity to participate in the performance of government and commercial subcontracts awarded by SRNS. It is SRNS intention to aggressively pursue, wherever possible, subcontracting opportunities with small business, veteran-owned small business, service-disabled veteran-owned small business, Hubzone small business, small disadvantaged small business,, minority business, and women-owned small business, as well as Historically Black Colleges and Universities and Minority Institutions in accordance with P.L. 99-66, Section 1207, and P.L. 100-180, Section 806."



SMALL BUSINESS SUBCONTRACTING PLAN

PURPOSE

This Savannah River Nuclear Solutions, LLC (SRNS) Small Business Subcontracting Plan promotes, develops, and implements aggressive small business (SB), HUBZone small business (HUBZone), small disadvantaged business (SDB), certified 8(a) small business, women-owned small business (WOSB), Veteran-Owned small business (VOSB), and Service Disabled Veteran owned small business (SDVOSB) subcontracting. This SB Subcontracting Plan provides for dollar and percentage goals to maximize opportunities for SB to apply their expertise in meaningful ways in the management and delivery of varied and complex work in the Savannah River Site (SRS). It incorporates key accountability measures to ensure the Plan is implemented and regularly monitored at a senior management level. SRNS member companies have had extensive experience working with SBs on closure projects similar to the SRS. In addition, SRNS members have a long-standing successful track record of developing and mentoring SBs dating back to the first DOE Mentor-Protégé program in 1994. Members of SRNS have mentored some 69 protégés. Members of SRNS have been twice recognized by DOE for Mentor-Protégé Program of the year (1997, 1998). Countless regional awards and recognitions have also been received. We will continually strive to exceed federally established requirements for socioeconomic programs and SB development.

STRATEGY FOR SMALL BUSINESS INVOLVEMENT

One of our management principles, and a key element in safe and compliant execution of the SOW, is the integration of SB performance into the SRS baseline. Our SB strategy is to incorporate a large share of meaningful, varied, and complex SB performance of SRS work into the baseline, enhancing SRS execution and facilitating workforce transition and SB development.

This strategy will be implemented by increasing opportunities, access and support for SBs currently at SRS and those in the region.

Offering additional work scopes of varying complexity to SBs and protégés will increase opportunities. Aggressive outreach efforts and advance procurement planning will improve access to these opportunities. Support to SBs will be in the form of technical and business to improve SB performance and provide for overall growth. These objectives provide the foundation for a comprehensive SB program that goes beyond meeting prescribed SB goals but also drives socioeconomic growth in the region and revitalizes the local SB community.

ACCOUNTABILITY

We require our management team to deliver on our small business goals and evaluate their performance as part of our performance evaluation process. This is accomplished by integrating SB goals and targets into project planning and execution. Project Managers will be responsible for the successful execution of SB contracts and providing technical oversight and appropriate assistance as required ensuring a successful contractual relationship with our SB subcontractors.



AREAS OF FOCUS FOR IMPROVING SB PARTICIPATION

Our strategy targets four focus areas for improving SB participation with meaningful contract opportunities at SRS:

Improve SB participation and success in local communities. We integrate our aggressive SB outreach program with access to our parent companies, coordinate activities and opportunities with the National Minority Supplier Development Council locally and nationally, access to the National Nuclear Security Administration (NNSA) Supply Chain Management Center, and access to processes and tools through our Supplier Development Program that help SBs improve their competitiveness.

Deliver best value services to our client and customers. Pressure on DOE to reduce life-cycle costs and deliver results continues to increase as many projects approach their highest level of uncertainty and risk. Our strategy relies on competitive procurements, consistent with project requirements, to deliver SBs that possess the necessary respect for compliance and project execution excellence to deliver mission-driven services. This strategy provides opportunity across the region and ensures that SBs selected to perform meaningful work are qualified and deliver safe cost-efficient services to our customers.

Integrate subcontracting strategy with our labor planning process. Mission-driven needs will dramatically change over the next 10 years and require concurrent changes in the quantity of employees and the skills mix required to support this change. Our strategy integrates SB subcontracting with our labor planning process to support mission-driven staffing needs at SRS and deliver maximum opportunities for employees to develop their skills and be part of the regional economic growth. Our disciplined process provides a cost efficient and flexible approach for maintaining mission-driven critical skills in the most cost effective manner.

Provide a strategic outsourcing decision process. Our approach delivers a proven disciplined process designed to make good outsourcing decisions developed by the Office of Naval Research and Northrop Grumman Newport News shipyard. It provides a structured deliberate process to involve all stakeholders, balance a variety of factors, collect data about those factors, and then make a reasoned mission-driven decision. This is in contrast to making an arbitrary decision to outsource without a completion of a full analysis.

NEW AND EXISTING SUBCONTRACTING OPPORTUNITIES

During the first year (FY08) of the contact SRNS will review all current subcontracts for performance and SB opportunities. This review will be conducted with project and procurement leads and the SB Liaison. New subcontract opportunities will be identified during this review. This information will be used to develop procurement plans for subcontract renewals and new work. Included in these plans will be a sourcing preference toward increasing total SB subcontracting dollars.

This review will include the implementation of a process that was developed with the Office of Naval Research. This process uses four factors for making outsourcing decisions—strategic concerns for core competence, employee and community relations, lowest total cost or best



value, and impact on SRS missions. Our process produces lower costs and fewer delays, leads to greater outsourcing in situations where total costs are lower when performed by subcontractors, and self-performs work when we are the more cost efficient service provider. In contrast to the typical outsourcing decision processes, our approach is comprehensive, structured, and considers the impact of outsourcing on associated processes and the need to build supplier relationships. Our comprehensive approach to costing, delivers an accurate view of both the make, and buy sides of the equation. We provide greater accuracy on the make side by not allocating a gross part of overhead costs to a particular process, but applying only the portions of overhead costs specifically attributable to that process. This provides greater accuracy on the buy side because it considers changes in the process that may be required if the product or service is outsourced.

As a result of implementing these approaches during the first year of the contract it is expected that during FY 09 there will be a marked increase in these dollars providing growth to the SB community.

PRESELECTED SMALL BUSINESS SUBCONTRACTOR

As a reflection of SRNS's commitment to provide SB with meaningful opportunities for complex work we have preselected Nuclear Fuel Services (NFS) to play a key role in meeting the SRS mission. NFS has nearly 50 years of experience processing highly enriched uranium (HEU) low enriched uranium (LEU), and plutonium. The NFS facility in Tennessee is one of only two commercial Category I facilities in the U.S. The Nuclear Regulatory Commission licensed NFS to receive, store, and process SNM including HEU, LEU, and small quantities of plutonium. They are responsible for the design, development, scale-up, construction, commissioning, operation, safety, safeguards and security, licensing, regulatory compliance, and product quality for its nuclear fuel manufacturing facility. At the SRS the NFS work scope will include materials disposition planning and process optimization, and the Blended Low-Enriched Uranium (BLEU) project. NFS also provides technical, nuclear and criticality safety, and safeguards and security support for the large capital project at K-Area, and may provide fuel fabrication services for our innovation to recycle excess plutonium and spent nuclear fuel.

I. GOALS

SRNS shall submit its proposed subcontracting goals each fiscal year during the term of this contract, or by such later date as authorized in writing by the CO. This submittal shall include goals for Small Business Concerns (SB), Veteran-owned Small Business concern (VOSB), Service-disabled Veteran-owned Small Business concern (SDVOSB), HUBZone Small Business concern (HubZone), Small Disadvantaged Business concern (SDB), and Women-owned Small Business concern (WOSB). The established goals will be incorporated into this plan by letter and will not require contract modification.

The proposed goals shall be based on an established percentage of estimated commercial purchased, including those for Large Business (LB) concerns, which will be derived from the current fiscal year budget. Goals may be changed within the first six months of each fiscal year with the approval of the CO. Goals for the utilization of SB, VOSB, SDVOSB, HubZone, SDB, and WOSB subcontractors shall be submitted as follows unless otherwise required by the CO.



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

- A. The following percentage goals (expressed in terms of a percentage of total planned subcontract dollars) are applicable to the contract period Year One. For each year of performance, revised goals will be negotiated and incorporated into the contract.
1. The total estimated dollar value of all planned subcontracting (to all types of business concerns) under this contract for FY 08 is \$142,218,750 (100%)
 - a. LB Concerns. Total estimated dollar value and percent of planned subcontracting with large businesses (all business concerns classified as "other than small") (% of 1 above): \$56,887,500 and 40.0%.
 - b. SB Concerns. Total estimated dollar value and percent of planned subcontracting with small businesses (include SB, VOSB, SDVOSB, HubSB, SDB, and WOSB concerns) (% of 1. above): \$85,331,250 and 60.0%.
 - c. VOSB Concerns. Total estimated dollar value and percent of planned subcontracting with veteran-owned small businesses (% of 1. above): \$1,848,844 and 1.3%. This amount is included n the amount shown under A.1.b, above as a subset.
 - d. SDVOSB Concerns. Total estimated dollar value and percent of planned subcontracting with service-disabled veteran-owned small businesses (% of 1. above): \$1,848,844 and 1.3%. This amount is included n the amount shown under A.1.b, above as a subset.
 - e. HubZone Concerns. Total estimated dollar value and percent of planned subcontracting with HUBZone small businesses (% of 1. above): \$4,408,781 and 3.1%. This amount is included n the amount shown under A.1.b, above as a subset.
 - f. SDB Concerns. Total estimated dollar value and percent of planned subcontracting with small disadvantaged businesses (% of 1. above): \$18,488,438 and 13.0%. This amount is included n the amount shown under A.1.b, above as a subset.
 - g. WOSB Concerns. Total estimated dollar value and percent of planned subcontracting with women-owned small businesses (% of 1. above): \$16,212,938 and 11.4%. This amount is included n the amount shown under A.1.b, above as a subset.

The following table provides a summary of the information provided above:



Small Business Category	Percent of Subcontracting Dollars (%)	Dollar Amount
Large Businesses	40.0	56,887,500
Small Businesses	60.0	85,331,250
Veteran-owned Small Businesses	1.3	1,848,844
Service-Disabled Veteran-owned Small Businesses	1.3	1,848,844
HUBZone Small Businesses	3.1	4,408,781
Small Disadvantaged Businesses	13.0	18,488,438
Women-owned Businesses	11.4	16,212,938

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

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

Subcontracted Supplies and Services (Type & NAICS Code)	SB	SDB	WOSB	SDVOSB	HUBZone	DOLLARS
541620—Environmental Consulting Services	X	X		X		\$7,000,000
541330—Engineering Services	X					5,000,000
562910—Remediation Services	X	X	X			8,000,000
423840—Industrial Supplies	X	X				7,000,000
541990—All other professional, scientific, and technical services	X	X	X	X		15,000,000
561210—Facilities support services	X	X				6,000,000
238910—Building Demolition	X	X			X	2,000,000
532412—Heavy Construction Equipment Rental	X					6,000,000
236210—Industrial Building Construction	X	X	X		X	3,000,000
541513—Computer Facilities Management	X					2,000,000
541611—Administrative Management	X	X				1,000,000
48-49—Transportation	X	X	X			5,000,000
33243—Other Metal Container Manufacturing	X	X				1,000,000
424120—Stationary and Office Supplies	X	X				2,000,000
Other Product/Services						72,218,750
Total Subcontracted Dollars in FY08						\$142,218,750



2. The % goals in Section A above and subcontract dollars reflected in the table above were developed after careful consideration of the following:
- List of current SRS incumbent subcontractors (>\$100,000)
 - FY2006 total planned subcontract dollars for the SRS incumbent prime contractor
 - FY2006 DOE Small Business Subcontracting Goals
 - FY2005 SRS incumbent prime contractor SB performance
 - SRNS parent and affiliate company SB performance at various DOE sites across the DOE Complex
 - Known SB suppliers of listed services

To determine the total subcontract dollars amount the expected FY08 operating budget (\$759,000,000) was reduced by 25% to determine the SRNS partial year expenditure (\$568,875,000). Based on the incumbent's historical subcontract activity it was assumed that 25% of the total expenditures would be for subcontracts ((\$142,218,750).

Attachment A, "Complex Work Scopes Targeted for SB Participation", to this SB Plan is a listing of the activities identified by SRNS Project Managers that are expected to result in procurement actions during the life of this Prime Contract. Those project areas responsible for the activity are annotated on the chart. We conducted a review of known current service providers and new possible sources, with an emphasis on SB/SDB. Before actual solicitations each respective "bid list" will include SB/SDBs as applicable. SRNS will continually increase its database of potential subcontractors through outreach programs and interface with regional small business organizations.

3. Indirect costs have not been included in the dollar and percentage subcontracting goals stated above.

II. PROGRAM ADMINISTRATOR

Name: TBD

Title: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____



Duties

The program administrator has general overall responsibility for SRNS's subcontracting program; i.e., developing, preparing, and executing subcontracting plans and monitoring performance relative to the requirements of this particular plan. These duties include, but are not limited to, the following activities:

- Developing and maintaining bidders lists of SB, VOSB, SDVOSB, HubZone, SDB and WOSB concerns from as many sources as possible. Ensure that SRS registration process is user friendly and unrestrictive.
- Ensuring that procurement packages are structured to permit participation of SB, VOSB, SDVOSB, HubZone, SDB and WOSB concerns to the maximum extent possible. This includes reviewing solicitations to remove statements, clauses, etc., that restrict such participation.
- Ensuring inclusion of SB, VOSB, SDVOSB, HubZone, SDB and WOSB concerns whose capabilities coincide with solicitations requiring their products or services.
- Reviewing solicitations to identify and remove any statements, clauses, etc., which may restrict or prohibit participation of SB, VOSB, SDVOSB, HubZone, SDB and WOSB concerns.
- Ensuring that proper documentation was provided by bid proposal board if award was not made to SB, VOSB, SDVOSB, HubZone, SDB and WOSB concern that provided the lowest bid.
- Ensure establishment and maintenance of records of solicitations and subcontract award activity.
- Attending or arranging for the attendance of company counselors at small business workshops, seminars, procurement fairs, trade fairs, and conferences.
- Monitoring achievement of proposed goals and reporting department performance to top management.
- Preparing, inputting, and submit semi-annual and annual subcontract reports through the electronic Subcontracting Reporting System (eSRS).
- Coordinating the facility's activities prior to and during the conduct of Federal agency compliance reviews.
- Developing and promoting company-wide policy initiatives that demonstrate the company's support for awarding contracts and subcontracts to SB, VOSB, SDVOSB, HubZone, SDB and WOSB concerns.
- Assuring the integrity of supplier information in the Central Contractor Registration (CCR) through a series of controls that include a review of Representations and Certifications of



new suppliers. Ensure that supplier NAICS codes and socioeconomic classifications are included in supplier descriptions.

- Periodically monitoring the procurement staff and routinely providing new small business and socioeconomic business sources. Although not required to monitor credit card purchases because they are below the micro-purchase threshold of \$2,500, the Program Administrator will develop a small business supplier list for all credit card holders and periodically add new sources to the list.
- Monitoring the compliance of subcontractors responsible for subcontracting plan requirements under "flow down" provisions.
- Participate in project reviews to identify new SB opportunities and assist with development of procurement plans. Establish a web based approach to forecast those requirements to the SB community.
- Work closely with local and regional SB development councils to match local SB resources with upcoming procurements suitable for small business concerns. Conduct other outreach programs to include supplier diversity fairs.
- Arrange for developmental training available through *SRNS* for site SBs to improve their performance and professional growth as appropriate.
- Ensure SB concerns obtain training on how to prepare responsive bids as required.
- Conducting or arranging for training of purchasing personnel regarding implementation of the small business subcontracting program.
- Ensuring that small businesses are made aware of the Credit Card Program and how to participate in it.
- Conducting or arranging training for credit card holders in order to provide subcontracting opportunities to small businesses through credit card purchases.
- Establish a SB Hotline to address SB questions and concerns and serve as a single point of contact for SB to gain access to *SRNS*.
- Seek additional opportunities with parent companies for *SRNS* proven and successful SBs.
- Establish a site-wide Supplier Diversity Integrated Project Team that optimizes procurement planning across the SRS.
- Establish a SB Forum that will provide SB feedback into the procurement process.
- Institute Technical Rep Program to improve SB subcontracting performance including safety and technical aspects.
- Coordinating actions for *SRNS* to participate in DOE's Mentor-Protégé Program.



III. EQUITABLE OPPORTUNITY AND OUTREACH EFFORTS

SRNS will ensure that small businesses, small disadvantaged businesses, women-owned small businesses, service-disabled veteran-owned small businesses, and HUBZone small businesses will have an equitable opportunity to compete for subcontracts. These efforts include, but are not limited to, the following activities:

A. Outreach efforts to obtain sources:

- (1) Contacting small, small disadvantaged, women-owned, service disabled veteran-owned, and HUBZone associations.
- (2) Contacting federal, state, local, and private small business development organizations.
- (3) Attending and participating in procurement conferences, trade fairs, etc.
- (4) Obtaining sources from the CCR.
- (5) Utilizing the Internet to encourage new sources.
- (6) Other participation I efforts or activities to expand the socioeconomic databae for this contract.
- (7) Using book references, catalogs, source lists, or other reference material to identify sources before the acquisitions are placed by the buying activities.
- (8) Establish a close working relationship with the South Carolina Small Business Development Council to identify and develop regional SB, VOSB, SDVOSB, HubSB, SDB and WOSB concerns.

B. Internal efforts to guide and encourage purchasing personnel

- (1) Presenting workshops, seminars, conferences, and training programs, on the requirements of this plan.
- (2) Establishing, maintaining, and using small business source lists, guides, and other data for soliciting sources for subcontracts.
- (3) Monitoring activities to evaluate compliance with the subcontracting plan.
- (4) Maintaining a list of trip reports and other documentation on the outreach activity attended, including new sources along with recommendations to buyers to include these sources in the next appropriate solicitation.

C. Outreach Events

- (1) Conduct a Regional Supplier Diversity Fair within 3 months following Transition



- (2) Develop an annual list of outreach events and activities to attend and participate in.
 - (3) Obtain a list of outreach activities to attend from the DOE Small Business Program Manager.
 - (4) Tally the list of events attended by the end of the fiscal year.
- D. Additional efforts to be undertaken:
- (1) Establish education courses for buyers, etc.
 - (2) Develop a small business web page.
 - (3) Conduct acquisition planning to include small business subcontracting opportunities.
 - (4) Develop an internal Small Business Policy, including a policy statement from the Site Project Manager.
- E. Utilization of External Small Business Advocates to Conduct the Small Business Subcontracting Program
- (1) Work with the SBA Procurement Center Representative.
 - (2) Work with Small Business Develop Centers and Minority Business Development Centers
 - (3) Work with Minority Supplier Development Councils.
 - (4) Work with other small business organizations.

IV. FLOW-DOWN CLAUSE

SRNS will include the provisions under FAR 52.219-8, "Utilization of Small Business Concerns," in all subcontracts that offer further subcontracting opportunities. All subcontractors, except small business concerns, that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) must adopt and comply with a plan similar to the plan required by FAR 52.219-9 "Small Business Subcontracting Plan." (FAR 19.704).

Such plans will be reviewed by comparing them with the provisions of Public Law 95-507, and assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small, small disadvantaged, women-owned, HUBZone, veteran-owned, service-disabled veteran-owned small businesses, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to subcontractors' facilities to review applicable records and subcontracting program progress.



V. REPORTS AND SURVEYS

SRNS will provide: (1) cooperation in any studies or surveys that may be required by the contracting agency or the SBA; (2) submission of periodic reports such as utilization reports, which show compliance with the subcontracting plan; (3) submission (timely) of small business subcontracting achievement data, formerly reported on the Standard Form (SF) 294 and/or 295, to the eSRS; and (4) ensure that large business subcontractors with subcontracting plans agree to input to the eSRS. The completed original written reports will be submitted to the cognizant CO and a courtesy copy to the cognizant SBA Procurement Center Representative. Reports will be submitted in accordance with the table below:

Reporting Period	Report Due	Due Date
October 1- March 31	SF 294	April 30 th
April 1- September 30	SF 294	October 30 th
October 1- March 31	SF 295	April 30 th
October 1- September 30	SF 295	October 30 th

VI. RECORDS AND PROCEDURES

The following is a list of the types of records that SRNS will maintain to demonstrate the procedures adopted to comply with the requirements and goals in this subcontracting plan. These records will include, but are not limited to, the following:

- A. A list of the sources, guides and other data used to identify suppliers and Vendors.
- B. Organizations contacted in an attempt to locate all categories of small business sources.
- C. On a contract-by-contract basis, records on each subcontract solicitation resulting in an award of more than \$100,000 indicating whether SB, VOSB, SDVOSB, 8(a)SB, SDB, and WOSB concerns were solicited, and if not, why not; and if applicable, the reason that the award was not made to a small business concern.
- D. Records to support other outreach efforts, e.g., contacts with small business trade associations, and attendance at conference, trade fairs, etc.
- E. Records to support internal guidance and encouragement, provided to buyers through: (1) workshops, seminars, training programs, incentive and other awards; and (2) monitoring of activities to evaluate compliance.
- F. On a contract-by-contract basis, a central database will be maintained which will include information regarding contract number, award recipient name, address, business size, description of subcontracted items, and award amount. This database will contain all such actions for the period of performance of the prime contract. This



documentation will remain part of the contract file and retained accordingly. (This item is not required for company or division-wide commercial product plans.) .

- G. All award recipients regardless of their classification will require "Representations and Certifications (Reps and Certs)." These reps and certs will be maintained in the contract files.

VII. MENTOR PROTÉGÉ PROGRAM

Collectively the *SRNS* team has 43 current active Protégés (see Attachment B). This is a reflection of the team's corporate commitment to provide support and foster growth in small businesses. Opportunities will be extended to those companies at the SRS by *SRNS*. In addition *SRNS* will serve as a Mentor to new Protégés that are/will be associated with SRS opportunities.

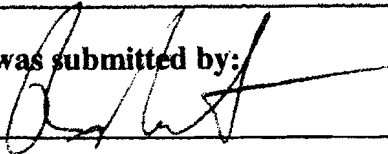
Attachments

- A. Complex Work Scopes Targeted for SB Participation
B. Member Companies' Active Protégés



This subcontracting plan was submitted by:

Signature: _____



Typed Name: _____

Rex Norton

Title: _____

Contracts Manager

Date Prepared: _____

May 23, 2007

Telephone: _____

803-649-5370

Fax: _____

803-649-5289

E-mail: _____

Rex.Norton@fluor.com

PLAN ACCEPTED BY: _____



01/10/08

Contracting Officer

Date



Attachment A to SRNS Small Business Plan
Complex WorkScopes Targeted For SB Participation

Mission Area	Scope Description	SB	SDB	WOSB	SDVOSB	VOSB	HubZone
a) Soil & Water Remediation							
	1) Groudwater Optimization	x		x			
	2) Environmental Monitoring	x	x	x		x	
	3) Environmental Compliance & Reporting	x		x			
	4) Soil Excavation/Remediation	x	x	x			x
	5) Subsurface Investigation/Drilling	x	x				x
b) Deactivation & Decommissioning							
	1) D&D Planning & Execution	x	x		x	x	
	2) D&D Strategic Planning, Surveillance and Monitoring	x	x			x	
c) Solid Waste							
	1) SWDF Operations	x	x	x			
	2) Waste Characterization	x	x	x			x
	3) Waste Packaging	x	x	x			x
	4) Offsite Transporation/Logistics	x	x		x		x
d) Nuclear Materials							
	1) HEU and Chemical Processes	x					
	2) Disposition Planning and Analysis	x	x				
SRNS							
	1) Mission development Support	x					
SRNS							
	1) Start-up/Commissioning	x					
	2) MC&A	x					
	3) Auditing & Inspection	x					
SRNS							
a) ESH&Q							
	1) Industrial Hygiene	x					
	2) Health Physics /Rad Engineering	x	x				
	3) Safety Analysis Support	x	x	x	x	x	x
	4) Chemical Management						
	5) Vendor QA Inspections	x			x		
b) Enginnering & Construction							
	Engineering (Mentor/Protégé Canidate)	x	x		x		
	General Light Construction (rad)	x					
	General Construction (non-rad)	x					
c) Operations Support							
	Analytical Laboratory Operations	x		x			
	Warehousing/Transportation	x	x	x			
	General Infrastructure	x	x	x	x	x	x
d) Business Services							
	Training	x	x	x		x	
	Professional Saffing	x	x	x			
	IT	x		x			

Attachment B to SRNS Small Business Plan			
Member Company's Active Protégés			
Company	Category	Services	Agency
Xinetics, Inc.	SB	Deformable Mirrors, High Speed Drive Electronics, Silicon Carbide Mirrors and Beam Control Software	Commercial
Advanced Technologies and Laboratories	WOSB	Technology Services	Commercial
Tcoombs & Associates, LLC	SDVOSB	Technology Services	Commercial
USE, Inc.	SDB, VOSB	Professional Services for airline industry	DHS
Government Acquisitions, Inc.	SB	Business Development and Marketing	DHS
Main Sail, LLC	VOSB	Engineering Services and custom computer programming	DHS
Paloma System, Inc.	SDB, WOSB	Systems Engineering and Integration	DISA
Keylogic Systems, Inc.	HUBZone	Information Technology Services	DISA
Chanega Advanced Solution and Engineering, LLC (CASE)	SDB	Information Technology Services	DOD
Sterling Computers	SDB, WOSB	Computer hardware/software design, development	DOD
Gryphon Technologies, L.C.	SDB	Information Technology Services	DOD
HITEM Corp.	SDB	Manufacture PWB and Prototypes	DOD
Reyes Machining	SDB, VOSB	Machining, precision and general hardware	DOD
Hurlen Corp.	SDB	Material Inventory & Government Property	DOD
Data Laser Imaging, LLC	SDB, WOSB	Business Office Products	DOD
Defense Manufacturing & Supply, LLC	SDVOSB	Complex and Precision Machining	DOD
SAALEX Solutions	SDB, VOSB, HUBZone	Engineering Services and Quality Assurance Services	DOD
Qual-Pro Corp.	WOSB	Printed Circuit Assembly Manufacture	DOD
Synergy Systems, Inc.	SDB	Machine Shops	DOD
Englander Enterprised DBA EEI Manufacturing	SDB, WOSB, HUBZone	CCA Design & Manufacturing	DOD
Epsilon	SDB	Flat Panel Displays	DOD
Geodetics	WOSB	GPS	DOD
Infinity Technology, Inc.	SDB, WOSB	Support Services	DOD
Randolph Construction (RCS)	WOSB	Construction	DOE
AMBA Solutions, Inc.	SDB, WOSB	Computer hardware/software, IT Services, Network Solutions, Engineering Services, Training Services	DOE

Analytican FEA, Inc.	SDB, WOSB	Engineering Consultancy, Strategical Technical Services, Mechanical Design, Analytical	DOE
Applied Thermal Systems	VOSB	Control Systems Automation, Robotics, System Integration	DOE
Bocotek, Inc.	SDB, WOSB	Printers, Computers, Servers, Networking Equipment	DOE
Contracts Associates, Inc.	SDB, WOSB	Commercial and office furniture, space planning	DOE
Corporation Allocation Services, Inc.	SDB, WOSB	On site Financial Management and Facilities support services	DOE
Environmental Dimensions, Inc.	SDB, WOSB	Waste Management, GPS/GIS services, Environmental mitigation	DOE
Horton Technical Associates, Inc.	SB, SDVOB	Custom software development and design, Operations Research and Systems Analysis (ORSA) services	DOE
Johnny Boards, LLC	SDB	Media advertising, information collection	DOE
Luitporia Software Consultancy, Inc.	SDB, WOSB	Information Technology Services	DOE
MB Native American Vetrans, Inc.	SDB, SDVOB	Information Technology Services, facilities management, EEO consulting	DOE
Signature Design & Manufacturing, Inc.	WOSB, VOSB	Mechanical design engineering, metal and plastic machining and fabrication	DOE
Strategy Works, Inc	SDB, WOSB	Organizational Consulting, Strategic Planning, Training and consulting	DOE
T.E.A.M. Concepts Engineering, LLC.	WOSB, VOSB	Radiological and contamination control, waste packaging	DOE
Garry Struthers Associates, Inc	SDVOB	Engineering and Construction Services	DOS
Solutron, Inc.	SDB, WOSB	Information Technology & Environmental Engineering Services	EPA
Enterprise Information Services, Inc. (EIS)	SDB	Engineering Services	FAA
ALCOSYS, Inc.	SB	Engineering Services	FAA
MORI Associates, Inc	SDB, WOSB	Information Technology & Engineering	FAA, DOT
Boecore Inc.	WOSB	Contract Labor	MDA
ION Corp.	SDB, VOSB	Cable and Harness Manufacture	NASA
Project Resources Inc. (PRI)	SDB, WOSB	Construction, Environmental Remediation	SBA

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX D

KEY PERSONNEL

Pursuant to the clause entitled “Key Personnel,” the following positions are considered to be essential to work being performed.

<u>Name</u>	<u>Title</u>
Munns, Charles -----	President
Bhattacharyya, Sam -----	SRNL Director
Chiou, JD -----	Director, Closure Projects & Waste Management
Dohse, Fred-----	Director, Nuclear Materials Operations
Eshelman, Roger-----	EVP, Operations
Fagan, Jon -----	Chief Engineer & Nuclear Safety Officer
Gentile, Chris-----	VP, Tritium Operations
Guinn, Linda -----	General Counsel
Hodge, Esther -----	Director, Human Resources
McElroy, Baxter -----	Director, Site Infrastructure & Project Support
Powell, Norm-----	Director, Site Interfaces
Sependa, Jack -----	EVP, Programs
Umek, Anthony -----	Director, ESH&Q
Wilson, Veasey -----	Director, Business Services

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX E

**APPENDIX E – LIST B/APPLICABLE DOE DIRECTIVES AND ORDERS
(AMENDMENT 003)**

Pursuant to the clause in Section I entitled, DEAR 970.5204-2 “Laws, Regulations, and DOE Directives,” the Contractor shall adhere to the ES&H requirements compliance process delineated in the Site Standards/ Requirements Identification Document (S/RID). For requirements other than ES&H, the contractor shall adhere to the existing DOE directive requirements that are the basis for established procedures and programs until authorized approvals are obtained to deviate from established requirements. The S/RID, and superseding versions thereof, are hereby incorporated by reference.

The Contracting Officer, or designated representative, may, from time to time via issuance of a Contract Administration Notice (CAN) or other means, revise the ES&H requirements and non-ES&H requirements (i.e., List B as referred to in this clause).

The following is the DOE approved List B set of requirements as of March 2007.

Directive	Title
10 CFR 1021	National Environmental Policy Act Implementing Procedures
10 CFR 436	Federal Energy Management and Planning Programs
10 CFR 707	Workplace Substance Abuse Programs at DOE Sites
10 CFR 708	DOE Contractor Employee Protection Program
10 CFR 71	PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL
10 CFR 820	PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES
10 CFR 830	NUCLEAR SAFETY MANAGEMENT
10 CFR 835	OCCUPATIONAL RADIATION PROTECTION
10 CFR 851	Worker Safety and Health Program
33 CFR 153	Control of Pollution by Oil and Hazardous Substances, Discharge Removal
33 CFR 320	General Regulatory Policies
33 CFR 322	Permits for Structures or Work in or Affected Navigable Waters of the United States
33 CFR 323	Permits for Discharges of Dredged or Fill Material into Waters of the United States
33 CFR 325	Processing of Department of Army Permits
33 CFR 326	Enforcement
33 CFR 327	Public Hearings
33 CFR 328	Definition of Waters of the United States
33 CFR 329	Definition of Navigable Waters of the United States
33 CFR 330	Nation Wide Permit Program

40 CFR 110	Discharge of Oil
40 CFR 112	Oil Pollution Prevention
40 CFR 116	Designation of Hazardous Substances
40 CFR 117	Determination of Reportable Quantities for Hazardous Substances
40 CFR 122	EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
40 CFR 125	Criteria and Standards for the National Pollution Discharge Elimination System
40 CFR 129	Toxic Pollutant Effluent Standards
40 CFR 131	Water Quality Standards
40 CFR 133	Secondary Treatment Regulation
40 CFR 136	Guidelines Establishing Test Procedures for the Analysis of Pollutants
40 CFR 141	National Primary Drinking Water Regulations
40 CFR 142	National Primary Drinking Water Regulations Implementation
40 CFR 143	National Secondary Drinking Water Regulations
40 CFR 144	Underground Injection Control Program
40 CFR 146	Underground Injection Control Program: Criteria and Standards
40 CFR 148	Hazardous Waste Injection Restrictions
40 CFR 149	Sole Source Aquifers
40 CFR 166	Exemption of Federal and State Agencies for Use of Pesticides Under Emergency Conditions
40 CFR 170	Worker Protection Standard
40 CFR 171	CERTIFICATION OF PESTICIDE APPLICATORS
40 CFR 191	ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR MANAGEMENT AND DISPOSAL OF SPENT NUCLEAR FUEL, HIGH-LEVEL AND TRANSURANIC RADIOACTIVE WASTES
40 CFR 230	Section 404(b)(1) Guidelines for Specification of Disposal for Dredged or Fill Material
40 CFR 231	Section 404(c) Procedures
40 CFR 243	Guidelines for the Storage and Collection of Residential, Commercial, and Institutional Solid Waste
40 CFR 246	Source Separation for Materials Recovery Guidelines
40 CFR 247	Comprehensive Procurement Guideline for Products Containing Recovered Materials
40 CFR 257	Criteria for Classification of Solid Waste Disposal Facilities and Practices
40 CFR 260	Hazardous Waste Management System: General
40 CFR 261	IDENTIFICATION AND LISTING OF HAZARDOUS WASTE
40 CFR 262	Standards Applicable to Generators of Hazardous Waste
40 CFR 263	Standards Applicable to Transporters of Hazardous Waste
40 CFR 264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
40 CFR 265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
40 CFR 266	STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES
40 CFR 268	LAND DISPOSAL RESTRICTIONS
40 CFR 270	EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM
40 CFR 273	STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

40 CFR 279	Standards for the Management of Used Oil
40 CFR 280	TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)
40 CFR 300	National Oil and Hazardous Substances Pollution Contingency Plan
40 CFR 302	DESIGNATION, REPORTABLE QUANTITIES AND NOTIFICATION
40 CFR 355	EMERGENCY PLANNING AND NOTIFICATION
40 CFR 370	HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW
40 CFR 372	TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW
40 CFR 401	Effluent Guidelines and Standards: General Provisions
40 CFR 403	General Pretreatment Regulations for Existing and New Sources of Pollution
40 CFR 50	National Primary and Secondary Ambient Air Quality Standards
40 CFR 503	STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE
40 CFR 58	Ambient Air Quality Surveillance
40 CFR 60	Standards of Performance for New Stationary Sources
40 CFR 61	NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
40 CFR 68	Chemical Accident Prevention Provisions
40 CFR 69	Special Exemptions from Requirements of the Clean Air Act
40 CFR 707	Chemical Imports and Exports
40 CFR 717	Records and Reports of Allegations that Chemical Substances Cause Significant Adverse Reactions to Health or the Environment
40 CFR 747	Metalworking Fluids
40 CFR 761	Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions
40 CFR 763	Asbestos
40 CFR 82	Protection of Stratospheric Ozone
43 FR 4377	RADIATION PROTECTION GUIDANCE TO FEDERAL AGENCIES FOR DIAGNOSTIC X-RAYS
49 CFR 107	HAZARDOUS MATERIALS PROGRAM PROCEDURES
49 CFR 171	GENERAL INFORMATION, REGULATIONS AND DEFINITIONS
49 CFR 172	HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS
49 CFR 173	SHIPPERS - GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS
49 CFR 174	CARRIAGE BY RAIL
49 CFR 177	CARRIAGE BY PUBLIC HIGHWAY
49 CFR 382	CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING
49 CFR 383	COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES
49 CFR 385	SAFETY FITNESS PROCEDURES
49 CFR 386	Rules of Practice for Motor carrier Safety and Hazardous Materials Proceedings -- Scope of Rules, Definitions
49 CFR 387	MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS
49 CFR 389	Rulemaking Procedures - Federal Motor Carrier Safety Regulations -- General
49 CFR 390	FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL
49 CFR 391	QUALIFICATIONS OF DRIVERS
49 CFR 392	DRIVING OF MOTOR VEHICLES

49 CFR 393	PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION
49 CFR 395	HOURS OF SERVICE OF DRIVERS
49 CFR 396	INSPECTION, REPAIR, AND MAINTENANCE
49 CFR 397	TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES
49 CFR 40	Procedures for Transportation Workplace Drug Testing Program -- General
50 CFR 17	Endangered and Threatened Wildlife and Plants
ADN-89-05-FF	FEDERAL FACILITY AGREEMENT FOR THE SAVANNAH RIVER SITE
ANS 8.1	Nuclear Criticality Safety In Operations With Fissionable Materials Outside Reactors
ANS 8.14	Use of Soluble Neutron Absorbers in Nuclear Facilities Outside Reactors
ANS 8.15	Nuclear Criticality Control of Special Actinide Elements
ANS 8.17	Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR Fuel Outside Reactors
ANS 8.19	Administrative Practices for Nuclear Criticality Safety
ANS 8.21	Use of Fixed Neutron Absorbers in Nuclear Facilities Outside Reactors
ANS 8.22	Nuclear Criticality Safety Based on Limiting and Controlling Moderators
ANS 8.3	Criticality Accident Alarm System
ANS 8.6	Safety in Conducting Subcritical Neutron-Multiplication Measurements in Situ
ANS 8.7	Nuclear Criticality Safety In The Storage Of Fissile Materials
ANSI Z 358.1	Eye Wash and Shower Equipment, Emergency
ANSI N323A - 1997	American National Standard: Radiation Protection Instrumentation Test and Calibration, Portable Survey Instruments
ANSI N42.18 - 1980	American National Standard: Specification and Performance of On-Site Instrumentation for Continuously Monitoring Radioactivity in Effluents
ANSI N43.3 - 1993	American National Standard For General Radiation Safety - Installations Using Non-Medical X-Ray and Sealed Gamma-Ray Sources, Energies Up To 10 MeV
ANSI/ANS-3.2	ADMINISTRATIVE CONTROLS AND QUALITY ASSURANCE FOR THE OPERATIONAL PHASE OF NUCLEAR POWER PLANTS
ANSI/ASQ E4	Quality Systems For Environmental Data And Technology Programs -Requirements With Guidance For Use
ANSI/HPS N43.2 - 2001	American National Standard: Radiation Safety for X-Ray Diffraction and Fluorescence Analysis Equipment
ASME NQA-1-2000	QUALITY ASSURANCE REQUIREMENTS FOR NUCLEAR FACILITY APPLICATIONS
Comm. Vehicle Safety Alliance	North American Uniform Vehicle Out-of-Service Criteria
DOE LETTER AA-03-007	Cancellation of Directive Implementation Instructions
DOE LETTER EMPT-06-060	DOE-SR Letter EMPT-06-060, Enclosure 1, Fire Protection Requirements And Clarifications Established by DOE-SR
DOE/NNSA QC-1, Rev. 10	DOE/NNSA QC-1 Weapon Quality Policy QC-1
DOE/RW-0333P, Rev 6	Quality Assurance Requirements and Description for the Civilian Radioactive Waste Management Program
DOE5400.5 Chg 2	RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT
DOE5480.19	CONDUCT OF OPERATIONS REQUIREMENTS FOR DOE FACILITIES
DOE5480.20A	PERSONNEL SELECTION, QUALIFICATION, AND TRAINING REQUIREMENTS FOR DOE NUCLEAR FACILITIES
DOE5480.4 Chg 4	ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION STANDARDS
DOE5480.8A Chg 1	CONTRACTOR OCCUPATIONAL MEDICAL PROGRAM
DOE5530.3	RADIOLOGICAL ASSISTANCE PROGRAM

DOE-EM-STD-5502-94	Hazard Baseline Documentation
DOEM231.1-1A	Environment, Safety and Health Reporting Manual
DOEM231.1-2	Occurrence Reporting and Processing of Operations Information
DOEM435.1-1	Radioactive Waste Management Manual, Chg. 1
DOEO151.1C	COMPREHENSIVE EMERGENCY MANAGEMENT SYSTEM
DOEO210.2	DOE Corporate Operating Experience Program
DOEO225.1A	ACCIDENT INVESTIGATIONS
DOEO226.1	IMPLEMENTATION OF DEPARTMENT OF ENERGY OVERSIGHT POLICY
DOEO243.1	RECORDS MANAGEMENT PROGRAM,
DOEO243.2	VITAL RECORDS
DOEO251.1B	Departmental Directives Program
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DOEO450.1	Environmental protection Program
DOEO451.1B	NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM
DOEO460.1B	Packaging and Transportation Safety
DOEO460.2A	Departmental Materials Transportation and Packaging Management
DOEO461.1A	Packaging and Transfer or Transportation of Materials of National Security Interest
DOEP450.4	Safety Management System Policy
DOE-STD-1088-95	Fire Protection for Relocatable Structures
DOE-STD-1098-99	Radiological Control
DOE-STD-1186-2004	Specific Administrative Controls
EM-WAPS	Waste Acceptance Product Specifications (WAPS) for Vitrified High-Level Waste Forms
EPA QA/R-5	Requirements for Quality Assurance Project Plans
EPA/540/R-93/071	DATA QUALITY OBJECTIVES
EPA/SW-846	TEST MEHODS FOR EVALUATING SOLID WASTE
ERD-97-1660	Environmental Restoration Division Operations
FMDP - QARD	FISSILE MATERIALS DISPOSITION PROGRAM - QUALITY ASSURANCE REQUIREMENTS DOCUMENT
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SBC	Standard Building Code
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SC R.61-92	Underground Storage Tank Control Regulations
SC R.72-300	Standards for Stormwater Management and Sediment Reduction
UBC	Uniform Building Code

ES&H REQUIREMENTS	
Directive	Title
10 CFR 1021	National Environmental Policy Act Implementing Procedures
10 CFR 436	Federal Energy Management and Planning Programs
10 CFR 707	Workplace Substance Abuse Programs at DOE Sites
10 CFR 708	DOE Contractor Employee Protection Program
10 CFR 71	PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL
10 CFR 820	PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES
10 CFR 830	NUCLEAR SAFETY MANAGEMENT
10 CFR 835	OCCUPATIONAL RADIATION PROTECTION
10 CFR 851	Worker Safety and Health Program
33 CFR 153	Control of Pollution by Oil and Hazardous Substances, Discharge Removal
33 CFR 320	General Regulatory Policies
33 CFR 322	Permits for Structures or Work in or Affected Navigable Waters of the United States

33 CFR 323	Permits for Discharges of Dredged or Fill Material into Waters of the United States
33 CFR 325	Processing of Department of Army Permits
33 CFR 326	Enforcement
33 CFR 327	Public Hearings
33 CFR 328	Definition of Waters of the United States
33 CFR 329	Definition of Navigable Waters of the United States
Directive	Title
33 CFR 330	Nation Wide Permit Program
40 CFR 110	Discharge of Oil
40 CFR 112	Oil Pollution Prevention
40 CFR 116	Designation of Hazardous Substances
40 CFR 117	Determination of Reportable Quantities for Hazardous Substances
40 CFR 122	EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
40 CFR 125	Criteria and Standards for the National Pollution Discharge Elimination System
40 CFR 129	Toxic Pollutant Effluent Standards
40 CFR 131	Water Quality Standards
40 CFR 133	Secondary Treatment Regulation
40 CFR 136	Guidelines Establishing Test Procedures for the Analysis of Pollutants
40 CFR 141	National Primary Drinking Water Regulations
40 CFR 142	National Primary Drinking Water Regulations Implementation
40 CFR 143	National Secondary Drinking Water Regulations
40 CFR 144	Underground Injection Control Program
40 CFR 146	Underground Injection Control Program: Criteria and Standards
40 CFR 148	Hazardous Waste Injection Restrictions
40 CFR 149	Sole Source Aquifers
40 CFR 166	Exemption of Federal and State Agencies for Use of Pesticides Under Emergency Conditions
40 CFR 170	Worker Protection Standard
40 CFR 171	CERTIFICATION OF PESTICIDE APPLICATORS
40 CFR 191	ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR MANAGEMENT AND DISPOSAL OF SPENT NUCLEAR FUEL, HIGH-LEVEL AND TRANSURANIC RADIOACTIVE WASTES
40 CFR 230	Section 404(b)(1) Guidelines for Specification of Disposal for Dredged or Fill Material
40 CFR 231	Section 404(c) Procedures
40 CFR 243	Guidelines for the Storage and Collection of Residential, Commercial, and Institutional Solid Waste
40 CFR 246	Source Separation for Materials Recovery Guidelines
40 CFR 247	Comprehensive Procurement Guideline for Products Containing Recovered Materials
40 CFR 257	Criteria for Classification of Solid Waste Disposal Facilities and Practices
40 CFR 260	Hazardous Waste Management System: General
40 CFR 261	IDENTIFICATION AND LISTING OF HAZARDOUS WASTE
40 CFR 262	Standards Applicable to Generators of Hazardous Waste
40 CFR 263	Standards Applicable to Transporters of Hazardous Waste

40 CFR 264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
40 CFR 265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
40 CFR 266	STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES
40 CFR 268	LAND DISPOSAL RESTRICTIONS
Directive	Title
40 CFR 270	EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM
40 CFR 273	STANDARDS FOR UNIVERSAL WASTE MANAGEMENT
40 CFR 279	Standards for the Management of Used Oil
40 CFR 280	TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)
40 CFR 300	National Oil and Hazardous Substances Pollution Contingency Plan
40 CFR 302	DESIGNATION, REPORTABLE QUANTITIES AND NOTIFICATION
40 CFR 355	EMERGENCY PLANNING AND NOTIFICATION
40 CFR 370	HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW
40 CFR 372	TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW
40 CFR 401	Effluent Guidelines and Standards: General Provisions
40 CFR 403	General Pretreatment Regulations for Existing and New Sources of Pollution
40 CFR 50	National Primary and Secondary Ambient Air Quality Standards
40 CFR 503	STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE
40 CFR 58	Ambient Air Quality Surveillance
40 CFR 60	Standards of Performance for New Stationary Sources
40 CFR 61	NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
40 CFR 68	Chemical Accident Prevention Provisions
40 CFR 69	Special Exemptions from Requirements of the Clean Air Act
40 CFR 707	Chemical Imports and Exports
40 CFR 717	Records and Reports of Allegations that Chemical Substances Cause Significant Adverse Reactions to Health or the Environment
40 CFR 747	Metalworking Fluids
40 CFR 761	Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions
40 CFR 763	Asbestos
40 CFR 82	Protection of Stratospheric Ozone
43 FR 4377	RADIATION PROTECTION GUIDANCE TO FEDERAL AGENCIES FOR DIAGNOSTIC X-RAYS
49 CFR 107	HAZARDOUS MATERIALS PROGRAM PROCEDURES
49 CFR 171	GENERAL INFORMATION, REGULATIONS AND DEFINITIONS
49 CFR 172	HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS
49 CFR 173	SHIPPERS - GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS
49 CFR 174	CARRIAGE BY RAIL
49 CFR 177	CARRIAGE BY PUBLIC HIGHWAY
49 CFR 382	CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

49 CFR 383	COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES
49 CFR 385	SAFETY FITNESS PROCEDURES
49 CFR 386	Rules of Practice for Motor carrier Safety and Hazardous Materials Proceedings -- Scope of Rules, Definitions
49 CFR 387	MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS
Directive	Title
49 CFR 389	Rulemaking Procedures - Federal Motor Carrier Safety Regulations -- General
49 CFR 390	FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL
49 CFR 391	QUALIFICATIONS OF DRIVERS
49 CFR 392	DRIVING OF MOTOR VEHICLES
49 CFR 393	PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION
49 CFR 395	HOURS OF SERVICE OF DRIVERS
49 CFR 396	INSPECTION, REPAIR, AND MAINTENANCE
49 CFR 397	TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES
49 CFR 40	Procedures for Transportation Workplace Drug Testing Program -- General
50 CFR 17	Endangered and Threatened Wildlife and Plants
ADN-89-05-FF	FEDERAL FACILITY AGREEMENT FOR THE SAVANNAH RIVER SITE
ANS 8.1	Nuclear Criticality Safety In Operations With Fissionable Materials Outside Reactors
ANS 8.14	Use of Soluble Neutron Absorbers in Nuclear Facilities Outside Reactors
ANS 8.15	Nuclear Criticality Control of Special Actinide Elements
ANS 8.17	Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR Fuel Outside Reactors
ANS 8.19	Administrative Practices for Nuclear Criticality Safety
ANS 8.21	Use of Fixed Neutron Absorbers in Nuclear Facilities Outside Reactors
ANS 8.22	Nuclear Criticality Safety Based on Limiting and Controlling Moderators
ANS 8.3	Criticality Accident Alarm System
ANS 8.6	Safety in Conducting Subcritical Neutron-Multiplication Measurements in Situ
ANS 8.7	Nuclear Criticality Safety In The Storage Of Fissile Materials
ANSI Z 358.1	Eye Wash and Shower Equipment, Emergency
ANSI N323A - 1997	American National Standard: Radiation Protection Instrumentation Test and Calibration, Portable Survey Instruments
ANSI N42.18 - 1980	American National Standard: Specification and Performance of On-Site Instrumentation for Continuously Monitoring Radioactivity in Effluents
ANSI N43.3 - 1993	American National Standard For General Radiation Safety - Installations Using Non-Medical X-Ray and Sealed Gamma-Ray Sources, Energies Up To 10 MeV
ANSI/ANS-3.2	ADMINISTRATIVE CONTROLS AND QUALITY ASSURANCE FOR THE OPERATIONAL PHASE OF NUCLEAR POWER PLANTS
ANSI/ASQ E4	Quality Systems For Environmental Data And Technology Programs -Requirements With Guidance For Use
ANSI/HPS N43.2 - 2001	American National Standard: Radiation Safety for X-Ray Diffraction and Fluorescence Analysis Equipment
ASME NQA-1-2000	QUALITY ASSURANCE REQUIREMENTS FOR NUCLEAR FACILITY APPLICATIONS
Comm. Vehicle Safety Alliance	North American Uniform Vehicle Out-of-Service Criteria

DOE LETTER AA-03-007	Cancellation of Directive Implementation Instructions
DOE LETTER EMPT-06-060	DOE-SR Letter EMPT-06-060, Enclosure 1, Fire Protection Requirements And Clarifications Established by DOE-SR
DOE/NNSA QC-1, Rev. 10	DOE/NNSA QC-1 Weapon Quality Policy QC-1
DOE/RW-0333P, Rev 6	Quality Assurance Requirements and Description for the Civilian Radioactive Waste Management Program
Directive	Title
DOE5400.5 Chg 2	RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT
DOE5480.19	CONDUCT OF OPERATIONS REQUIREMENTS FOR DOE FACILITIES
DOE5480.20A	PERSONNEL SELECTION, QUALIFICATION, AND TRAINING REQUIREMENTS FOR DOE NUCLEAR FACILITIES
DOE5480.4 Chg 4	ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION STANDARDS
DOE5480.8A Chg 1	CONTRACTOR OCCUPATIONAL MEDICAL PROGRAM
DOE5530.3	RADIOLOGICAL ASSISTANCE PROGRAM
DOE-EM-STD-5502-94	Hazard Baseline Documentation
DOEM231.1-1A	Environment, Safety and Health Reporting Manual
DOEM231.1-2	Occurrence Reporting and Processing of Operations Information
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SC R.61-92	Underground Storage Tank Control Regulations
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NON ES&H REQUIREMENTS	
Directive	Title
DOE1340.1B	Management Of Public Communications Publications And Scientific, Technical, And Engineering Publications
DOE1450.4	Concensual Listening-in to or Recording Telephone/Radio Conversations
DOE5610.2Chg1	Control of Weapon Data
DOEM140.1-1B	Interface with the Defense Nuclear Facilities Safety Board
DOEM200.1-1	Chapter 9, Public Key Cryptography and Key Management
DOEM413.3-1	Project Management For The Acquisition Of Capital Assets
DOEM470.4-1	Safeguards and Security Program Planning and Management (Change 1)
DOEM470.4-2	Physical Protection
DOEM470.4-3	Protective Safeguards and Security Force (Change 1)
DOEM470.4-4	Information Security
DOEM470.4-5	Personnel Security
DOEM470.4-6	Nuclear Material Control and Accountability (Change 1)
DOEM471.1-1	Identification And Protection Of Unclassified Controlled Nuclear Information Manual
DOEM471.2-2	Classified Information Systems Security Manual
DOEM471.3-1	Manual For Identifying And Protecting Official Use Only Information
DOEM475.1-1A	Identifying Classified Information
DOEM481.1-1AChg1	Reimbursable Work for Non-Federal Sponsors Process Manual
DOEM483.1-1	DOE Cooperative Research And Development Agreements Manual
DOEM573.1-1	Mail Services User's Manual
DOEN205.1	Unclassified Cyber Security Program
DOEN205.2	Foreign National Access To DOE Cyber Systems
DOEN205.3	Password Generation, Protection, And Use
DOEN205.4	Handling Cyber Security Alerts And Advisories And Reporting Cyber Security Incidents
DOEN206.3	Personal Identity Verification
DOEN470.2	Reporting Unofficial Foreign Travel
DOEN473.4	Department Of Energy Badges
DOEN473.5	Security Area Vouching And Piggybacking
DOEO110.3	Conference Management
DOEO130.1	Budget Formulation Process
DOEO142.1	Classified Visits Involving Foreign Nationals
DOEO142.2	Safeguards Agreement And Protocol With The International Atomic Energy Agency
DOEO142.3	Unclassified Foreign Visits And Assignments Program
DOEO200.1	Information Management Program
DOEO221.1	Reporting Fraud, Waste, And Abuse To The Office Of Inspector General
DOEO221.2	Cooperation With The Office Of Inspector General
DOEO241.1A	Scientific and Technical Information Management
DOEO252.1	TECHNICAL STANDARDS PROGRAM
DOEO350.1	Contractor Human Resource Management Programs
DOEO350.2A	Use Of Management And Operating Or Other Facility Management Contractor Employees For Services To DOE In The Washington, D.C., Area

Directive	Title
DOEO413.1A	Management Control Program
DOEO413.2B	Laboratory Directed Research And Development
DOEO413.3	Program And Project Management For The Acquisition Of Capital Assets
DOEO430.1B	REAL PROPERTY ASSET MANAGEMENT
DOEO430.2A	Departmental Energy And Utilities Management
DOEO440.2B	Aviation Management And Safety (CAIR being revised to incorporate Change 1 dated 11/19/2006, Due 5/22/2007)
DOEO470.2B	Independent Oversight And Performance Assurance Program
DOEO470.3	Design Basis Threat Policy
DOEO471.1A	Identification and Protection of Unclassified Controlled Nuclear Information
DOEO471.3	Identifying And Protecting Official Use Only Information
DOEO475.1	Counterintelligence Program
DOEO481.1B	Work for Others (Non-Department of Energy Funded Work)
DOEO483.1	DOE Cooperative Research And Development Agreements
DOEO484.1	Reimbursable Work For Department Of Homeland Security
DOEO522.1	PRICING OF DEPARTMENTAL MATERIALS AND SERVICES
DOEO534.1A	Accounting
DOEO551.1B	Official Foreign Travel
IBP-404	NWC Infrastructure Business Practice, Engineering Authorization System
NNSAM56XB	NNSA Development and Production Manual
NNSAM56XBCH 8. 1	NNSA Manual 56XB, Chapter 8.1, New Material And Stockpile Evaluation Test Program
NNSAM56XBCH 12. 3	NNSA Manual 56XB, Chapter 12.3, Risk Management Process For The Directed Stockpile Work Program
TBP	Nuclear Weapons Complex Applicable Technical Business Practice (TBP) Procedures
TBP-000	NWC Technical Business Practice, Program Management
TBP-100	NWC Technical Business Practice, Concurrent Qualification
TBP-101	NWC Technical Business Practice, Engineering Evaluation Process
TBP-200	NWC Technical Business Practice, Product Identification And Traceability
TBP-201	NWC Technical Business Practice, Weapon Identification Systems And Marking Criteria
TBP-300	NWC Technical Business Practice, Product Definition
TBP-301	NWC Technical Business Practice, Methods Of Definition
TBP-302	NWC Technical Business Practice, Product And Equipment Designations
TBP-308	NWC Technical Business Practice, Use of Models in the Product Realization Process
TBP-400	NWC Technical Business Practice, Design Control
TBP-401	NWC Technical Business Practice, Definition Control
TBP-402	NWC Technical Business Practice, Product Control
TBP-403	NWC Technical Business Practice, Reviews
TBP-404	NWC Technical Business Practice, Engineering Authorization System
TBP-500	NWC Technical Business Practice, Records Management
TBP-600	NWC Technical Business Practice, Procurement
TBP-601	NWC Technical Business Practice, Procurement Classes Of Weapon Product
TBP-700	NWC Technical Business Practice, Product Acceptance And Control Of Nonconformance

Directive	Title
TBP-701	NWC Technical Business Practice, Acceptance Equipment Interfaces
TBP-702	NWC Technical Business Practice, Nonconforming Material
TBP-703	NWC Technical Business Practice, Product Reprocessing And Reworking
TBP-704	NWC Technical Business Practice, Evaluation And Disposition Of Discrepant Weapon Material
TBP-800	NWC Technical Business Practice, Stockpile Management
TBP-801	NWC Technical Business Practice, Laboratory And Flight Test Material
TBP-804	NWC Technical Business Practice, Stockpile Support Material
TBP-CM	NWC Technical Business Practice, Configuration Management
TBP-PRP	NWC Technical Business Practice, Product Realization Process
TBP-SYS	NWC Technical Business Practice, Technical Business Practice System

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX F

SENSITIVE FOREIGN NATIONS CONTROL

In accordance with the clause in Section I entitled, DEAR 952.204-71 “Sensitive Foreign Nations Controls,” this Attachment sets forth the requirements the contractor shall comply with under this contract. (Reference DOE Order 142.3, 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.

1. 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 follow:

Algeria
Armenia
Azerbaijan
Belarus
China (People's Republic of China)
Cuba - Terrorist
Georgia
India
Iran - Terrorist
Iraq
Israel
Kazakhstan
North Korea (Democratic People's Republic of) - Terrorist
Kyrgyzstan
Libya - Terrorist
Moldavia
Pakistan
Russia
Sudan - Terrorist
Syria - Terrorist
Taiwan (Republic of China)
Tajikistan
Turkmenistan
Ukraine
Uzbekistan

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.

2. Prior Approvals Relating to Foreign Nationals

- a. Foreign visits and assignments pertaining to DOE programs must be in accordance with DOE Order 142.3, 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.
- b. Sensitive visits or assignment requests must be submitted 45 days in advance in order to allow time for an indices check to be completed.
- c. Non-sensitive visits or assignment requests must be submitted 5 days in advance.

3. Reports Relating to Foreign Visits and Assignments

Host Report Requirements - To enable the approving official to evaluate the effectiveness of visits and assignments, and to assist in determining the desirability of future visits and assignments, host reports are required within 5 days of the completion of the visit or assignment.

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX G

PERFORMANCE GUARANTEE AGREEMENT

The Performance Guarantee Agreement is required by the Section H provision entitled “Performance Guarantee.”

PART IV – REPRESENTATIONS AND INSTRUCTIONS
SECTION L – Attachment A
PERFORMANCE GUARANTEE AGREEMENT

Fluor Federal Services, Incorporated's guaranty of performance is based on the interpretation that as a guaranty of only contract performance that: (1) the first paragraph of this Performance Guarantee Agreement permits the Guarantor to raise the same contract performance defenses that would be available to the contractor, and (2) the waiver in the first two lines of the third paragraph of this Guarantee is not intended to reduce or eliminate the rights of Guarantor to raise such contract performance defenses.

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-AC09-06SR22470 for the management and operation of the Savannah River Site (the "Contract") dated _____, by and between the Government and Savannah River Nuclear Solutions, LLC (Contractor), the undersigned, Fluor Federal Services, Inc. (Guarantor), a corporation incorporated in the State of Washington with its principal place of business at One Enterprise Drive, Aliso Viejo, CA 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 to or 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.

PART IV – REPRESENTATIONS AND INSTRUCTIONS
SECTION L – Attachment A
PERFORMANCE GUARANTEE AGREEMENT

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 on 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 5-18-07.

Fluor Federal Services, Inc.



John L. Hopkins
President



ATTESTATION AND
CORPORATE SEAL

Northrop Grumman Corporation's guaranty of performance is based on the interpretation that as a guaranty of only contract performance that: (1) the first paragraph of this Performance Guarantee Agreement permits the Guarantor to raise the same contract performance defenses that would be available to the contractor, and (2) the waiver in the first two lines of the third paragraph of this Guarantee is not intended to reduce or eliminate the rights of Guarantor to raise such contract performance defenses.

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-AC09-06SR22470 for the management and operation of the Savannah River Site (the "Contract") dated (date of Contract award), by and between the Government and Savannah River Nuclear Solutions, LLC (Contractor), the undersigned, Northrop Grumman Corporation (Guarantor), a corporation incorporated in the State of Delaware with its principal place of business at 1840 Century Park East, Los Angeles, CA 90067 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.

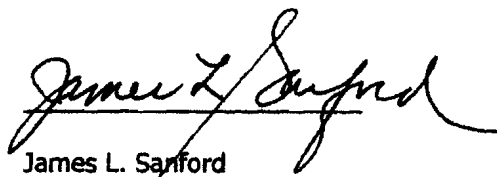
Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation 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, Lynne (Law) 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 May 18, 2007.

NORTHROP GRUMMAN CORPORATION



NAME James L. Sanford

POSITION Corporate Vice President
and Treasurer



ATTESTATION AND
CORPORATE SEAL

Honeywell
101 Columbia Rd.
P.O. Box 1219
Morristown, NJ 07962-1219
973-455-2000

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-RP09-06SR22470 for the management and operation of the Savannah River Site and satellite facilities (the "Contract") to be dated as of August 31, 2007, by and between the Government and Savannah River Nuclear Solutions, LLC (the "Contractor"), the undersigned, Honeywell International Inc. (the "Guarantor"), a corporation incorporated in the State of Delaware with its principal place of business at Morristown, New Jersey 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 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

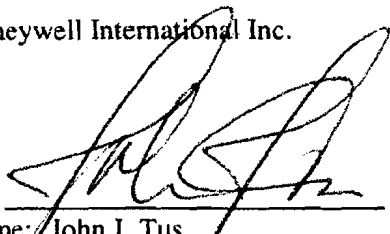
- (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person 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 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 May 11, 2007.

Honeywell International Inc.

By: 
Name: John J. Tus
Title: Vice President and Treasurer

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX H

GUIDANCE FOR PREPARATION OF DIVERSITY PLAN

With regard to the clause in Section I entitled, DEAR 970.5226-1 “Diversity Plan,” this Appendix provides guidance to assist the Contractor in understanding the information being sought by the Department for each of the clause’s Diversity elements. If the Contractor’s current policy or procedure already addresses the following elements, the Contractor need only provide a copy of the policy or procedure to the CO and identify the applicable policy or procedure and applicable page number(s).

Work Force

This Contract includes clauses on Equal Opportunity and Affirmative Action. The Contractor should discuss its policies and plans for implementation of these clauses in its operations. If the Contractor already has procedures in place, these should be discussed and copies provided.

Educational Outreach

The Contractor should outline or discuss any programs already provided, or which it intends to provide, which will provide employees an opportunity to improve their employment skills and opportunities. These programs could include: educational assistance allowance, provision for outside training programs either during or outside regular work hours, and executive training programs for non-executive employees. The Contractor should also discuss any plans to participate in any program supporting Historically Black Colleges and Universities, Hispanic Serving Institutions, and Native American Institutions.

Community Involvement and Outreach

An Offeror's proposal or this Contract may include a section dealing with community involvement and outreach activities. In that event, those sections may be cross-referenced and do not need to be repeated. Contractor community relation activities could include support for the following activities: support for science, mathematics and engineering education; support for community service organizations; assistance to Governmental and community service organizations and for equal opportunity activities; and community assistance in connection with work force reduction plans. The Contractor may provide support to these activities through direct sponsorship or making individual employees available to work with the specific community activity. The Contractor's Diversity Plan should discuss the Contractor's existing and planned activities promoting community involvement of its employees as well as the corporation.

Subcontracting

If appropriate to the Contractor, the Contract will contain FAR 52.219-9 "Small, Small Disadvantaged, and Woman Owned Small Business Subcontracting Plan" and other small business related clauses. The Contractor should briefly summarize its subcontracting plan. If the Contractor is participating, or plans to participate, in the Department's Mentor-Protégé Program, this involvement or planned involvement should be summarized. Information concerning its subcontracting plans already submitted and approved does not need to be redeveloped or renegotiated.

Economic Development (Including Technology Transfer)

Many of the Department's contracts include clauses dealing with technology transfer. Planning or activities developed under such clauses may apply to this element of the Contractor's Diversity Plan. Additionally, some of the subcontracting activities planned by the Contractor with small business, small disadvantaged businesses, or woman-owned small businesses may be entered into for the purpose of assisting the economic development of or transferring technology to such a business. The Contractor's Diversity Plan should outline and discuss its planned activities promoting economic diversification of the local community.

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX I

GUIDANCE FOR PREPARATION OF EMPLOYEE CONCERNS PROGRAM (ECP) IMPLEMENTATION PLAN

This Guidance is to assist the Contractor in understanding the information being sought by the Department for each of the ECP Plan elements. The Plan should include innovative strategies for identifying and resolving employee issues effectively at the lowest level possible in a timely manner. The Plan should address, at a minimum, the Contractor's approach for promoting openness in communication and resolving employee issues through (1) educational outreach and training, (2) an effective concerns processing system, (3) a thorough and independent investigation process, (4) tracking implementation of corrective actions, (5) timely response to concerned employees, (6) integration of the ECP into the Contractor's Integrated Safety Management System (ISMS), (7) proactive use of Alternative Dispute Resolution (ADR), (8) zero tolerance for reprisal for raising any issue, and (9) an effective self assessment and evaluation process.

Educational Outreach and Training

The Contractor Plan should outline or discuss any programs already provided, or which it intends to provide, which will educate their workforce and those of their subcontractors on their rights and responsibilities regarding reporting all types of issues to their management and/or the ECP, the avenues available to all employees for raising concerns, emphasizing the proactive use of ADR, and the Department's policy on zero tolerance for reprisal for raising issues.

Effective Concerns Processing System

The Contractor's ECP Plan should discuss the Contractor's existing or planned processes for receiving and resolving employee concerns in accordance with DOE directives. The Plan should discuss overall perspectives on organizational location of the ECP function, staffing, establishment of procedures, and logistical considerations for the functioning of an effective ECP.

Thorough and Independent Investigation Process

The Contractor's ECP Plan should discuss the Contractor's existing or planned processes for investigating employee concerns in accordance with DOE directives, including proposed methods for investigating concerns by ECP staff, as well as identifying the types of concerns referred or transferred to other organizations for investigation and resolution. The Plan should discuss the methods used to ensure the independence of the ECP and maintaining the integrity of the Program as an independent evaluation process. The Plan should also discuss the types and levels of expertise relative to the investigation process necessary to implement an effective ECP.

Tracking Implementation of Corrective Actions

The Contractor's Plan should discuss methods the Contractor is currently using or intends to use to document and track the implementation of corrective actions resulting from substantiated employee concern investigations, to include an evaluation of the effectiveness of the actions in resolving the concern and preventing future recurrence of the identified problems.

Timely Response to Concerned Employees

The Plan should describe the methods the Contractor is currently using or intends to use to provide effective feedback to the concerned employees throughout the process, as well as in providing a final closeout to the individual.

Integration of the ECP into the Integrated Safety Management System (ISMS)

The Plan should discuss the integration of the ECP as part of the Contractor's ISMS, specifically describing the Contractor's philosophy on how the ECP contributes to the effectiveness of the ISMS.

Proactive Use of Alternative Dispute Resolution (ADR)

The Contractor's Plan should discuss the Contractor's existing or planned processes for incorporating the proactive, early use of ADR methods, including mediation, into their efforts to resolve employee concerns, in accordance with DOE directives. The Plan should also discuss the types and levels of expertise relative to ADR necessary to implement ADR as part of an effective ECP.

Zero Tolerance for Reprisal for Raising Issues

The Plan should discuss the methods the Contractor is currently using or intends to use to communicate and enforce DOE directives regarding zero tolerance for reprisal for raising all types of issues. The Plan should discuss the processes established to implement the provisions of Title 10, Code of Federal Regulations, Part 708 (10CFR 708), *Contractor Employee Protection Program*, and the reprisal prohibitions under Title 10, Code of Federal Regulation, Part 820 (10CFR820), *Procedural Rules for DOE Nuclear Activities*. The Plan should include discussion of methods of training employees and supervisors on the provisions of 10CFR708 and 10CFR820, as well as proactively resolving formal complaints filed under 10CFR708. The Plan should also include discussion regarding how to address the implications of violations of 10CFR708 or 10CFR820 as it relates to the Price-Anderson Amendments Act of 1988 (PAAA).

Effective Self Assessment and Evaluation Process

The Contractor ECP Plan should discuss the methods the Contractor is currently using or intends to use to implement an effective self assessment and evaluation process, in accordance with DOE directives, including DOE Order 226.1, *Implementation of DOE Oversight Policy*. The Plan should include discussion on methods to conduct tracking and trending analysis on concerns received and resolved, as well as actions to report that information to senior Contractor management

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX J

GUIDANCE FOR PREPARATION OF EQUAL OPPORTUNITY PROGRAM

With regard to the clause in Section I entitled, FAR 52.222-26 “Equal Opportunity,” this Appendix provides guidance to assist the Contractor in understanding the Department’s expectations in the area of workforce equal employment opportunity and diversity.

In addition to Executive Order 11246 and DOE Order 311.1B, DOE-SR contractors and subcontractors will strive to meet DOE-SR's expectations to be model employers in the area of workforce equal employment opportunity and diversity, and to provide policies, procedures, and assign responsibilities and authorities for the oversight of contractor equal employment opportunity and affirmative action at DOE facilities, as specified in applicable State and Federal laws and regulations.

DOE-SR contractors and subcontractors must ensure that all its personnel actions are "made free" of any discrimination based on race, color, religion, sex, national origin, age, disabling condition, reprisal or sexual orientation and that each of its contractors and subcontractors has "an affirmative program of equal employment opportunity" for all employees and applicants for employment. To this end, the contractors must maintain the essential elements of a Model Equal Employment Opportunity (EEO) Program as follows:

- Demonstrated commitment from company leadership;
- Integration of EEO into the company's strategic mission;
- Management and program accountability;
- Proactive prevention of unlawful discrimination;
- Efficiency; and
- Responsiveness and legal compliance.

(a) **Demonstrated Commitment from Contractor Leadership**

- (1) Contractor heads and other senior management officials are to demonstrate a firm commitment to equality of opportunity for all employees and applicants for employment. Even the best workplace policies and procedures will fail if they are not trusted, respected and vigorously enforced. The Contractor must translate equal opportunity into every day practice and make those principles a fundamental part of their company culture. This commitment to equal opportunity must be embraced by company leadership and communicated through the ranks from the top down. It is the responsibility of each company head to take such measures as may be necessary to

incorporate the principles of equal employment opportunity into the company's organizational structure.

- (2) To this end, the Contractor will adhere to all DOE policies governing EEO and a workplace free of discriminatory harassment.

(b) Integration of EEO into the Company's Strategic Mission

- (1) Maintain a reporting structure that provides the company's EEO Director with regular access to the company head and other senior management officials for reporting on the effectiveness, efficiency and legal compliance of the company's equal employment opportunity and diversity programs.
- (2) EEO Director be a direct report to the company head.
- (3) Ensure EEO professionals are involved with, and consulted on, the management and deployment of human resources. The EEO Director should be a regular participant in senior staff meetings and regularly consulted on human resources issues.
- (4) Allocate sufficient resources to create and/or maintain equal employment opportunity and diversity programs that: 1) identify and eliminate barriers that impair the ability of individuals to compete in the workplace because of race, national origin, sex or disability; 2) establish and maintain training and education programs designed to provide maximum opportunity for all employees to advance; and 3) ensure that unlawful discrimination in the workplace is promptly corrected and addressed.
- (5) Attract, develop and retain EEO staff with the strategic competencies necessary to accomplish the company's EEO mission, and interface with company officials, managers and employees.
- (6) Recruit, hire, develop and retain supervisors and managers who have effective managerial, communications and interpersonal skills. Provide managers and supervisors with appropriate classroom training and other resources to understand and successfully discharge their duties and responsibilities.
- (7) Involve managers and employees in the implementation of the company's EEO and diversity programs.
- (8) Use various media to distribute EEO information concerning EEO laws, regulations and requirements, rights, duties and responsibilities and to promote best workplace practices.

(c) Management and Program Accountability

- (1) Conduct regular internal audits, on at least an annual basis, to assess the effectiveness and efficiency of EEO laws and regulations to ascertain whether the company has

made a good faith effort to identify and remove barriers to equality of opportunity in the workplace.

- (2) Establish procedures to prevent all forms of discrimination, including harassment, retaliation and failure to provide reasonable accommodation to qualified individuals with disabilities.
- (3) Evaluate managers and supervisors on efforts to ensure equality of opportunity for all employees.
- (4) Maintain clearly defined, well-communicated, consistently applied and fairly implemented personnel policies, selection and promotion procedures, evaluation procedures, rules of conduct and training systems.
- (5) Review each finding of discrimination to determine the appropriateness of taking disciplinary action against company officials involved in the matter. Track these decisions and report trends, issues and problems to company leadership for appropriate action.

(d) Proactive Prevention of Unlawful Discrimination

Contractors must conduct a self-assessment on at least an annual basis to monitor progress, identify areas where barriers may operate to exclude certain groups and develop strategic plans to eliminate identified barriers.

(e) Efficiency

- (1) Contractors must have an efficient and fair dispute resolution process and effective systems for evaluating the impact and effectiveness of their EEO programs.
- (2) Maintain an efficient, fair, and impartial complaint resolution process.
- (3) Establish and encourage the widespread use of a fair alternative dispute resolution (ADR) program that facilitates the early, effective, and efficient informal resolution of disputes.
- (4) Establish an internal complaint process to include suspense date that has been approved by DOE-SR. Develop a tracking and monitoring system that permits the company to identify the location, status, and length of time elapsed at each stage of the company's complaint process, the issues and the bases of the complaints, the aggrieved individuals/complainants, the involved management officials and other information necessary to analyze complaint activity and identify trends.
- (5) Identify, monitor and report significant trends reflected in complaint processing activity monthly to DOE-SR. Analysis of data relating to the nature and disposition

of EEO complaints can provide useful insight into the extent to which an company is meeting its obligations to EEO laws, regulations, executive orders and guidances.

- (6) Maintain a system that collects and maintains accurate information on the race, national origin, sex, and disability status of company employees.
 - (7) Maintain a system that tracks applicant flow data, which identifies applicants by race, national origin, sex, and disability status and the disposition of all applications.
 - (8) Maintain a tracking system of recruitment activities to permit analyses of these efforts in any examination of potential barriers to equality of opportunity.
 - (9) Identify and disseminate best workplace practices.
- (f) Responsiveness and Legal Compliance

Ensure that they are in full compliance with the laws, regulations, guidances, orders and other written instructions.

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX K

**SUPPLEMENTAL REQUIREMENTS TO
LAWS, REGULATIONS, AND DOE DIRECTIVES**

RESERVED

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX L

DISCRETIONARY MANAGEMENT POSITIONS

TO BE COMPLETED AFTER AWARD

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX M

GUIDANCE FOR PREPARATION OF THE TRANSITION PLAN

The successful Offeror shall submit a Transition Plan within one day after contract award that describes the process and details for providing an orderly transition during the contract's Transition Term as specified in the clause in Section F entitled "Term of Contract", and in accordance with the Transition Plan Requirements described in Item 1- Transition Plan Requirements, below.

Within 10 days of contract award, the successful Offeror shall provide an estimate of the costs to perform the transition activities specified in the Contractor's Transition Plan and in accordance with the instructions set forth in Item 2 - Transition Cost Proposal. Upon submission of the Transition Cost Proposal, the proposed Transition activities, schedule, and estimated costs will be finalized with the Contractor and approved by the Contracting Officer prior to commencement of the Transition Plan activities.

1. Transition Plan Requirements

The Contractor is responsible for performing due diligence to ensure that all the transition activities are identified, negotiated, and completed during the Transition Term. The Contractor shall perform those activities that are necessary to transition the work from the incumbent contractor in a manner that (1) assures that all work for which the contractor is responsible under the contract is continued without disruption; (2) provides for an orderly transfer of resources responsibilities and accountability from the incumbent contractor; and (3) provides for the ability of the Contractor to perform the work in an efficient, effective, and safe manner. The Contractor is responsible for providing all necessary personnel and logistical support (office space, computers, telephone, etc.) during the transition period, unless specifically directed otherwise by the CO.

The purpose of this Transition Plan Requirements is to identify the major, high level, and minimum set of transition activities that are expected to be used to develop the Transition Plan and associated cost estimate of activities to be completed by the Contractor during the Transition Term. The objectives of the Transition Plan are to minimize the impacts on continuity of operations, identify key issues, and overcome barriers to transition.

After completion of the transition activities contained in the approved transition plan and such other transition activities as may be authorized or directed by the CO, the Contractor shall notify the CO in writing that it is ready to assume full responsibility for the work. The plan shall include a narrative and an implementation schedule of all major transition activities, and address, as a minimum:

- Identification of a transition team (inclusive of consultants and teaming members, if any);
- Identification of key transition issues and milestones;
- Approach to minimizing impacts on continuity of operations;
- Interface process among the Contractor, incumbent contractors, site tenants, and DOE;
- Development or modification of controlling agreements as required;
- Assumption of SR programs and projects;
- Assumption of all ES&H responsibilities, functions, and activities;
- Integration of work packages (direct and indirect) and budgets from incumbent contractors;
- Comprehensive human resource management as described in the provision in Section H entitled, "Employee Compensation: Pay and Benefits";
- Joint reconciliation of the incumbent contractor's property inventory as described in the provision in Section H entitled, "Government-Owned Property and Equipment";
- Implementation of existing or proposed management systems (e.g., Project Management, Integrated Safety Management, General Electronic Data Processing, Budget and Planning, Purchasing Material, Compensation, Labor/Payroll, Indirect and Direct Costs, Property Management, Billing and Estimating);
- Dispute Resolution; and
- Identification and prioritization of issues after transition.

The Contractor's Transition Plan shall include a detailed staffing plan that shows the proposed labor hours by individual or labor category by major transition activity. The staffing plan shall include a brief narrative outlining the roles and responsibilities of the personnel assigned to manage and execute the Transition Plan, and the rationale for the selected skill mix and assumptions used to develop the proposed labor hour estimates. The staffing plan shall separately identify any significant transition related effort assumed to be provided by the incumbent or the government.

2. Transition Cost Proposal

The successful Offeror shall submit a Transition Cost estimate to the Contracting Officer for approval within 10 calendar days after contract award. The Transition Cost proposal shall include a summary by major cost element of the costs to perform the transition activities specified in the successful Offeror's Transition Plan and a narrative sufficient to explain the development and reasonableness of the proposed costs. Each cost element in (a) through (c) below shall be supported by a detailed exhibit or schedule that includes the following cost information, as applicable. Include all known or anticipated transition related costs in the Transition Cost proposal. Separately identify any significant transition related items that are provided at no cost from the Offeror, or assumed to be provided at no cost by the incumbent or the government. No fee shall be paid for transition activities.

Note: If a teaming arrangement is proposed, provide a cost summary of the total that clearly identifies by cost element, the portion of the cost proposal that pertains to each participant including subcontractors. In addition, each participant and each subcontractor must provide supporting cost information in the same format and level of detail as required of the Contractor under these cost instructions.

- (a) Labor Hours and Rates: Consistent with the successful Offeror's proposed Transition Plan, provide a staffing summary showing the proposed labor hours for each major transition activity by individual or labor category and explain the basis for the labor hour estimates. Identify base (unburdened) labor rates for each key personnel, named individual, or by labor category, and the source of the labor rates (e.g., Forward Pricing Rate Agreement, bidding rates, current actual rates, average category rates, commitment letters, or salary surveys). Separately identify and explain any salary premiums applied to the base salaries. If any of the proposed labor rates deviate from the actual rates currently paid to the named employee, then identify and explain. If labor escalation is applied, identify the escalation factor(s) and show how the escalation is applied to the base labor rates to arrive at the proposed escalated rates.
- (b) Indirect Rates and Costs: Show the proposed indirect rates for all applicable burdens and clearly demonstrate how the rates are applied to arrive at the proposed indirect costs. Identify the application base for each burden rate, and provide documentation regarding the basis for the proposed rates/factors (i.e., Government approved Forward Pricing Rate Agreement, bidding rates, budgets, trend analysis, historical experience, and/or relevant DCAA audits). Indirect costs, including allocable home office support costs, should be proposed in accordance with FAR Part 31, the Cost Accounting Standards, if applicable, and your current disclosed accounting practices and procedures. Note: For allocable Home Office costs incurred after the Transition period, refer to the clause in Section H entitled, "Home Office Expenses."
- (c) Materials, Equipment, Subcontracts, and Other Direct Costs: Provide an exhibit that summarizes proposed materials, equipment, services, transition office space/lease costs, travel, and other direct cost items relating to the transition effort. Provide a schedule showing each travel destination, number of trips, number of travel days per employee, air fares, car rental, hotel, meals, and other miscellaneous travel costs. Travel expenses will be subject to applicable FAR limitations unless the corporate policy is less.

For all other direct costs, materials, equipment and services, show the proposed quantity, unit price, and extended amounts, and provide the basis of estimate and supporting documentation used to determine the proposed costs/prices.

Note: The cost of relocating Key Personnel, whether incurred during or after the transition period, is to be included as a Key Personnel cost and not as a Transition cost.

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

SECTION J - LIST OF ATTACHMENTS

APPENDIX N

SRS INTERFACE MANAGEMENT PLAN

TO BE COMPLETED AFTER AWARD